

March 15, 2022

Mr. Crandall Watson
Chief
Procurement Policy Division
Office of Contracting and Procurement
U.S. Department of Agriculture

Submitted electronically to Procurement.Policy@usda.gov.

RE: Extension Request for the Comment Period on RIN: 0599-AA28, Agriculture Acquisition Regulation Proposed Rule (87 Fed. Reg. 9005, Feb. 17, 2022)

Dear Mr. Watson:

HR Policy Association respectfully requests a 90-day extension to the comment period on the U.S. Department of Agriculture's Notice of Proposed Rulemaking to make amendments to the Agriculture Acquisition Regulation (AGAR), which was published to the Federal Register on February 17, 2022. The limited 32-day comment period poses significant challenges for our member businesses and other USDA federal contracting stakeholders to assess the NPRM's implications and to provide meaningful and constructive input. Therefore, we urge USDA to provide stakeholders an additional 90 days to submit comments.

HR Policy Association represents the most senior human resource executives in more than 400 of the largest companies in the United States. Collectively, these companies employ more than 10 million employees in the United States, nearly nine percent of the private sector workforce, and 20 million employees worldwide. The Association's member companies, many of whom are within the agriculture industry and are government contractors, have a long-standing commitment to complying with all federal and state employment and labor laws.

The proposed amendments will have significant and far-reaching implications for contractors bidding on AGAR contracts. The current 32-day comment period is not adequate to allow for the stakeholder community to effectively evaluate the NPRM's impact on their businesses and collect the relevant information needed to provide thoughtful and accurate input to USDA.

The NPRM proposes major policy changes surrounding labor law compliance and reporting that will have far-reaching effects on businesses that perform work on AGAR contracts. Specifically, the NPRM would insert an AGAR clause requiring contractors to certify compliance with 15 different labor laws and their state law equivalents, as well as certify the compliance of any subcontractors and suppliers. The NPRM would also insert a clause requiring contractors to certify that they and any subcontractors are in

compliance with previously required corrective actions for adjudicated labor law violations and provide a list of specific violations to a contracting officer.

This NPRM appears similar to USDA Direct Final Rule (76 Fed. Reg. 74722) and NPRM (76 Fed. Reg. 74755), which similarly sought to amend the AGAR to include a new clause around labor law compliance certification and reporting. These changes were proposed more than 10 years ago and were quickly withdrawn after they were met with widespread public opposition.

In addition, the language proposed by the USDA's latest NPRM is substantially the same as the U.S. Department of Labor's 2016 Guidance Document (82 Fed. Reg. 51358) and Federal Acquisition Regulation Final Rule (81 Fed. Reg. 58562) implementing President Obama's July 31, 2014, Fair Pay and Safe Workplaces Executive Order 13673 (79 Fed. Reg. 45309). Both were subject to a preliminary injunction issued by the U.S. District Court for the Eastern District of Texas on October 24, 2016. Subsequently, under the Congressional Review Act, Congress passed, and the President signed, Public Law 115-11, a resolution of disapproval of the DOL Guidance and FAR rule. The CRA provides that a rule may not be issued in "substantially the same form" as the disapproved rule unless it is specifically authorized by a subsequent law.

HR Policy Association appreciates your attention to our above-mentioned concerns and strongly urges the USDA to extend the comment period by 90 days.

Thank you for your consideration of this request.

Sincerely,



Chatrane Birbal
Vice President, Government Relations
HR Policy Association



Roger G. King
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HR Policy Association