***[Insert Company Letter Head]***

August X, 2015

General Services Administration

Regulatory Secretariat (MVCB)

ATTN: Ms. Flowers

1800 F Street NW, 2nd Floor

Washington, D.C. 20405

Tiffany Jones

U.S. Department of Labor

Room S—2312, 200 Constitution Avenue NW,

Washington, D.C. 20210

**Re: FAR Case 2014-025, Comments on the Proposed Federal Acquisition Regulation; Fair Pay and Safe Workplaces (RIN 9000-AM81); Comments on the Proposed Guidance for Executive Order 13673, Fair Pay and Safe Workplaces (ZRIN 1290-ZA02).**

Dear Ms. Flowers and Ms. Jones:

My name is XXX. I am the XXX [Insert president or other title] of XXX (Insert company name).

[***Briefly describe your company’s history and experience as a federal contractor or subcontractor, if any. For example, describe the number of federal contracts over $500,000 you have performed recently and highlight any impressive federal projects/contracts.]***

I’m writing in opposition to the proposed rulemaking issued May 28, 2015, by the Federal Acquisition Regulatory (FAR) Council and proposed guidance by the U.S. Department of Labor (DOL) implementing President Obama’s Fair Pay and Safe Workplaces Executive Order 13673.

Our company shares the president’s goal of providing fair pay and a safe workplace because it is the right thing to do. It also helps us attract and retain top talent and provides us with a distinct advantage against other construction businesses competing for federal contracts.

*[****Possible insert: Describe your company’s strong safety record or record of compliance with federal labor and employment laws, or steps you have taken to ensure compliance].***

Our company has invested significant resources in systems to track information to ensure compliance with numerous and complex federal contracting requirements. However, we have several serious concerns with the proposal and believe it should be rescinded.

First, I am very concerned about the proposed requirement to report non-final agency and court actions. Companies commonly undergo agency investigations and receive violation notices or court complaints, but a subsequent hearing or legal proceeding often reveals the alleged violation is unfounded or is much less serious than the original claim. If non-final agency or court actions are considered by the contracting officer as part of the responsibility determination process, quality companies like mine could lose a contract as a result of cases or investigations that are not yet fully adjudicated or are eventually dismissed. ***[Possible insert: For example, this has happened to my company in the past. (Describe an incident in which a complaint was made against your company that was later dismissed or settled with a greatly reduced finding.)].***

In addition, competitors, labor unions and other stakeholders could be incentivized by this proposal to file frivolous claims that trigger investigations in order to prevent us from completing ongoing contracts and receiving new contracts. ***[Possible insert: If you have been the target of a union corporate campaign, this is the place to tell your story.]***Destroying a federal contractor’s due process rights will create a series of unintended consequences that will harm the economy and efficiency in federal contracting. Therefore, the proposal should only require the reporting of final, non-appealable determinations.

Second, we already report information to the federal government as part of the federal contracting process. By adding duplicative reporting requirements and certifying compliance of subcontractors, our company will be forced to hire more staff and attorneys at great costs that eventually will be passed onto the federal government and taxpayers. It is disappointing that we are exposed to additional red tape and increased costs even if we do not have a violation. Rather than imposing additional and duplicative data collection and reporting requirements on federal contractors, the federal government should seek to use data it already collects to determine a contractor’s responsibility. In addition, federal agencies should use existing suspension and debarment processes to root out bad firms, rather than create a new and burdensome regulatory scheme.

Third, this proposal is sure to increase costs for a number of reasons. However, it is difficult to know the exact costs this proposal will incur for my company, especially because the rule is not final and it was issued through a bifurcated process that does not identify any of the hundreds of state equivalent labor and employment laws (with the exception of OSHA-equivalent state plans) we could need to track, certify compliance with, and report to procurement officials before a contract award and again every six months during the life of a contract. Essentially, we are being asked to comment on the proposal without having a complete picture of its scope or its economic and regulatory impact. Therefore, the proposal should not be implemented until both phases of the proposal are released.

Despite the bifurcated rulemaking process, we know the proposal will increase costs due to new reporting and compliance red tape, as well as increase costs in other ways ignored by the government’s regulatory impact analysis. For example, our company will have to factor costs into our bid related to risk and uncertainty associated with another contractor on a jobsite being found non-responsible while performing a federal contract. If one company is found non-responsible during the life of a contract, it could shut down a jobsite and lead to significant delays, which would damage the ability of every contractor on the jobsite to make a profit. There is also the risk that a false claim could be made against our company or oursubcontractors six months into a contract that we would have to report and that could potentially result in our being disqualified mid-term, even though there has been no final adjudication of the allegations.

In addition, the proposal is sure to increase costs and create delays due to pre-award bid protests, litigation against frivolous complaints and investigations, and lawsuits disputing the subjective responsibility determination or assertions made by federal contracting officers or prime contractors and subcontractors.

***[Possible insert: Describe other ways the proposal will increase costs, create delays and lead to litigation specific to your company.]***

Added costs, red tape, increased risk, delays and needless uncertainty resulting from this proposal will have a severe impact on small businesses and will prevent many from competing for federal contracts because they do not have the resources to comply with this substantial regulatory burden. In the construction industry, a lack of small and disadvantaged contractors will result in reduced competition and increased costs, making it difficult for federal agencies to meet small and disadvantaged contracting goals and requirements.

Finally, the proposal is illegal because it exceeds the president’s authority. The proposal gives little attention to the careful balance of remedies and penalties already established by Congress in existing labor and employment laws identified in the proposal. Instead, the proposal undermines the Constitution’s separation of powers by substituting the president for Congress in the exercise of legislative authority. For example, the proposal circumvents Congress and adds new penalties on federal contractors found in violation of some of the 14 identified laws. In short, it improperly supplants the balanced labor law schemes established by Congress to the detriment of taxpayers, contractors and the procurement process.

In conclusion, this proposal inserts a great deal of uncertainty and risk into the process of bidding on federal contracts and delivering the best possible product at the best possible price.

***[Possible insert: If this proposal becomes final in anything like its present form, my company would have to seriously consider our willingness to pursue federal contracts, even though we are a high-quality, safe and legally compliant contractor. This will be bad for the nation’s taxpayers, as there will be fewer quality contractors competing for government work.]***

The proposal is unlawful, impracticable and extremely burdensome to taxpayers and to government contractors, particularly small businesses in the construction industry. It will reduce competition, increase costs, harm the economy and reduce efficiency in federal contracting in numerous ways that have not been acknowledged in the rulemaking. For the reasons outlined in this comment, Executive Order 13673 and the related regulatory proposals should be rescinded in their entirety.

Sincerely,

***Name
Title
Company
Contact Information***