

BLACKLISTING EXECUTIVE ORDER

Stop this Unfounded, Unnecessary and Subjective Executive Order from Becoming Law

Action Needed:

Prohibit application of the Blacklisting EO in the final National Defense Authorization Act (NDAA). Section 1095 of H.R. 4909 and Section 8291 of S. 2943—which limit application of the EO in the House and Senate NDAA bills—must be included in the final NDAA bill and apply government-wide. This Executive Order begins taking effect on October 25, 2016.

Background:

- Executive Order 13673—commonly called the Blacklisting Executive Order (EO)—allows agency contracting officers to debar a contractor on a contract-by-contract basis with little cause. This Order requires federal prime contractors to report violations of 14 federal labor laws and “equivalent” state laws during the previous three years, and again every six months, on federal contracts over \$500,000. Prime contractors will also be responsible for evaluating the labor law violations of its subcontractors at all tiers, forcing subcontractors to disclose sensitive information to a contractor that may be a future competitor on another contract, which could lead to bid protests and extortion.

AGC Message:

- **The “Need” for this Executive Order is Unfounded.** The Administration, in large part, justifies this Order based on a 2010 Government Accountability Office report that found almost two-thirds of the 50 largest wage-and-hour violations—incurred by a mere 15 federal contractors—went on to receive new government contracts. Those 15 contractors represent a meager 0.000625 percent of the 24,000 federal contractors estimated by the Labor Department.
- **It is Unnecessary.** The Federal Acquisition Regulation (FAR) already provides a number of avenues, like suspension or debarment, for federal agencies to deal with contractors that willfully or repeatedly violate the law. Additionally, reporting mechanisms for violations already exist through a number of federal reporting systems.
- **It will Establish a New, Subjective and Inconsistent Bureaucratic System.** A contracting officer could deny a contractor the right to compete on one contract, but could find that same contractor responsible enough to compete on another. Similarly, one contracting officer could find a contractor’s record unsatisfactory but another contracting officer could find it satisfactory.
- **It is Unworkable for the Construction Industry.** The process that a prime contractor goes through to submit a proposal is often fast-paced, short and can be chaotic. The Order requires prime contractors to evaluate potential subcontractors’ labor violations and determine whether they meet the legal standards set forth under the Order. Prime contractors can have dozens, and, sometimes hundreds of potential subcontractors at every tier. To allow prime contractors time to adequately perform these evaluations, federal procurement times will have to increase dramatically and bids will correspondingly increase to help cover compliance costs.