

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

Administrative Bulletin Number: OE-2022-014

EXECUTIVE ORDER OF THE GOVERNOR OF PUERTO RICO, HON. PEDRO R. PIERLUISI, FOR THE PURPOSES OF ESTABLISHING THE MINIMUM WAGE FOR WORKERS IN FEDERALLY FUNDED CONSTRUCTION PROJECTS; ESTABLISHING A PILOT PROGRAM FOR THE IMPLEMENTATION OF PROJECT LABOR AGREEMENTS; AND REVOKING ADMINISTRATIVE BULLETING NO. OE-2021-023

WHEREAS: The Government and its instrumentalities are fundamental to the recovery and reconstruction of Puerto Rico. Hurricanes Irma and María, as well as the earthquakes that struck our Island, created an economic and social challenge in Puerto Rico. They also resulted in a need to boost our economy and make our public facilities and our homes more resilient. This includes establishing and implementing public policy to promote the economic wellbeing of workers and to foster workplace harmony among the businesses that contract with the Government.

WHEREAS: One of the most important functions of the Government in this process is the procurement of construction projects.

WHEREAS: The natural disasters of the last few years had a negative impact on housing and critical infrastructure, as well as our road network, homes, recreational areas, and hospitals, among others.

WHEREAS: Over \$50 billion in direct funding from FEMA's Public Assistance and Hazard Mitigation Assistance Grants and the U.S. Department of Housing and Urban Development's (HUD) CDBG-DR and CDBG-MIT programs have been earmarked for the reconstruction of our Island. Furthermore, billions of dollars approved under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) have been allocated, as well as other federal stimulus funds granted as a result of the COVID-19 pandemic. The proper use of these funds represents an immediate injection into our economy, as we upgrade our infrastructure.



WHEREAS: Investing in the recovery and reconstruction of Puerto Rico will result in an increase in construction activity, which has been severely affected by the natural disasters and the COVID-19 pandemic.

WHEREAS: The construction industry is one of the main sources of employment in Puerto Rico. Construction industry workers have been one of the most affected by the economic and fiscal crisis. Therefore, it is important that we provide the necessary mechanisms to improve the condition of our workers and that we ensure that the local economy will improve with the reconstruction.

WHEREAS: It is estimated that, in order to address the thousands of federally funded reconstruction projects, which are expected to be completed within ten (10) to fifteen (15) years, it will be necessary to add tens of thousands of construction workers to the approximately thirty thousand (30,000) workers who are currently working in this industry in Puerto Rico.

WHEREAS: The wage and employment inequalities in the construction industry threaten to reduce the amount of labor available for the reconstruction of Puerto Rico. In turn, they intensify the migration that reduces Puerto Rico's economic activity and its number of taxpayers.

WHEREAS: Economic studies conclude that paying competitive salaries generates incentives for a society's economy.

WHEREAS: It is a public policy of the Government of Puerto Rico to increase efficiency and productivity in the work performed by construction work contractors. Increasing the wages paid to construction workers boosts workers' morale, productivity, and quality of work, thus reducing supervision costs and the employee turnover rate. In turn, these savings will improve the economy and efficiency in government purchasing and procurement.

WHEREAS: Article IV, Section 4, of the Constitution of Puerto Rico provides that the Governor has absolute authority to instruct all Government agencies, public corporations, and instrumentalities, through an Executive Order, as to how compliance with current laws will be enforced.

WHEREAS: Throughout history, it has been common practice in the United States to use the President's power to implement public policy in support of workers. This includes requiring minimum wages higher than those provided by law as a condition to obtain federal contracts



(e.g., Executive Order of President Barack Obama 13658, which established a minimum hourly wage of \$10.10 and, subsequently, the minimum wage was increased to \$10.95 per hour effective January 1, 2021; Executive Order of President Joseph R. Biden, Jr. 14026 increasing minimum wage to \$15.00 per hour, effective January 1, 2022).

WHEREAS:

On March 18, 2021, I issued Administrative Bulletin No. OE-2021-023, whereby I increased the minimum wage to ten dollars and ninety-five cents (\$10.95) for Government construction contract employees whose projects are funded in whole or in part with federal reconstruction or recovery funds. Said Bulletin also created the Multisectoral Advisory Board for Project Labor Agreements (“Advisory Board”), which was tasked with establishing the guidelines and protocols for agencies, instrumentalities, and public corporations to evaluate the need and appropriateness of incorporating a Project Labor Agreement with contractors and their employees, as a requirement for bidding and contracting.

WHEREAS:

Upon evaluating the recommendations issued by the Secretary of Labor and Human Resources (“Secretary of Labor”), the proposals from union leaders and the private sector, together with the public policy principles outlined above, this Executive Order sets a new minimum wage for construction industry workers working in construction projects of the Government of Puerto Rico that have been funded with federal funds granted for the reconstruction or recovery of our Island. Likewise, this Executive Order sets the parameters for the implementation of Project Labor Agreements, starting with a pilot project whose performance will be evaluated in order to determine the continuation of this type of agreements in certain reconstruction projects funded in whole or in part with federal funds.

THEREFORE:

I, PEDRO R. PIERLUISI, Governor of Puerto Rico, by virtue of the powers inherent to my office and the authority vested in me by the Constitution and the Laws of the Government of Puerto Rico, hereby declare and order the following:

Section 1:

DEFINITIONS. For the purposes of this Executive Order, the following terms shall have the meaning stated below:

- a. "Project Labor Agreement" shall mean an agreement with one or more employers covered by the federal statute provisions found in 29 U.S.C. 158(f) and independent contractors who employ construction workers in a Construction Project. These agreements will include clauses on dispute resolution, warranties against strikes and work stoppages, and employment terms and conditions, among other issues required by the agency.
- b. "Agency" refers to any agency, instrumentality, office, or department of the Executive Branch of the Government of Puerto Rico, regardless of its name, including public corporations. This Executive Order will not apply to projects or works performed by the municipalities of Puerto Rico and municipal public corporations. It also does not apply to projects or works contracted by private or non-governmental entities.
- c. "Employee" shall mean any person who works in a Construction Project and who should be paid a minimum wage pursuant to the provisions of the Fair Labor Standards Act, adopted by the United States Congress on June 25, 1938, as it has been or may be subsequently amended. It shall also include people who are paid a minimum wage in accordance with the provisions of Act No. 47-2021, known as the "Puerto Rico Minimum Wage Act," and any Mandatory Decree applicable to the Construction Industry that may have been issued under Act No. 47-2021, Act No. 180-1998, known as the "Puerto Rico Vacation and Sick Leave Act," as amended, or Act No. 96 of June 26, 1956, as amended. It shall not include employees who are expressly excluded in this Executive Order.
- d. "Construction Project" shall mean the construction of any structure, building, or facility where materials such as asphalt, cement, concrete, or other construction products are used, as it may be interpreted by an agency of the Government of Puerto Rico as project owner. This shall include the construction of buildings, roads, houses, permanent public transportation facilities, and major repair of existing structures and roads.



e. "Subcontractor" shall include, but shall not be limited to, all persons that would be subject to the decennial liability provided in Article 1541 of the Puerto Rico Civil Code of 2020, Act No. 55-2020.

Section 2:

MINIMUM WAGE FOR GOVERNMENT CONSTRUCTION CONTRACTOR EMPLOYEES.

As a condition to award a contract for any Construction Project funded in whole or in part with federal funds allocated for the reconstruction or recovery of Puerto Rico and contracted by an agency of the Government of Puerto Rico, the Construction Project's contractor and subcontractors shall be required to compensate their construction workers with a minimum wage of fifteen dollars (\$15.00) per hour of work for skilled workers and eleven dollars (\$11.00) per hour of work for non-skilled workers.

Section 3:

The Secretary of Labor is hereby ordered to interpret and define the concepts of "skilled worker" and "non-skilled worker." All federal and local laws and regulations concerning minimum wage payment, working hours, minimum wage exempt employees and occupations, and working hours or work time, shall be applicable.

The provisions of this section shall also apply to projects designated under the "PILOT PROGRAM TO INCORPORATE PROJECT LABOR AGREEMENTS" created in Section 4 of this Administrative Bulletin.

COMMUNICATIONS FROM AGENCIES AND APPLICATION OF RULES TO SUBCONTRACTORS.

The provisions of this Administrative Bulletin must be included in all communications issued by the agencies requesting proposals or bids for the procurement of any matter that is subject to the provisions hereof. All contracts between the agencies and their contractors must include a requirement for contractors to comply with the provisions of this Administrative Bulletin.

Section 4:

PILOT PROGRAM TO INCORPORATE PROJECT LABOR AGREEMENTS.

The "Pilot Program to Incorporate Project Labor Agreements" ("Pilot Program") is hereby created. This program shall be implemented under the following parameters:

1. The pilot program shall be implemented in all Construction Projects that exceed five million dollars (\$5,000,000) which are funded in whole or in part with federal funds from the FEMA Public Assistance Program intended for reconstruction and recovery work and obligated under Section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, as amended.
2. Within fifteen (15) days from the signing of this Administrative Bulletin, the Secretary of Labor must draft the model Project Labor Agreement that will be included as part of the construction project bidding documents.
3. No other agreement or model project labor agreement will be accepted, and it will be disqualified from the bidding process.
4. Agreeing to the Project Labor Agreement will be a requirement to bid on any contract in connection with a pilot project. Bidders who fail to sign the aforementioned Labor Agreement with the provided conditions will not be able to receive a final contract award for a Construction Project.
5. The Project Labor Agreement will apply to all work covered under the awarded contract and does not include any other work awarded under previous or subsequent bids. It also does not include contracts awarded and executed for clean-up or debris removal work.
6. The following employee categories shall be excluded from the application of a Project Labor Agreement:
 - a. Supervisors (excluding general supervisor and covered foremen), air safety supervisors, engineers, certified professional engineers and/or architects performing inspection and testing work, quality control/assurance personnel, personnel in charge of time and attendance records, mail clerks, office clerks, office employees, messengers, security guards, technicians, employees not engaged in manual labor, and all employees performing professional, engineering, administrative, and management work;
 - b. Employees working for the contracting agency or any other state agency authority, or entity, or any other public employees, even if they are working onsite while the work

covered under the Project Labor Agreement is being carried out.

- c. Employees and entities dedicated to the manufacturing, modification, repair, maintenance, assembly, painting, and external handling or production of project components, materials, equipment, or machinery, or who deliver materials to and/or from the Construction Project's site.
 - d. Construction Project Manager's employees, except that, if the Agency hires a contractor to act as the Construction Project's Manager, then the Construction Manager's employees who perform manual labor on the project site will be covered under the Project Labor Agreement.
 - e. Employees who perform work related to equipment warranty on the project site, unless there are employees working onsite who are certified to perform warranty work.
 - f. Employees who perform geophysical surveys, except for soil boring and sampling.
 - g. Contractor or subcontractor employees exclusively assigned to other projects.
 - h. The Secretary of Labor, in coordination with the Agency and the different sectors, may exclude other categories of employees based on the circumstances of each Construction Project.
7. In the event that, in the course of the Pilot Program, FEMA and/or HUD determine that the implementation of a Project Labor Agreement will impact the cost reasonableness of a construction project and, as a consequence, will affect or put the project's federal obligated funds at risk, the Evaluation Committee created in Section 5 hereof shall have the authority to terminate the aforementioned Project Labor Agreement or Pilot Project.

Section 5:

PROJECT LABOR AGREEMENTS EVALUATION COMMITTEE. A Project Labor Agreements Evaluation Committee ("Committee") is hereby created to evaluate the Pilot Program and consider the desirability and the need to incorporate Project Labor Agreements into other projects funded in whole or in part with federal funds. The Committee shall be composed of the following

officials:

1. The Secretary of Labor and Human Resources of Puerto Rico, who will act as its Chair;
2. The Executive Director of the Central Office for Recovery, Reconstruction, and Resilience;
3. The Director of the Office of Management and Budget.
4. Any other person appointed by the Governor of Puerto Rico.

SECTION 6:

AUTHORITY TO WAIVE. The Committee may, at its discretion, waive the requirement to incorporate Project Labor Agreements where deemed necessary in order to serve the public interest.

SECTION 7:

COMMITTEE MEETINGS AND REPORTS. The Committee shall meet at least on a quarterly basis and will be required to submit regular reports to the Office of the Chief of Staff indicating the status of the implementation of the Pilot Program. A first report shall be issued at the beginning of the Pilot Program, with a second report to be issued three (3) months after the program's inception. The Committee Chair may convene a meeting at any time and may issue as many interim reports as he/she may deem appropriate. These reports shall consider whether the Project Labor Agreement mechanism achieved its purpose to attract the workforce required for the project's execution; that its implementation did not cause a significant increase in project costs; that it did not have an impact on cost reasonableness for the purposes of all federal legal and regulatory requirements applicable to projects funded with FEMA and/or HUD federal funds; and whether it allowed the company to maintain its operational stability, among other potential factors to be determined by the Committee.

Upon completion of the Pilot Project, the Committee shall issue a final report on the appropriateness of incorporating Project Labor Agreements into other construction projects.

SECTION 8:

PROSPECTIVE APPLICATION. The provisions of this Executive Order shall be applied prospectively. Therefore, signed contracts and contracting processes already underway or published before the approval of this Executive Order, as well as any amendments or extensions to said contracts, will not be subject to the provisions hereof. Signed contracts or agreements, including any subsequent amendments thereto, pursuant to the provisions of

Administrative Bulletins OE-2018-033, OE-2020-075, and OE-2021-23 shall remain in force according to their terms and conditions.

SECTION 9: **SECRETARY OF LABOR'S ENFORCEMENT AND INTERPRETATION DUTY.** It shall be the duty of the Secretary of Labor and Human Resources to monitor and enforce compliance of this Executive Order. To this end, the Secretary of Labor is hereby delegated the Governor's authority to implement and interpret the provisions of this Executive Order.

Section 10: **IMPLEMENTATION.** This Executive Order shall be implemented in accordance with the laws and regulations of the Government of Puerto Rico and shall not be applicable where expressly prohibited by law or regulation.

Section 11: **DUTY TO ADAPT REGULATIONS AND PUBLIC POLICY.** All agencies are hereby ordered to adapt their regulations, circular letters, memoranda, policy documents, guidelines, and public policy in order to bring them into line with the provisions of this Executive Order.

Section 12: **REVOCATION AND VALIDITY.** This Executive Order repeals and revokes Administrative Bulletin No. 2021-023. Administrative Bulletins OE-2018-033, OE-2020-075, and OE-2021-023 shall remain in force exclusively for the purposes of regulating the agreements signed or published under its terms and during its validity period, as well as any amendments and extensions thereto. In addition, this Executive Order repeals and revokes any other executive order that may, in whole or in part, be inconsistent with the provisions herein, to the extent of such inconsistency. Furthermore, this Executive Order shall revoke any administrative determination, guiding document, or any other incompatible public policy determination.

This Executive Order shall enter into force immediately and shall remain in force until amended or repealed 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 14: **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 hereby issue this Executive Order under my signature and cause the Great Seal of the Government of Puerto Rico to be affixed at La Fortaleza, in San Juan, Puerto Rico, on this 20th day of February of 2022.

**PEDRO R. PIERLUISI
GOVERNOR**

Enacted in accordance with the law on this 20th day of February of 2022.

**FELIX E. RIVERA TORRES
ACTING SECRETARY OF STATE**

CERTIFIED TRANSLATION



I, Juan E. Segarra, USCCI #06-067/translator, certify that the foregoing is a true and accurate translation, to the best of my abilities, of the document in Spanish which I have seen.