



# Acquisition Reform Working Group

May 10, 2016

The Honorable John McCain  
Chairman

The Honorable Jack Reed  
Ranking Member

U.S. Senate Committee on Armed Services  
228 Russell Senate Office Building  
Washington, DC 20510

Dear Chairman McCain and Ranking Member Reed:

On behalf of the undersigned members of the Acquisition Reform Working Group (ARWG), we write to express our opposition to the Fair Pay and Safe Workplaces Executive Order (Executive Order 13673) issued by the President on July 31, 2014<sup>1</sup>, and to request that you take action in the Fiscal Year 2017 National Defense Authorization Act to address Department of Defense (DOD) compliance with the Executive Order.

Industry supports the laudable goal of Executive Order 13673 (E.O.) to ensure that only those contractors who abide by applicable labor-related laws and regulations are permitted to receive federal contracts. However, the E.O.'s own recognition that the "vast majority of federal contractors play by the rules,"<sup>2</sup> raises serious questions about the necessity of a sweeping and significant new compliance regime that would be established by the E.O. Additionally, the Executive Order ignores the fact that the federal government already has a vast federal contractor labor law oversight infrastructure in place that gives the Department of Labor many tools to take punitive or corrective actions, or determine whether a contractor is "presently responsible" to perform a federal contract. These tools include fines, payment withholdings, and formal suspension and debarment proceedings. Instead of focusing on these existing enforcement mechanisms, Executive Order 13673 seeks to shift the reporting burden and information collection to industry, at great expense and with no demonstrable benefit to DOD.

<sup>1</sup> Executive Order, Fair Pay and Safe Workplaces, available at <https://www.whitehouse.gov/the-press-office/2014/07/31/executive-order-fair-pay-and-safe-workplaces>.

<sup>2</sup> Fact Sheet: Fair Pay and Safe Workplaces Executive Order, available at <http://www.whitehouse.gov/the-press-office/2014/07/31/fact-sheet-fair-pay-and-safe-workplaces-executive-order>.

Both Congress and DOD have sought to remove needless regulations and barriers to entry into the federal marketplace, and to otherwise streamline the acquisition process. We strongly believe that Executive Order 13673 will severely undermine those efforts by adding several layers of new, costly, and unnecessary burdens on businesses currently providing, or seeking to provide, goods and services to DOD.

We also are concerned that the Executive Order will effect DoD's ability to meet its missions. Implementation of the Executive Order will slow the federal contracting process through extended reviews and more frequent bid protests, and will deny government access to innovation and critical mission support contractors that are challenging even an alleged violation of a labor law. Even companies without any labor law violations or allegations will avoid the federal market due to the subcontractor flow-down requirements and significant regulatory costs associated with the Executive Order.

To summarize, we believe that the Executive Order is duplicative, unnecessary, costly, and seeks to impose labor standards on private contractors that Federal Agencies have themselves been unable to meet. We therefore request that your committee incorporate statutory language in the Fiscal Year 2017 NDAA that exempts DoD from complying with the E.O. or significantly narrows the scope of coverage and prescriptive requirements that would be heaped upon industry if the E.O. is fully implemented.

Thank you for your consideration of our request. If you have any questions, please contact ARWG's project lead on this issue, Roger Jordan of the Professional Services Council staff, at 703-875-8059.

Sincerely,

Aerospace Industries Association  
Associated Builders and Contractors, Inc.  
American Council of Engineering Companies  
Financial Executives International's Committee on Government Business  
Information Technology Alliance for the Public Sector  
National Defense Industrial Association  
Professional Services Council  
The Associated General Contractors of America  
The Coalition for Government Procurement  
U.S. Chamber of Commerce