

President's Blacklist Rule Would Hurt Minority Businesses

By *Alfredo Ortiz*

When deciding on which home builder or caterer to hire, most customers make a decision after weighing both the price and quality of available contractors. What isn't likely to sway the decision much — if at all — is whether or not a business is on a list of ongoing or old labor disputes.

Yet an executive order signed by President Obama last year that could become law this year calls on the federal government to consider just this when awarding its \$500 billion worth of annual contracts. The "Fair Play and Safe Workplaces" rule says potential government contractors — and their subcontractors — must report any and all labor law complaints from the past three years when bidding on contracts of \$500,000 or more.

Just a reasonable regulation to protect employees from unscrupulous employers? Hardly. The rule isn't meant to police the handful of bad actors that carelessly or repeatedly mistreat employees. Major offenses and offenders are already a matter of public record, easy to identify, and reprimanded by the vast federal labor laws already in existence.

Rather, this rule is meant to identify just about everyone else who may be involved in a labor dispute, no matter how illegitimate or trivial. In other words, the rule is little more than a blacklist. It's simply a favor to Big Labor, which is looking to keep the bulk of federal contracts flowing in its direction by blackballing its private

competitors.

And according to Roger A. Campos, founder of the Minority Business Roundtable, "The competitors most likely to be negatively impacted by this rule are small, minority-owned businesses who often don't have the capacity to deal with the onerous reporting requirements and frivolous lawsuits that would be part-and-parcel of the rule."

Federal contracts to minority-owned businesses are already disproportionately small. Recent estimates suggest that only about 5 percent of contracts go to such businesses. Latino- and black-owned small businesses get only single-digit percentages of the approximately \$100 billion in federal contracts set aside for small businesses, despite making up 17 percent and 13 percent of the population, respectively. The figures are even worse for women, who only received 4.3 percent of federal contracts in 2013. The Government Accountability Office suggests a lack of "knowledge of the federal contracting process" as a significant reason for this discrepancy.

The blacklisting rule will only exacerbate this problem because of its burdensome reporting requirements. Such bureaucratic hurdles disproportionately hurt minority businesses, which often don't have the capacity, capital or general know-how to navigate the rule's complicated reporting process, like its requirement for semi-annual updates throughout the life of a project.

While minority contractors are rare, minority subcontractors are more common. They stand to be hurt even more by these reporting requirements because contractors, who are nervous about being blacklisted themselves, will worry about their subcontractors' inability to carry out such reporting and be incentivized to hire bigger, more connected, and less risky subcontractors instead.

The increased threat of lawsuits will also disproportionately hurt these businesses. Trial lawyers are licking their chops hoping for quickie settlements from companies faced with frivolous labor lawsuits and desperately trying to stay off the blacklist. Small, minority-owned businesses often don't have the capital necessary to fight frivolous lawsuits while they risk their income stream as a result of being placed on the blacklist. They will have little choice but to settle out of court to keep their record clean.

Therefore, rather than awarding federal contracts based on merit, this blacklist rule will tilt the already stacked scales further in the direction of Big Labor and farther away from small, minority-owned businesses. Especially at this time of heightened sensitivity to income inequality, rules like this that make small business smaller and big business bigger should be reexamined.

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