

Executive Order 14026 FAQs

Executive Order 14026 - Frequently Asked Questions.

Questions:

1. What is the Executive Order [\(E.O.\) 14026](#)?

This executive order was a decree issued by President Biden to increase the minimum wages for federal contractors (For more information about federal contractors, please see number two).

2. Who are considered federal contractors?

Federal contractors are individuals or contractors that enter a contract directly with the United States to perform a specific job or supply labor and/or materials. Think of some of the big federal groups (US Department of Defense, US Department of Energy, US Health and Human Services, US Department of Veteran Affairs, and NASA) contracting directly with a contractor: Lockheed Martin, Boeing, etc.

3. Could CDOT contractors be federal contractors?

Possibly.... If they hold direct contracts with a federal government entity. However, the vast majority of CDOT contracts are NOT considered federal contracts (they are considered federally assisted contracts). CDOT is almost always a pass-through organization. CDOT gets money from a federal source, and then they turn around and award a project to a contractor or to a local agency. Money is passed from the federal government to CDOT to a contractor or local agency.

4. Why does it matter about how a contractor is classified? Isn't federal money simply federal money?

Classification of a contract (not contractor) matters because in order to stay in compliance with the federal money regulations, CDOT is required to ensure that contractors are following all of the rules as it relates to the type of funding attached to the project. Federal requirements are not universal and the same across the board; they change with the specific type of money attached to the project. This is why the E.O. will not apply to the vast majority (99.9%) of CDOT projects.

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5. What types of contracts are covered by the Executive Order?

E.O. 14026 and the Department's final rule are intended to apply to a wide range of contracts with the Federal Government for services or construction. Consistent with coverage under E.O. 13658, coverage under E.O. 14026 and the Department's final rule generally extends to four major categories of contractual agreements:

- Procurement contracts for construction covered by the DBA;
- Service contracts covered by the SCA;
- Concessions contracts, including any concessions contract excluded from the SCA by the Department's regulations at 29 CFR 4.133(b); and
- Contracts in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public.

The E.O. also establishes value threshold requirements for coverage. The E.O. only applies to prime contracts covered by the DBA that exceed \$2,000 and prime contracts covered by the SCA that exceed \$2,500. For procurement contracts where workers' wages are governed by the FLSA, the E.O. specifies that it applies only to contracts that exceed \$10,000. There is no value threshold requirement for subcontracts awarded under such prime contracts.

The E.O. minimum wage generally applies to workers performing on or in connection with the above types of contracts if the wages of such workers are governed by the DBA, the SCA, or the FLSA. **The wages of workers on CDOT contracts are not governed by any of these.**

6. In talking about the types of projects that will be applicable to the E.O. in the question above, it talks about the DBA. What does that mean?

There are two primary types of Davis-Bacon wage requirements: DBA and DBRA. DBA is used for direct federal contractors, and DBRA is applicable to pass-through agencies like CDOT.

DBA – Broad (umbrella) act that requires “payment of prevailing wages and fringe benefits to laborers and mechanics.” It applies to construction contracts whenever the US government is a party to the contract (think US Department of Defense, US Department of Energy, US Health and Human Services, US Department of Veteran Affairs, and NASA).

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DBRA – This act includes roughly 60 acts that refer to or rely upon the DBA coverage. It applies to projects that are funded by federal grants, loans, and loan guarantees including road and bridge construction by the Federal Highway Administration (FHWA).

CDOT is covered by DBRA, meaning that the E.O. will not apply to the contracts that CDOT has.

7. What does this mean for CDOT?

The E.O. is NOT a requirement as it relates to the vast majority (99.9%) of CDOT jobs (as we are a pass-through agency). It was also confirmed through the Department of Labor for clarification purposes. Here is the confirmation through DOL.

Written to a senior level advisor through the DOL

I just wanted to verify... the new executive order (E.O. 14026) does not apply to DBRA. It seems like it ONLY applies to federal contractors, and the references go back to DBA and FAR (understanding the link here to federal contractors), but I cannot find anything that specifically exempts DBRA contracts. Is my understanding of DBRA exemption for E.O. 14026 correct?

Answer:

Absolutely correct.

8. So what wages apply on CDOT projects?

All projects that are released through CDOT will be subject to Davis-Bacon wages.

CDOT state funded projects are required to pay Davis-Bacon wages through the Colorado HB 1056 (formerly the SB 19-196) and through federally assisted contract requirements. Therefore, if the project was released by CDOT, the wage determination that was included at the time of advertisement (or the one that was incorporated through a revision under ad or through a change order) is what contractors will be held to. The \$15.00 minimum wage requirement will not apply to any of these projects.