

116TH CONGRESS
2D SESSION

S. 3448

To provide for certain contracting requirements to promote fair and safe workplaces, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 11, 2020

Ms. SMITH (for herself, Mr. BLUMENTHAL, Mr. BROWN, Ms. BALDWIN, Mrs. FEINSTEIN, Mrs. MURRAY, Mrs. GILLIBRAND, Mr. VAN HOLLEN, Mrs. SHAHEEN, Mr. MERKLEY, and Mr. DURBIN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To provide for certain contracting requirements to promote fair and safe workplaces, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fair Pay and Safe
5 Workplaces Act of 2020”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) COVERED CONTRACT.—The term “covered
9 contract” means a Federal contract for the procure-

1 ment of property or services, including construction,
2 valued in excess of \$500,000.

3 (2) COVERED SUBCONTRACT.—The term “cov-
4 ered subcontract”—

5 (A) means a subcontract for property or
6 services under a Federal contract that is valued
7 in excess of \$500,000; and

8 (B) does not include a subcontract for the
9 procurement of commercially available off-the-
10 shelf items.

11 (3) EXECUTIVE AGENCY.—The term “executive
12 agency” has the meaning given the term in section
13 133 of title 41, United States Code.

14 **SEC. 3. PURPOSE.**

15 The purpose of this Act is to—

16 (1) ensure that the purchasing power of the
17 Federal Government is employed to raise labor
18 standards, improve working conditions, and
19 strengthen workers’ bargaining power; and

20 (2) increase efficiency and cost savings in the
21 work performed by parties who contract with the
22 Federal Government by ensuring that they under-
23 stand and comply with labor laws, which are de-
24 signed to promote safe, healthy, fair, and effective
25 workplaces and increase the likelihood of enhanced

1 productivity in the workplace and the timely, pre-
2 dictable, and satisfactory delivery of goods and serv-
3 ices to the Federal Government.

4 **SEC. 4. REQUIRED PRE-CONTRACT AWARD ACTIONS.**

5 (a) DISCLOSURES.—The head of an executive agency
6 shall ensure that the solicitation for a covered contract re-
7 quires the offeror—

8 (1) to represent, to the best of the offeror’s
9 knowledge and belief, whether there has been any
10 administrative merits determination, arbitral award
11 or decision, or civil judgment, as defined in guidance
12 issued by the Secretary of Labor, rendered against
13 the offeror in the preceding 3 years for violations
14 of—

15 (A) the Fair Labor Standards Act of 1938
16 (29 U.S.C. 201 et seq.);

17 (B) the Occupational Safety and Health
18 Act of 1970 (29 U.S.C. 651 et seq.);

19 (C) the Migrant and Seasonal Agricultural
20 Worker Protection Act (29 U.S.C. 1801 et
21 seq.);

22 (D) the National Labor Relations Act (29
23 U.S.C. 151 et seq.);

1 (E) subchapter IV of chapter 31 of title
2 40, United States Code (commonly known as
3 the “Davis-Bacon Act”);

4 (F) chapter 67 of title 41, United States
5 Code (commonly known as the “Service Con-
6 tract Act”);

7 (G) Executive Order 11246 (42 U.S.C.
8 2000e note; relating to equal employment op-
9 portunity);

10 (H) section 503 of the Rehabilitation Act
11 of 1973 (29 U.S.C. 793);

12 (I) section 4212 of title 38, United States
13 Code;

14 (J) the Family and Medical Leave Act of
15 1993 (29 U.S.C. 2601 et seq.);

16 (K) title VII of the Civil Rights Act of
17 1964 (42 U.S.C. 2000e et seq.);

18 (L) the Americans with Disabilities Act of
19 1990 (42 U.S.C. 12101 et seq.);

20 (M) the Age Discrimination in Employ-
21 ment Act of 1967 (29 U.S.C. 621 et seq.);

22 (N) title II of the Genetic Information
23 Nondiscrimination Act of 2008 (42 U.S.C.
24 2000ff et seq.);

1 (O) Executive Order 13658 (79 Fed. Reg.
2 9851; relating to establishing a minimum wage
3 for contractors); or

4 (P) equivalent State laws, as defined in
5 guidance issued by the Secretary of Labor;

6 (2) to require each subcontractor for a covered
7 subcontract—

8 (A) to represent to the offeror and the en-
9 tity designated by the final rule reissued under
10 subsection (a) of section 7, to the best of the
11 subcontractor's knowledge and belief, whether
12 there has been any administrative merits deter-
13 mination, arbitral award or decision, or civil
14 judgment, as defined in guidance issued by the
15 Department of Labor, rendered against the
16 subcontractor in the preceding 3 years for viola-
17 tions of any of the labor laws and Executive or-
18 ders listed under paragraph (1); and

19 (B) to update such information every 6
20 months for the duration of the subcontract; and

21 (3) to consider the advice rendered by the enti-
22 ty designated by the final rule reissued under sub-
23 section (a) of section 7 or information submitted by
24 a subcontractor pursuant to paragraph (2) in deter-
25 mining whether the subcontractor is a responsible

1 source with a satisfactory record of integrity and
2 business ethics—

3 (A) prior to awarding the subcontract; or

4 (B) in the case of a subcontract that is
5 awarded or will become effective within 5 days
6 of the prime contract being awarded, not later
7 than 30 days after awarding the subcontract.

8 (b) PRE-AWARD CORRECTIVE MEASURES.—

9 (1) IN GENERAL.—A contracting officer, prior
10 to awarding a covered contract, shall, as part of the
11 responsibility determination, provide an offeror who
12 makes a disclosure pursuant to subsection (a) an op-
13 portunity to report any steps taken to correct the
14 violations of or improve compliance with the labor
15 laws and Executive orders listed in paragraph (1) of
16 such subsection, including any agreements entered
17 into with an enforcement agency.

18 (2) CONSULTATION.—The executive agency's
19 Labor Compliance Advisor designated pursuant to
20 section 6, in consultation with relevant enforcement
21 agencies, shall advise the contracting officer whether
22 agreements are in place or are otherwise needed to
23 address appropriate remedial measures, compliance
24 assistance, steps to resolve issues to avoid further

1 violations, or other related matters concerning the
2 offeror.

3 (3) RESPONSIBILITY DETERMINATION.—The
4 contracting officer, in consultation with the executive
5 agency’s Labor Compliance Advisor, shall consider
6 information provided by the offeror under this sec-
7 tion in determining whether the offeror is a respon-
8 sible source with a satisfactory record of integrity
9 and business ethics. The determination shall be
10 based on the guidelines reissued under subsection
11 (b)(1) of section 7 and the final rule reissued under
12 subsection (a) of such section.

13 (c) REFERRAL OF INFORMATION TO SUSPENSION
14 AND DEBARMENT OFFICIALS.—As appropriate, con-
15 tracting officers, in consultation with their executive agen-
16 cy’s Labor Compliance Advisor, shall refer matters related
17 to information provided pursuant to paragraphs (1) and
18 (2) of subsection (a) to the executive agency’s suspension
19 and debarment official in accordance with agency proce-
20 dures.

21 **SEC. 5. POST-AWARD CONTRACT ACTIONS.**

22 (a) INFORMATION UPDATES.—The contracting offi-
23 cer for a covered contract shall require that the contractor
24 update the information provided under paragraphs (1)
25 and (2) of section 4(a) every 6 months.

1 (b) CORRECTIVE ACTIONS.—

2 (1) PRIME CONTRACT.—The contracting officer,
3 in consultation with the Labor Compliance Advisor
4 designated pursuant to section 6, shall determine
5 whether any information provided under subsection
6 (a) warrants corrective action. Such action may in-
7 clude—

8 (A) an agreement requiring appropriate re-
9 medial measures;

10 (B) compliance assistance;

11 (C) resolving issues to avoid further viola-
12 tions;

13 (D) the decision not to exercise an option
14 on a contract or to terminate the contract; or

15 (E) referral to the agency suspending and
16 debarring official.

17 (2) SUBCONTRACTS.—The prime contractor for
18 a covered contract, in consultation with the Labor
19 Compliance Advisor, shall determine whether any in-
20 formation provided under section 4(a)(2) warrants
21 corrective action, including remedial measures, com-
22 pliance assistance, and resolving issues to avoid fur-
23 ther violations.

24 (3) DEPARTMENT OF LABOR.—The Department
25 of Labor shall, as appropriate, inform executive

1 agencies of its investigations of contractors and sub-
2 contractors on current Federal contracts for pur-
3 poses of determining the appropriateness of actions
4 described under paragraphs (1) and (2).

5 **SEC. 6. LABOR COMPLIANCE ADVISORS.**

6 (a) IN GENERAL.—Each executive agency shall des-
7 ignate a senior official to act as the agency’s Labor Com-
8 pliance Advisor.

9 (b) DUTIES.—The Labor Compliance Advisor shall—

10 (1) meet quarterly with the Deputy Secretary,
11 Deputy Administrator, or equivalent executive agen-
12 cy official with regard to matters covered under this
13 Act;

14 (2) work with the acquisition workforce, agency
15 officials, and agency contractors to promote greater
16 awareness and understanding of labor law require-
17 ments, including recordkeeping, reporting, and no-
18 tice requirements, as well as best practices for ob-
19 taining compliance with these requirements;

20 (3) coordinate assistance for executive agency
21 contractors seeking help in addressing and pre-
22 venting labor violations;

23 (4) in consultation with the Department of
24 Labor or other relevant enforcement agencies, and
25 pursuant to section 4(b) as necessary, provide assist-

1 ance to contracting officers regarding appropriate
2 actions to be taken in response to violations identi-
3 fied prior to or after contracts are awarded, and ad-
4 dress complaints in a timely manner, by—

5 (A) providing assistance to contracting of-
6 ficers and other executive agency officials in re-
7 viewing the information provided pursuant to
8 subsections (a) and (b) of section 4 and section
9 5(a), or other information indicating a violation
10 of a labor law in order to assess the serious, re-
11 peated, willful, or pervasive nature of any viola-
12 tion and evaluate steps contractors have taken
13 to correct violations or improve compliance with
14 relevant requirements;

15 (B) helping agency officials determine the
16 appropriate response to address violations of
17 the requirements of the labor laws and Execu-
18 tive orders listed in section 4(a)(1) or other in-
19 formation indicating such a labor violation (par-
20 ticularly serious, repeated, willful, or pervasive
21 violations), including agreements requiring ap-
22 propriate remedial measures, decisions not to
23 award a contract or exercise an option on a
24 contract, contract termination, or referral to the

1 executive agency suspension and debarment of-
2 ficial;

3 (C) providing assistance to appropriate ex-
4 ecutive agency officials in receiving and re-
5 sponding to, or making referrals of, complaints
6 alleging violations by agency contractors and
7 subcontractors of the requirements of the labor
8 laws listed in section 4(a)(1); and

9 (D) supporting contracting officers, sus-
10 pension and debarment officials, and other
11 agency officials in the coordination of actions
12 taken pursuant to this subsection to ensure
13 agency-wide consistency, to the extent prac-
14 ticable;

15 (5) as appropriate, send information to agency
16 suspension and debarment officials in accordance
17 with agency procedures;

18 (6) consult with the agency's Chief Acquisition
19 Officer and Senior Procurement Executive, and the
20 Department of Labor as necessary, in the develop-
21 ment of regulations, policies, and guidance address-
22 ing labor law compliance by contractors and sub-
23 contractors;

1 (7) make recommendations to the agency to
2 strengthen agency management of contractor compli-
3 ance with labor laws;

4 (8) publicly report, on an annual basis, a sum-
5 mary of agency actions taken to promote greater
6 labor compliance, including the agency's response
7 pursuant to this order to serious, repeated, willful,
8 or pervasive violations of the requirements of the
9 labor laws and Executive orders listed in section
10 4(a)(1); and

11 (9) participate in the interagency meetings reg-
12 ularly convened by the Secretary of Labor pursuant
13 to section 7(b)(2)(C).

14 **SEC. 7. MEASURES TO ENSURE GOVERNMENT-WIDE CON-**
15 **SISTENCY.**

16 (a) FEDERAL ACQUISITION REGULATION.—

17 (1) IN GENERAL.—Notwithstanding Public Law
18 115–11 (131 Stat. 75) and section 553 of title 5,
19 United States Code, not later than 1 year after the
20 date of enactment of this Act, the Secretary of De-
21 fense, the Administrator of the General Services Ad-
22 ministration, and the Administrator of the National
23 Aeronautics and Space Administration shall reissue
24 the final rule entitled “Federal Acquisition Regula-

1 tion; Fair Pay and Safe Workplaces” (81 Fed. Reg.
2 58562 (Aug. 25, 2016)), subject to paragraph (2).

3 (2) UPDATED DATES.—The agencies described
4 in paragraph (1) may, in reissuing the final rule
5 under such paragraph, update any date provided in
6 such final rule as reasonable and necessary.

7 (b) DEPARTMENT OF LABOR.—

8 (1) GUIDANCE.—Not later than 1 year after
9 the date of enactment of this Act, the Secretary of
10 Labor shall reissue the guidance entitled “Guidance
11 for Executive Order 13673, ‘Fair Pay and Safe
12 Workplaces’” (81 Fed. Reg. 58564 (Aug. 25,
13 2016)). In reissuing such guidance, the Secretary of
14 Labor may update any date provided in such guid-
15 ance as reasonable.

16 (2) ADDITIONAL ACTIVITIES.—The Secretary of
17 Labor shall—

18 (A) develop a process—

19 (i) for the Labor Compliance Advisors
20 designated pursuant to section 6 to consult
21 with the Secretary of Labor in carrying
22 out their responsibilities under section
23 6(b)(4);

24 (ii) by which contracting officers and
25 Labor Compliance Advisors may give ap-

1 appropriate consideration to determinations
2 and agreements made by the Secretary of
3 Labor and the heads of other executive
4 agencies; and

5 (iii) by which contractors may enter
6 into agreements with the Secretary of
7 Labor, or the head of another executive
8 agency, prior to being considered for a con-
9 tract;

10 (B) review data collection requirements
11 and processes, and work with the Director of
12 the Office of Management and Budget, the Ad-
13 ministrators of General Services, and other
14 agency heads to improve such requirements and
15 processes, as necessary, to reduce the burden on
16 contractors and increase the amount of infor-
17 mation available to executive agencies;

18 (C) regularly convene interagency meetings
19 of Labor Compliance Advisors to share and pro-
20 mote best practices for improving labor law
21 compliance; and

22 (D) designate an appropriate contact for
23 executive agencies seeking to consult with the
24 Secretary of Labor with respect to the require-
25 ments and activities under this Act.

1 (c) OFFICE OF MANAGEMENT AND BUDGET.—The
2 Director of the Office of Management and Budget shall—

3 (1) work with the Administrator of General
4 Services to include in the Federal Awardee Perform-
5 ance and Integrity Information System the informa-
6 tion provided by contractors pursuant to sections
7 4(a)(1) and 5(a) and data on the resolution of any
8 issues related to such information; and

9 (2) designate an appropriate contact for agen-
10 cies seeking to consult with the Office of Manage-
11 ment and Budget on matters arising under this Act.

12 (d) GENERAL SERVICES ADMINISTRATION.—

13 (1) IN GENERAL.—The Administrator of Gen-
14 eral Services, in consultation with other relevant ex-
15 ecutive agencies, shall establish a single internet
16 website for Federal contractors to use for all Federal
17 contract reporting requirements under this Act, as
18 well as any other Federal contract reporting require-
19 ments to the extent practicable.

20 (2) AGENCY COOPERATION.—The heads of ex-
21 ecutive agencies with covered contracts shall provide
22 the Administrator of General Services with the data
23 necessary to maintain the internet website estab-
24 lished under paragraph (1).

1 (e) MINIMIZING COMPLIANCE BURDEN.—After re-
2 issuing the guidance under subsection (b)(1) or the final
3 rule under subsection (a), the Secretary of Labor or the
4 Secretary of Defense, the Administrator of the General
5 Services Administration, and the Administrator of the Na-
6 tional Aeronautics and Space Administration may, respec-
7 tively, amend such guidance or final rule consistent with
8 the requirements under chapter 5 of title 5, United States
9 Code.

10 **SEC. 8. PAYCHECK TRANSPARENCY.**

11 (a) IN GENERAL.—Each executive agency entering
12 into a covered contract, or covered subcontract, shall en-
13 sure that provisions in solicitations for such contracts, or
14 subcontracts, and clauses in such contracts, or sub-
15 contracts, shall provide that, for each pay period, contrac-
16 tors or subcontractors provide each individual described
17 in subsection (b) with a document containing information
18 with respect to such individual for the pay period con-
19 cerning hours worked, overtime hours worked, pay, and
20 any additions made to or deductions made from pay.

21 (b) INDIVIDUALS DESCRIBED.—An individual de-
22 scribed in this subsection is any individual performing
23 work under a contract or subcontract for which the con-
24 tractor or subcontractor is required to maintain wage
25 records under—

1 (1) the Fair Labor Standards Act of 1938 (29
2 U.S.C. 201 et seq.);

3 (2) subchapter IV of chapter 31 of title 40,
4 United States Code (commonly referred to as the
5 “Davis-Bacon Act”);

6 (3) chapter 67 of title 41, United States Code
7 (commonly known as the “Service Contract Act”); or

8 (4) an applicable State law.

9 (c) EXCEPTIONS.—

10 (1) EMPLOYEES EXEMPT FROM OVERTIME RE-
11 QUIREMENTS.—The document provided under sub-
12 section (a) to individuals who are exempt under sec-
13 tion 13 of the Fair Labor Standards Act of 1938
14 (29 U.S.C. 213) from the overtime compensation re-
15 quirements under section 7 of such Act (29 U.S.C.
16 207) shall not be required to include a record of the
17 hours worked if the contractor or subcontractor in-
18 forms the individual of the status of such individual
19 as exempt from such requirements.

20 (2) SUBSTANTIALLY SIMILAR STATE LAWS.—

21 The requirements under this section shall be deemed
22 to be satisfied if the contractor or subcontractor
23 complies with State or local requirements that the
24 Secretary of Labor has determined are substantially
25 similar to the requirements under this section.

1 (d) INDEPENDENT CONTRACTORS.—If the contractor
2 or subcontractor is treating an individual performing work
3 under a covered contract or subcontract as an independent
4 contractor, and not as an employee, the contractor or sub-
5 contractor shall provide the individual a document inform-
6 ing the individual of the individual’s status as an inde-
7 pendent contractor.

8 **SEC. 9. COMPLAINT AND DISPUTE TRANSPARENCY.**

9 (a) IN GENERAL.—

10 (1) CONTRACTS.—The head of an executive
11 agency may not enter into a contract for the pro-
12 curement of property or services valued in excess of
13 \$500,000 unless the contractor agrees that any deci-
14 sion to arbitrate the claim of an employee or inde-
15 pendent contractor performing work under the con-
16 tract that arises under title VII of the Civil Rights
17 Act of 1964 (42 U.S.C. 2000e et seq.) or any tort
18 related to or arising out of sexual assault or sexual
19 harassment may only be made with the voluntary
20 consent of the employee or independent contractor
21 after the dispute arises.

22 (2) SUBCONTRACTS.—The head of an executive
23 agency shall require that a contractor covered under
24 paragraph (1) incorporate the requirement under
25 such paragraph into each subcontract for the pro-

1 curement of property or services valued in excess of
2 \$500,000 at any tier under the contract.

3 (b) EXCEPTIONS.—

4 (1) CONTRACTS FOR COMMERCIAL ITEMS AND
5 COMMERCIALY AVAILABLE OFF-THE-SHELF
6 ITEMS.—The requirements under subsection (a) do
7 not apply to contracts or subcontracts for the acqui-
8 sition of commercial items or commercially available
9 off-the-shelf items (as those terms are defined in
10 sections 103(1) and 104, respectively, of title 41,
11 United States Code).

12 (2) EMPLOYEES AND INDEPENDENT CONTRAC-
13 TORS NOT COVERED.—The requirements under sub-
14 section (a) do not apply with respect to an employee
15 or independent contractor who—

16 (A) is covered by a collective bargaining
17 agreement negotiated between the contractor or
18 subcontractor and a labor organization rep-
19 resenting the employee or independent con-
20 tractor; or

21 (B) entered into a valid agreement to arbi-
22 trate claims covered under such subsection be-
23 fore the contractor or subcontractor bid on the
24 contract covered under such subsection, except
25 that such requirements do apply—

1 (i) if the contractor or subcontractor
2 is permitted to change the terms of the ar-
3 bitration agreement with the employee or
4 independent contractor; or

5 (ii) in the event the arbitration agree-
6 ment is renegotiated or replaced after the
7 contractor or subcontractor bids on the
8 contract.

9 **SEC. 10. NEUTRALITY.**

10 (a) **ALLOWABLE COSTS.**—Costs incurred in main-
11 taining satisfactory relations between a contractor, and its
12 employees, on a covered contract or a subcontractor, and
13 its employees, on a covered subcontract (other than those
14 made unallowable in subsection (b) of this section), includ-
15 ing costs of shop stewards, labor management committees,
16 employee publications, and other related activities, are al-
17 lowable.

18 (b) **LIMITATION ON FEDERAL FUNDS.**—No Federal
19 funds made available through a covered contract or cov-
20 ered subcontract may be used to engage in activities un-
21 dertaken to persuade employees, of any entity, to exercise
22 or not to exercise, or concerning the manner of exercising,
23 the right to organize and bargain collectively through rep-
24 resentatives of the employees' own choosing or any other
25 activities that are subject to the requirements under sec-

1 tion 203(b) of the Labor-Management Reporting and Dis-
2 closure Act of 1959 (29 U.S.C. 433(b)). Examples of unal-
3 lowable costs under this subsection include the costs of—

4 (1) preparing and distributing materials;

5 (2) hiring or consulting legal counsel or consult-
6 ants;

7 (3) meetings (including paying the salaries of
8 the attendees at meetings held for this purpose); and

9 (4) planning or conducting activities by man-
10 agers, supervisors, or union representatives during
11 work hours.

12 **SEC. 11. IMPLEMENTING REGULATIONS.**

13 Not later than 9 months after the date of enactment
14 of this Act, the Federal Acquisition Regulatory Council
15 shall amend the Federal Acquisition Regulation to carry
16 out the provisions of this Act, including sections 8 and
17 9.

18 **SEC. 12. SEVERABILITY.**

19 If any provision of this Act or the application of any
20 such provision to any person or circumstance is held to
21 be unconstitutional, the remaining provisions of this Act
22 and the application of such provisions to any person or
23 circumstance shall not be affected by such holding.

24 **SEC. 13. RULES OF CONSTRUCTION.**

25 Nothing in this Act shall be construed as—

1 (1) impairing or otherwise affecting the author-
2 ity granted by law to an executive agency or the
3 head thereof; or

4 (2) impairing or otherwise affecting the func-
5 tions of the Director of the Office of Management
6 and Budget relating to budgetary, administrative, or
7 legislative proposals.

○