

**GOVERNMENT OF PUERTO RICO
LA FORTALEZA
SAN JUAN, PUERTO RICO**

Administrative Bulletin Number: OE-2018-033

**EXECUTIVE ORDER OF THE GOVERNOR OF PUERTO RICO, HON. RICARDO
ROSSELLÓ-NEVARES, TO INCREASE THE MINIMUM WAGE OF CONSTRUCTION
WORKERS, TO BRING INTO FORCE THE LAWS REQUIRING THE USE OF
CEMENT PRODUCED IN PUERTO RICO, AND TO REQUIRE THE USE OF LABOR
AGREEMENTS IN PUBLICLY FUNDED CONSTRUCTION PROJECTS**

WHEREAS: The purchase and procurement of goods and services from private entities is one of the primary governmental functions. These functions include the contracting of construction work for the Government of Puerto Rico.

WHEREAS: The Government of Puerto Rico is Puerto Rico's main employer and contractor. Therefore, it is the responsibility of the Government of Puerto Rico to execute efficient contracts leading to the economic development of the Island. This includes the establishment of public policy that promote the economic well-being of workers and that will foster labor peace in the companies that enter into contracts with the Government.

WHEREAS: The recovery and reconstruction of Puerto Rico after the strike of Hurricanes Irma and María will constitute a challenge that will require a massive investment of federal and state funds. This investment will result in an increase in activity in the building sector, which has been severely affected in recent years.

WHEREAS: The construction industry is a major source of employment in Puerto Rico, especially for the working class, which has been the most affected by the economic and fiscal crisis of the past four (4) years. In calendar year 2012, 17 million cement bags were produced in Puerto Rico. In calendar year 2014, this figure fell to 7 million; a 60% reduction. Construction accounted for 3.2 billion dollars of economic activity in 2015, as compared to 6 billion in 2005. Therefore, it is a ministerial duty of the government to ensure the well-being of construction workers who work every day from sunrise to sunset for the economic development of Puerto Rico.

WHEREAS: The salaries of construction workers in Puerto Rico are well below what they deserve based on the risks and sacrifices they face in their work. In the United States, it is typical for construction workers to earn over \$70.00 per hour, while a worker doing the same job in Puerto Rico earns \$7.25. The nearly 36,000 construction workers laboring in Puerto Rico are suffering the consequences of this wage injustice.

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WHEREAS: The wage and labor inequalities facing the construction industry threaten to reduce the available workforce for the reconstruction of Puerto Rico, while intensifying the migration that leads to a decline in Puerto Rico's economic activity and taxpayer base.

WHEREAS: Economic studies show that paying good salaries to workers in this industry is good public policy to boost the economy. Paying extremely low wages to workers in this industry results in less income and resources for the Government, reduces the quality of the services rendered, and promotes worker migration.

WHEREAS: In order to foster Puerto Rico's economic development, it is also necessary to establish a public policy of support for local production. The use of materials produced in Puerto Rico protects local businesses that create jobs and invest locally. Cement is one of Puerto Rico's main products and an economic indicator for the Island.

WHEREAS: Law No. 109 of July 12, 1985, as amended, provides that all cement used in construction projects of the Government of Puerto Rico must have been produced in Puerto Rico.

WHEREAS: Article IV, Section 4 of the Constitution of Puerto Rico provides that the Governor shall have the duty to obey and enforce the laws. In the compliance of his constitutional obligation, and as Head of Government, the Governor has full authority to order to instruct Government agencies and instrumentalities, through an Executive Order, on how existing laws should be applied and enforced.

WHEREAS: Article 5 of Reorganization Plan No. 3-2011, as amended, provides that the General Services Administrator must implement the public policy concerning government procurement. Furthermore, Article 6 of said Reorganization Plan provides that the Administrator shall act as representative for the Governor in these functions and, therefore, shall be accountable to the Governor for his/her actions.

WHEREAS: The use of project labor agreements that promote work stability and peace in businesses shall be necessary to further the professionalization of construction workers in Puerto Rico. Construction companies usually lack a steady workforce, which makes the execution of works and legal and Human Resources regulatory compliance even more complicated. The lack of coordination between contractors, subcontractors, and workers gives rise to challenges that reduce government procurement efficiency.

WHEREAS: The use of labor agreements in construction work projects in the United States has allowed for coordination between employers and workers

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to avoid labor conflicts in the workplace and promote the efficient and timely execution of construction projects, especially larger scale projects.

WHEREAS: This administration is committed to workers' rights protected under Article II, Section 17 of the Constitution of Puerto Rico.

WHEREAS: It is the duty of the Secretary of the Puerto Rico Department of Labor and Human Resources to implement the public policy concerning Puerto Rico's human resources under Article 1 of Law No. 15 of April 14, 1931, as amended, known as the "Organic Act of the Department of Labor and Human Resources of Puerto Rico."

WHEREAS: In the United States, using the President's power to implement public policy in favor of workers has historically been common practice as a requirement to obtain contracts with the United States Government. This includes requiring higher minimum wages as a condition to obtain federal contracts (Executive Order No. 13658) and to require labor agreements for federally funded public works projects (Executive Order No. 13502).

WHEREAS: State governments have full powers to establish adequate requirements for their private contractors as a condition to sign such contracts.

THEREFORE: I, RICARDO A. ROSSELLÓ-NEVARES, Governor of Puerto Rico, by virtue of the inherent powers of my position and the authority vested in me by the Constitution and the Laws of Puerto Rico, hereby DECLARE and ORDER the following:

SECTION 1: For the purposes of this Executive Order:

"Project Labor Agreement" shall mean an agreement with one or more employers covered under 29 U.S.C. 158(f) and independent contractors employing construction workers.

"Employee" shall mean any person who must be paid a minimum wage in accordance with the provisions of the Fair Labor Standards Act passed by the United States Congress on June 25, 1938, as it has been amended or as it may be subsequently amended. It shall also include persons who are paid a minimum wage in accordance with the provisions of Law No. 180-1998, known as the "Puerto Rico Minimum Wage, Vacation, and Sick Leave Act," as amended, as well as any Mandatory Decree that may be applicable to the Construction Industry.

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“Construction Project” shall mean the construction of any work, building, or facility using materials such as asphalt, cement, concrete, or other construction products as may be interpreted by the agency. This shall include the construction of buildings, roads, permanent public transportation facilities, and major repairs of existing structures and roads.

“Subcontractor” shall include, but shall not be limited to, all persons who would be subject to the decennial liability established under Article 1483 of the Puerto Rico Civil Code, as interpreted by the Supreme Court of Puerto Rico.

SECTION 2: As a condition to award a contract, any construction project funded in full or in part by the Government of Puerto Rico, its agencies, instrumentalities, and public corporations, shall require contractors to pay a minimum wage of fifteen dollars (\$15.00) per hour to employees working on said project. This requirement shall also apply to subcontractors. Any other aspect of the federal legislation and the regulations concerning how to pay the minimum wage, working hours, employees and occupations that are exempt from minimum wage, and what constitutes work time or working hours, shall also apply.

SECTION 3: If the sum of the contract is greater than two (2) million dollars, any construction project funded in full or in part by the Government of Puerto Rico, its agencies, instrumentalities, and public corporations must have a Project Labor Agreement in place for its employees.

SECTION 4: Any Project Labor Agreement concluded under the provisions hereof, must:

- a) Be binding for all contractors and subcontractors in the construction project. These agreements must be made a part of the contract and must be included in the proposal or bid for the construction project;
- b) Contain guarantees against strikes, stoppages, and other labor problems;
- c) Establish efficient processes to avoid and resolve any labor disputes that may arise; and
- d) Provide other mechanisms to encourage cooperation between workers and management in matters related to work productivity and occupational safety.

SECTION 5: As a requirement to award a contract for a construction project, all agency heads shall require a certification that all the cement to be used in the project was produced in Puerto Rico in accordance with the

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provisions of Law No. 109 of July 12, 1985, including the cement used by the project's subcontractors. No construction project shall be exempt from the requirements established herein.

SECTION 6: The provisions of this Executive Order shall be part of the communications issued by the agencies when requesting proposals or bids for the procurement of any matter subject to the provisions of this Executive Order. All contracts entered into between the Government and its contractors must include the requirement that subcontractors must also fulfill the requirements of this Executive Order.

SECTION 7: This Executive Order shall be given the broadest possible interpretation within the provisions of law applicable to the procurement of non-professional services. It is further provided that, for the purposes of this Executive Order, a construction project commissioned by the Government to meet the operational needs, functions, services or duties of an agency, instrumentality, or public corporation of the Government of Puerto Rico, or for the design, development, financing, maintenance, or operation of its facilities, shall be considered as a construction project partially funded by said Government.

SECTION 8: Any contracts that have already been signed, as well as any procurement processes that have been initiated or which were published prior to the approval of this Executive Order, shall not be subject to the provisions hereof. It is also provided that the provisions of the "THIRD" paragraph of the "WHEREAS" section above shall not apply to projects when a federal requirement prohibits the use of project labor agreements.

SECTION 9: The use of the provisions of this Executive Order to require the use of a specific labor organization as opposing party in a project labor agreement is prohibited.

SECTION 10: It shall be the duty of the Secretary of the Puerto Rico Department of Labor and Human Resources to oversee and enforce compliance of this Executive Order. To this end, the authority of the Government to implement the provisions of this Executive Order is delegated to the Secretary. All agencies, instrumentalities, and public corporations covered by this Executive Order are given sixty (60) days from the enactment of this Executive Order to negotiate the Project Labor Agreements that will govern working conditions in the construction contracts executed by said agencies.

SECTION 11: This Executive Order shall be implemented in accordance with the Laws and Regulations of Puerto Rico and shall not apply where expressly prohibited by any Law or Regulation. Furthermore, this Executive Order shall revoke any executive order, administrative

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Decision, guideline document, or any other public policy determination that may be incompatible. If any of the provisions hereof are declared unconstitutional or unlawful, all other provisions shall prevail.

SECTION 12: All agencies, instrumentalities, and public corporations of the Government of Puerto Rico are hereby ordered to adapt their rules and public policies to the provisions of this Executive Order.

SECTION 13: DEFINITION OF THE TERM "AGENCY." For the purposes of this Executive Order, the term "agency" refers to any agency, instrumentality, office, or department of the Executive Branch of the Government of Puerto Rico, including public corporations, regardless of their names.

SECTION 13: ANNULMENT AND VALIDITY. This order shall prevail over any other Executive Order that may, in whole or in part, be inconsistent with this Executive Order, to the extent of such incompatibility. This Executive Order shall enter into force immediately and shall remain in force until it is amended or revoked by a subsequent executive order or by law.

SECTION 13: SEVERABILITY. The provisions of this Executive Order are separate and independent of each other, and if any part, section, provision, or sentence of this Executive Order is declared unconstitutional, void, or invalid by a court of jurisdiction and venue, such decision shall not affect the validity of the remaining provisions, which shall remain in full force.

SECTION 16: PUBLICATION. This Executive Order must be filed immediately with the Department of State and the widest possible publication is hereby ordered.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the Government of Puerto Rico to be affixed, in San Juan, Puerto Rico, on this 30th day of July of 2018.


RICARDO ROSSELLO NEVARES
GOVERNOR

Enacted in accordance with the law, on this 30th day of July of 2018.



LUIS GERARDO RIVERA-MARÍN
SECRETARY OF STATE