



## Federal Aviation Administration

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# Memorandum

Date: October 25, 2023

To: AAQ, AAP, APM, AFN

From: Nathan Tash, Deputy Assistant Administrator for Acquisition and Business Services, FAA Acquisition Executive (ACQ-1)

Subject: Amended Enforcement of Executive Order 14026

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1. **PURPOSE.** Based on an order issued by the U.S. District Court for the Southern District of Texas on September 26, 2023, this memorandum (memo) is disseminated to affirm the FAA, congruent with other executive agencies of the Federal Government, is not currently enforcing Executive Order (E.O.) 14026, Increasing the Minimum Wage for Federal Contractors, to any contract, contract-like instrument, or subcontract of which the States of Texas, Louisiana, or Mississippi, or agencies of those States are party to.
2. **AUTHORITY.** The policy effected by this memo is made pursuant to 49 U.S.C § 40110(d). As provided under 49 U.S.C. § 106, the FAA Administrator has delegated certain acquisition authorities to the FAA Acquisition Executive (FAE).<sup>1</sup>
3. **APPLICABILITY.** The policy described by this memo applies to all contracts, contract-like instruments, and subcontracts of which the States of Texas, Louisiana, or Mississippi, or agencies of those States are party to.
4. **BACKGROUND.** Beginning January 20, 2022, E.O. 14026 established minimum wage rates to be paid to workers performing work on or in connection with covered federal contracts. The FAA, using its acquisition authority, adopted the policy of E.O. 14026 and its implementing regulation at 29 CFR 23 to the Acquisition Management System (AMS).

In compliance with an order issued by the U.S. District Court for the Southern District of Texas,<sup>2</sup> and per the advice of the Department of Justice, the Federal Government will not enforce the policy requirements of E.O. 14026 in any contract, contract-like instrument, or

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<sup>1</sup>See FAA Memorandum "Designation of Acquisition Executive and Delegation of Authority," dated March 24, 2020, *available at* <https://fast.faa.gov/docs/FAEsignedmemo.pdf>.

<sup>2</sup> See Judgment, *Texas v. Biden*, No. 6:22-cv-00004, ECF No. 68 (S.D. Tex. Sept. 26, 2023).

subcontract of which the States of Texas, Louisiana, or Mississippi, or agencies of those States are party to. **Note, the court ordered injunction does not apply geographically to all contractors or contracts within those three States; rather, it applies only to the three specified States and their agencies as parties to Federal contracts, regardless of the place of performance** (see “*An Important Note on Applicability*” in Attachment A of this memo for further clarification).

**5. AFFECTED AMS.** The following AMS Policy, Guidance, and clauses listed below contain language related to the enforcement of E.O. 14026. Such language will immediately not be enforced to the applicable contracts, contract-like instruments, and subcontracts described in this memo.

- AMS Policy 3.6.2.1 Applicability
- AMS Guidance T3.6.2 Labor Law
- AMS Contract Clause 3.6.2-47 Minimum Wages for Contractor Workers Under Executive Order 14026
- AMS Real Property Clause 6.3.0-11 Minimum Wages for Contractor Workers Under Executive Order 14026

**6. CONTRACTING OFFICER RESPONSIBILITIES.** Contracting Officers and Real Estate Contracting Officers should review “Attachment A” for instruction on their role in the implementation of this memo.

**7. EFFECTIVE DATE:** The policy of this memo is effective immediately and will remain in effect until rescinded or otherwise amended.

**8. CONTACT FOR QUESTIONS.** Contracting personnel with questions should contact their management, who will respond or consult with AAQ/AAP management, as needed.

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Attachment A: Preliminary Injunction and Implementation/Enforcement of E.O. 14026

## PRELIMINARY INJUNCTION AND IMPLEMENTATION/ENFORCEMENT OF EO 14026

*“Applicable State or State agency” means the States of Texas, Louisiana, or Mississippi, or any agency of those States.*

	Applicable State or State agency <b>is</b> party	Applicable State or State agency <b>is not</b> party
<b><u>New and Existing</u> SIRs, contracts, and contract-like instruments (including those for Real Property)</b>	<ul style="list-style-type: none"> <li>Language related to E.O. 14026 found in Policy 3.6.2.1 and Guidance T3.6.2 should be <i>disregarded and not enforced</i>.</li> <li>Procurement Clause 3.6.2-47 and Real Property Clause 6.3.0-11 should <b>not be enforced</b>.</li> </ul>	<ul style="list-style-type: none"> <li>No change in approach is required i.e., <i>enforcement of E.O. 14026 should continue as is</i>.</li> </ul>

**An Important Note on Applicability:** The court injunction applies to contracts/contract-like instruments/subcontracts with the three specified States. The contract/contract-like instrument/subcontract’s place of performance is irrelevant to the applicability of the injunction.

For example –

- A contract-like instrument with a private company in which the place of performance just so happens to be **in** Texas is not affected by this injunction and the E.O. must be enforced.
- A contract-like instrument **with** Texas would be affected by the injunction and the E.O. must not be enforced.

The difference in these two examples is that performance of the first contract-like instrument occurred **in** Texas; the second contract-like instrument was **with** Texas i.e., the State of Texas itself was a party to the contract-like instrument.