

(B) includes an individual without regard to any contractual relationship alleged to exist between the individual and a contractor or subcontractor; but

(C) does not include an individual employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in part 541 of title 29, Code of Federal Regulations.

(4) UNITED STATES.—The term “United States”—

(A) includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, the outer Continental Shelf as defined in the Outer Continental Shelf Lands Act (43 U.S.C. §1331 et seq.), American Samoa, Guam, Wake Island, and Johnston Island; but

(B) does not include any other territory under the jurisdiction of the United States or any United States base or possession within a foreign country.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3811.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 1: 6701, 41:357, Pub. L. 89-286, §8, Oct. 22, 1965, 79 Stat. 1036; Pub. L. 93-57, §1, July 6, 1973, 87 Stat. 140; Pub. L. 94-489, §3, Oct. 13, 1976, 90 Stat. 2358.

In paragraph (3), the word “individual” is substituted for “person” because of the definition of “person” in 1:1. The words “contract made by the Federal Government” are substituted for “contract entered into by the United States” for consistency in the revised title. The words “as of July 30, 1976, and any subsequent revision of those regulations” are omitted as obsolete.

In paragraph (4)(A), the words “the outer Continental Shelf” are substituted for “Outer Continental Shelf lands” for consistency with the definition in 43:1331 and for consistency with the more common usage generally found in subchapter III of chapter 29 of title 43. The words “Eniwetok Atoll, Kwajalein Atoll” are omitted because they are part of the Marshall Islands and therefore no longer part of the United States. The words “Canton Island” are omitted because it is part of Kiribati and therefore no longer part of the United States.

Editorial Notes

REFERENCES IN TEXT

The Outer Continental Shelf Lands Act, referred to in par. (4)(A), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, which is classified generally to subchapter III (§1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of Title 43 and Tables.

§ 6702. Contracts to which this chapter applies

(a) IN GENERAL.—Except as provided in subsection (b), this chapter applies to any contract or bid specification for a contract, whether negotiated or advertised, that—

(1) is made by the Federal Government or the District of Columbia;

(2) involves an amount exceeding \$2,500; and

(3) has as its principal purpose the furnishing of services in the United States through the use of service employees.

(b) EXEMPTIONS.—This chapter does not apply to—

(1) a contract of the Federal Government or the District of Columbia for the construction, alteration, or repair, including painting and decorating, of public buildings or public works;

(2) any work required to be done in accordance with chapter 65 of this title;

(3) a contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line or oil or gas pipeline where published tariff rates are in effect;

(4) a contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934 (47 U.S.C. 151 et seq.);

(5) a contract for public utility services, including electric light and power, water, steam, and gas;

(6) an employment contract providing for direct services to a Federal agency by an individual; and

(7) a contract with the United States Postal Service, the principal purpose of which is the operation of postal contract stations.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3812.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 1: 6702(a), 41:351(a) (words before par. (1) related to applicability), Pub. L. 89-286, §2(a) (words before par. (1) related to applicability), Oct. 22, 1965, 79 Stat. 1034; Pub. L. 94-489, §1(a), Oct. 13, 1976, 90 Stat. 2358. Row 2: 6702(b), 41:356, Pub. L. 89-286, §7, Oct. 22, 1965, 79 Stat. 1035.

In subsection (b)(2), the words “the Walsh-Healey Public Contracts Act (49 Stat. 2036)”, which appear in section 7(2) of Public Law 89-286 (79 Stat. 1036), are treated as a reference to the Act of June 30, 1936 (ch. 881, 49 Stat. 2036), which was known as the Walsh-Healey Act and which was subsequently designated as the Walsh-Healey Act by section 12 of the Act of June 30, 1936, which was added by section 10005(f)(5) of Public Law 103-355 (108 Stat. 3409).

In subsection (b)(7), the words “United States Postal Service” are substituted for “Post Office Department” because of sections 4(a) and 6(o) of the Postal Reorganization Act (Public Law 91-375, 84 Stat. 773, 783, 39 U.S.C. note prec. 101, 201 note).

Editorial Notes

REFERENCES IN TEXT

The Communications Act of 1934, referred to in subsec. (b)(4), is act June 19, 1934, ch. 652, 48 Stat. 1064, which is classified principally to chapter 5 (§151 et seq.) of Title 47, Telecommunications. For complete classification of this Act to the Code, see section 609 of Title 47 and Tables.

§ 6703. Required contract terms

A contract, and bid specification for a contract, to which this chapter applies under section 6702 of this title shall contain the following terms:

(1) MINIMUM WAGE.—The contract and bid specification shall contain a provision specifying the minimum wage to be paid to each class of service employee engaged in the performance of the contract or any subcontract,

as determined by the Secretary or the Secretary's authorized representative, in accordance with prevailing rates in the locality, or, where a collective-bargaining agreement covers the service employees, in accordance with the rates provided for in the agreement, including prospective wage increases provided for in the agreement as a result of arm's length negotiations. In any case the minimum wage may not be less than the minimum wage specified in section 6704 of this title.

(2) **FRINGE BENEFITS.**—The contract and bid specification shall contain a provision specifying the fringe benefits to be provided to each class of service employee engaged in the performance of the contract or any subcontract, as determined by the Secretary or the Secretary's authorized representative to be prevailing in the locality, or, where a collective-bargaining agreement covers the service employees, to be provided for under the agreement, including prospective fringe benefit increases provided for in the agreement as a result of arm's-length negotiations. The fringe benefits shall include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, accident insurance, vacation and holiday pay, costs of apprenticeship or other similar programs and other bona fide fringe benefits not otherwise required by Federal, State, or local law to be provided by the contractor or subcontractor. The obligation under this paragraph may be discharged by furnishing any equivalent combinations of fringe benefits or by making equivalent or differential payments in cash under regulations established by the Secretary.

(3) **WORKING CONDITIONS.**—The contract and bid specification shall contain a provision specifying that no part of the services covered by this chapter may be performed in buildings or surroundings or under working conditions, provided by or under the control or supervision of the contractor or any subcontractor, which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to provide the services.

(4) **NOTICE.**—The contract and bid specification shall contain a provision specifying that on the date a service employee begins work on a contract to which this chapter applies, the contractor or subcontractor will deliver to the employee a notice of the compensation required under paragraphs (1) and (2), on a form prepared by the Federal agency, or will post a notice of the required compensation in a prominent place at the worksite.

(5) **GENERAL SCHEDULE PAY RATES AND PREVAILING RATE SYSTEMS.**—The contract and bid specification shall contain a statement of the rates that would be paid by the Federal agency to each class of service employee if section 5332 or 5341 of title 5 were applicable to them. The Secretary shall give due consideration to these rates in making the wage and fringe benefit determinations specified in this section.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3812.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
6703	41:351(a) (words before par. (1) related to required contract terms), (1)-(5).	Pub. L. 89-286, §2(a) (words before par. (1) related to required contract terms), (1)-(5), Oct. 22, 1965, 79 Stat. 1034; Pub. L. 92-473, §§1, 2, Oct. 9, 1972, 86 Stat. 789; Pub. L. 94-489, §2, Oct. 13, 1976, 90 Stat. 2358.

Executive Documents

EXECUTIVE ORDER NO. 13495

Ex. Ord. No. 13495, Jan. 30, 2009, 74 F.R. 6103, which provided for nondisplacement of qualified workers under a successor service contract upon the expiration of the predecessor contract, was revoked by Ex. Ord. No. 13897, §1, Oct. 31, 2019, 84 F.R. 59709, formerly set out below.

EXECUTIVE ORDER NO. 13897

Ex. Ord. No. 13897, Oct. 31, 2019, 84 F.R. 59709, which related to the revocation of Ex. Ord. No. 13495, formerly set out above, was revoked by Ex. Ord. No. 14055, §9, Nov. 18, 2021, 86 F.R. 66400, set out below.

EX. ORD. NO. 14055. NONDISPLACEMENT OF QUALIFIED WORKERS UNDER SERVICE CONTRACTS

Ex. Ord. No. 14055, Nov. 18, 2021, 86 F.R. 66397, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Property and Administrative Services Act, [see] 40 U.S.C. 101 et seq. [and 41 U.S.C. 101 et seq.], and in order to promote economy and efficiency in procurement, it is hereby ordered as follows:

SECTION 1. Policy. When a service contract expires, and a follow-on contract is awarded for the same or similar services, the Federal Government's procurement interests in economy and efficiency are best served when the successor contractor or subcontractor hires the predecessor's employees, thus avoiding displacement of these employees. Using a carryover work force reduces disruption in the delivery of services during the period of transition between contractors, maintains physical and information security, and provides the Federal Government with the benefits of an experienced and well-trained work force that is familiar with the Federal Government's personnel, facilities, and requirements. These same benefits are also often realized when a successor contractor or subcontractor performs the same or similar contract work at the same location where the predecessor contract was performed.

SEC. 2. Definitions.

(a) "Service contract" or "contract" means any contract, contract-like instrument, or subcontract for services entered into by the Federal Government or its contractors that is covered by the Service Contract Act of 1965, as amended, [see] 41 U.S.C. 6701 et seq., and its implementing regulations.

(b) "Employee" means a service employee as defined in the Service Contract Act of 1965, as amended, 41 U.S.C. 6701(3).

(c) "Agency" means an executive department or agency, including an independent establishment subject to the Federal Property and Administrative Services Act, 40 U.S.C. 102(4)(A).

SEC. 3. Nondisplacement of Qualified Workers. (a) Each agency shall, to the extent permitted by law, ensure that service contracts and subcontracts that succeed a contract for performance of the same or similar work, and solicitations for such contracts and subcontracts, include the following clause:

"Nondisplacement of Qualified Workers: (a) The contractor and its subcontractors shall, except as otherwise provided herein, in good faith offer service em-

ployees (as defined in the Service Contract Act of 1965, as amended, 41 U.S.C. 6701(3)) employed under the predecessor contract and its subcontracts whose employment would be terminated as a result of the award of this contract or the expiration of the contract under which the employees were hired, a right of first refusal of employment under this contract in positions for which those employees are qualified. The contractor and its subcontractors shall determine the number of employees necessary for efficient performance of this contract and may elect to employ more or fewer employees than the predecessor contractor employed in connection with performance of the work solely on the basis of that determination. Except as provided in paragraph (b), there shall be no employment opening under this contract or subcontract, and the contractor and any subcontractors shall not offer employment under this contract to any person prior to having complied fully with the obligations described in this clause. The contractor and its subcontractors shall make an express offer of employment to each employee as provided herein and shall state the time within which the employee must accept such offer, but in no case shall the period within which the employee must accept the offer of employment be less than 10 business days.

“(b) Notwithstanding the obligation under paragraph (a) above, the contractor and any subcontractors (1) are not required to offer a right of first refusal to any employee(s) of the predecessor contractor who are not service employees within the meaning of the Service Contract Act of 1965, as amended, 41 U.S.C. 6701(3), and (2) are not required to offer a right of first refusal to any employee(s) of the predecessor contractor for whom the contractor or any of its subcontractors reasonably believes, based on reliable evidence of the particular employees’ past performance, that there would be just cause to discharge the employee(s) if employed by the contractor or any subcontractors.

“(c) The contractor shall, not less than 10 business days before the earlier of the completion of this contract or of its work on this contract, furnish the Contracting Officer a certified list of the names of all service employees working under this contract and its subcontracts during the last month of contract performance. The list shall also contain anniversary dates of employment of each service employee under this contract and its predecessor contracts either with the current or predecessor contractors or their subcontractors. The Contracting Officer shall provide the list to the successor contractor, and the list shall be provided on request to employees or their representatives, consistent with the Privacy Act, 5 U.S.C. 552a, and other applicable law.

“(d) If it is determined, pursuant to regulations issued by the Secretary of Labor (Secretary), that the contractor or its subcontractors are not in compliance with the requirements of this clause or any regulation or order of the Secretary, the Secretary may impose appropriate sanctions against the contractor or its subcontractors, as provided in Executive Order (No. _____), the regulations implementing that order, and relevant orders of the Secretary, or as otherwise provided by law.

“(e) In every subcontract entered into in order to perform services under this contract, the contractor will include provisions that ensure that each subcontractor will honor the requirements of paragraphs (a) and (b) with respect to the employees of a predecessor subcontractor or subcontractors working under this contract, as well as of a predecessor contractor and its subcontractors. The subcontract shall also include provisions to ensure that the subcontractor will provide the contractor with the information about the employees of the subcontractor needed by the contractor to comply with paragraph (c) of this clause. The contractor shall take such action with respect to any such subcontract as may be directed by the Secretary as a means of enforcing such provisions, including the imposition of sanctions for noncompliance: provided, however, that if the contractor, as a result of such direc-

tion, becomes involved in litigation with a subcontractor, or is threatened with such involvement, the contractor may request that the United States enter into such litigation to protect the interests of the United States.”

(b) Nothing in this order shall be construed to require or recommend that agencies, contractors, or subcontractors pay the relocation costs of employees who exercise their right to work for a successor contractor or subcontractor pursuant to this order.

SEC. 4. *Location Continuity.* (a) When an agency prepares a solicitation for a service contract that succeeds a contract for performance of the same or similar work, the agency shall consider whether performance of the work in the same locality or localities in which the contract is currently being performed is reasonably necessary to ensure economical and efficient provision of services.

(b) If an agency determines that performance of the contract in the same locality or localities is reasonably necessary to ensure economical and efficient provision of services, then the agency shall, to the extent consistent with law, include a requirement or preference in the solicitation for the successor contract that it be performed in the same locality or localities.

SEC. 5. *Exclusions.* This order shall not apply to:

(a) contracts under the simplified acquisition threshold as defined in 41 U.S.C. 134; or

(b) employees who were hired to work under a Federal service contract and one or more nonfederal service contracts as part of a single job, provided that the employees were not deployed in a manner that was designed to avoid the purposes of this order.

SEC. 6. *Exceptions Authorized by Agencies.* (a) A senior official within an agency may grant an exception from the requirements of section 3 of this order for a particular contract by, no later than the solicitation date, providing a specific written explanation of why at least one of the following circumstances exists with respect to that contract:

(i) Adhering to the requirements of section 3 of this order would not advance the Federal Government’s interests in achieving economy and efficiency in Federal procurement;

(ii) Based on a market analysis, adhering to the requirements of section 3 of this order would:

(A) substantially reduce the number of potential bidders so as to frustrate full and open competition; and

(B) not be reasonably tailored to the agency’s needs for the contract; or

(iii) Adhering to the requirements of section 3 of this order would otherwise be inconsistent with statutes, regulations, Executive Orders, or Presidential Memoranda.

(b) To the extent permitted by law and consistent with national security and executive branch confidentiality interests, each agency shall publish, on a centralized public website, descriptions of the exceptions it has granted under this section, and ensure that the contractor notifies affected workers and their collective bargaining representatives, if any, in writing of the agency’s determination to grant an exception.

(c) On a quarterly basis, each agency shall report to the Office of Management and Budget descriptions of the exceptions granted under this section.

SEC. 7. *Regulations and Implementation.* (a) The Secretary of Labor (Secretary) shall, to the extent consistent with law, issue final regulations within 180 days of the date of this order [Nov. 18, 2021] to implement the requirements of this order, other than those specified in sections 6(b) and (c) of this order.

(b) Within 60 days of the Secretary issuing final regulations, the Federal Acquisition Regulatory Council (FAR Council), to the extent consistent with law, shall amend the Federal Acquisition Regulation to provide for inclusion in Federal procurement solicitations and contracts subject to this order the clause described in section 3 of this order.

(c) The Director of the Office of Management and Budget shall, to the extent consistent with law, issue guidance to implement section 6(c) of this order.

SEC. 8. *Enforcement.* (a) The Secretary shall have the authority to investigate potential violations of, and obtain compliance with, this order. In such proceedings, the Secretary shall have the authority to issue final orders prescribing appropriate sanctions and remedies, including, but not limited to, orders requiring employment and payment of wages lost. The Secretary may also provide that, if a contractor or subcontractor has failed to comply with any order of the Secretary or has committed willful violations of this order or the regulations issued pursuant thereto, the contractor or subcontractor, and its responsible officers, and any firm in which the contractor or subcontractor has a substantial interest, may be ineligible to be awarded any contract of the United States for a period of up to 3 years. Neither an order for debarment of any contractor or subcontractor from further Federal Government contracts under this section nor the inclusion of a contractor or subcontractor on a published list of noncomplying contractors shall be carried out without affording the contractor or subcontractor an opportunity to present information and argument in opposition to the proposed debarment or inclusion on the list.

(b) This order creates no rights under the Contract Disputes Act, 41 U.S.C. 7101 *et seq.*, and disputes regarding the requirements of the contract clause prescribed by section 3 of this order, to the extent permitted by law, shall be disposed of only as provided by the Secretary in regulations issued under this order.

SEC. 9. *Revocation.* Executive Order 13897 of October 31, 2019 (Improving Federal Contractor Operations by Revoking Executive Order 13495) [formerly set out above], is revoked. Executive Order 13495 of January 30, 2009 (Nondisplacement of Qualified Workers Under Service Contracts) [formerly set out above], remains revoked.

SEC. 10. *Severability.* If any provision of this order, or the application of any provision of this order to any person or circumstance, is held to be invalid, the remainder of this order and its application to any other person or circumstance shall not be affected thereby.

SEC. 11. *Effective Date.* This order shall become effective immediately and shall apply to solicitations issued on or after the effective date of the final regulations issued by the FAR Council under section 7 of this order. For solicitations issued between the date of this order and the date of the action taken by the FAR Council under section 7 of this order, or solicitations that have already been issued and are outstanding as of the date of this order, agencies are strongly encouraged, to the extent permitted by law, to include in the relevant solicitation the contract clause described in section 3 of this order.

SEC. 12. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

J.R. BIDEN, JR.

§ 6704. Limitation on minimum wage

(a) IN GENERAL.—A contractor that makes a contract with the Federal Government, the principal purpose of which is to furnish services through the use of service employees, and any subcontractor, may not pay less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C.

206(a)(1)) to an employee engaged in performing work on the contract.

(b) VIOLATIONS.—Sections 6705 to 6707(d) of this title are applicable to a violation of this section.

(Pub. L. 111–350, §3, Jan. 4, 2011, 124 Stat. 3813.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
6704	41:351(b).	Pub. L. 89–286, §2(b), Oct. 22, 1965, 79 Stat. 1034; Pub. L. 94–489, §1(b), Oct. 13, 1976, 90 Stat. 2358.

§ 6705. Violations

(a) LIABILITY OF RESPONSIBLE PARTY.—A party responsible for a violation of a contract provision required under section 6703(1) or (2) of this title or a violation of section 6704 of this title is liable for an amount equal to the sum of any deduction, rebate, refund, or underpayment of compensation due any employee engaged in the performance of the contract.

(b) RECOVERY OF AMOUNTS UNDERPAID TO EMPLOYEES.—

(1) WITHHOLDING ACCRUED PAYMENTS DUE ON CONTRACTS.—The total amount determined under subsection (a) to be due any employee engaged in the performance of a contract may be withheld from accrued payments due on the contract or on any other contract between the same contractor and the Federal Government. The amount withheld shall be held in a deposit fund. On order of the Secretary, the compensation found by the Secretary or the head of a Federal agency to be due an underpaid employee pursuant to this chapter shall be paid from the deposit fund directly to the underpaid employee.

(2) BRINGING ACTIONS AGAINST CONTRACTORS.—If the accrued payments withheld under the terms of the contract are insufficient to reimburse a service employee with respect to whom there has been a failure to pay the compensation required pursuant to this chapter, the Federal Government may bring action against the contractor, subcontractor, or any sureties in any court of competent jurisdiction to recover the remaining amount of underpayment. Any amount recovered shall be held in the deposit fund and shall be paid, on order of the Secretary, directly to the underpaid employee. Any amount not paid to an employee because of inability to do so within 3 years shall be covered into the Treasury as miscellaneous receipts.

(c) CANCELLATION AND ALTERNATIVE COMPLETION.—In addition to other actions in accordance with this section, when a violation of any contract stipulation is found, the Federal agency that made the contract may cancel the contract on written notice to the original contractor. The Federal Government may then make other contracts or arrangements for the completion of the original contract, charging any additional cost to the original contractor.

(d) ENFORCEMENT OF SECTION.—In accordance with regulations prescribed pursuant to section 6707(a)–(d) of this title, the Secretary or the head of a Federal agency may carry out this section.