

Executive Order No. 162 Frequently Asked Questions

General Questions

1. ***How will New York State use this data?*** New York State will use this data to determine whether, in the aggregate, minority group members or women receive proportionate compensation to non-minority male employees performing similar work on state contracts. Based on the results of this undertaking, New York State may engage in further study of disparities in pay, and investigate strategies for bridging any identified compensation gaps.

2. ***Will this data help New York State identify each cause of pay disparities?*** No. The collection of this data is a first step in understanding the extent to which pay disparities exist in the workforce of contractors on state contracts. This data will provide New York State with first of its kind insight into the existence or non-existence of pay disparities across dozens of industries. However, this data is only the first step in New York State's efforts to identify and address pay disparities.

3. ***I cannot identify the workforce used to perform my state contract. Do I need to provide compensation information for my employees?*** Some contractors are generally excluded from the reporting requirement because their work will typically not yield data on the compensation of individuals performing work specifically on a state contract, including:
 - A contractor performing work on a state contract exclusively with employees who are located outside of New York State;
 - Any banking or financial institution engaged solely in processing financial transactions;
 - Any contractor engaged solely in licensing intellectual property to a state agency or authority;
 - Primary and secondary school systems, and institutions of higher learning;
 - American Indian or Alaskan Native tribes; and
 - Any contractor organized in a country other than the United States of America.

All other contractors that are parties to a state contract, but cannot identify any of the employees who performed work specifically for the state contract, may submit a workforce utilization report listing each of their New York State employees. Contractors that can identify employees who performed work specifically for the state contract should report solely on those employees, and not their other employees.

Compensation

4. ***What compensation to employees should contractors report?*** Any "Gross wages" which are reported by employers to employees on their wage statements. Gross wages are defined more specifically by 20 NYCRR §2380.4 and typically include every form of compensation for employment paid by an employer to his, her or its employees, whether paid directly or indirectly by the employer, including salaries,

commissions, bonuses, tips and the reasonable value of board, rent, housing, lodging or similar advantage received.

- 5. *My employees are not paid on an hourly basis. How do I determine the compensation that I should report in the workforce utilization report?*** For salaried individuals not compensated on an hourly basis, the contractor shall first determine the average hourly gross wages of such employees by dividing the employees' total gross wages during the period by the number of hours worked by such employees during these pay periods. After determining the average hourly gross wages of salaried employees, contractors shall report the product of such employees' average hourly gross wages and the number of hours worked on the state contract.

Employees

- 6. *For employers reporting on their entire workforce, which employees should be included in the report?*** Employers selecting "Contractor/Subcontractor's Total Workforce" on the Workforce Utilization Report should include all employees of the contractor or subcontractor performing work in New York State.
- 7. *Which employees perform work directly on a state contract?*** Employees performing work directly on a state contract are those who perform one or more tasks for the exclusive purpose of satisfying their employer's obligations under a state contract. By way of example, members of a contractor's human resources department typically do not perform work directly on a state contract.
- 8. *How will New York State account for differing titles between employers?*** All employees must be reported under a Standard Occupational Classification (SOC) code. SOC codes are established and defined by the U.S. Bureau of Labor Statistics. Contractors must select the SOC code most closely corresponding to the roles performed by their employees, and may not use titles assigned by their organizations.
- 9. *How do I determine the number of hours to include in the workforce utilization report?*** Generally, prime contractors and subcontractors shall report the number of hours worked by each employee under each applicable SOC code during the period covered by a workforce utilization report. However, agencies and authorities may approve an alternative schedule based upon the pay periods of contractors at the sole discretion of such agencies and authorities.

Reporting Procedures

- 10. *When should reports be submitted?*** Reports must be submitted by contractors during the term of state contracts subject to the reporting requirement at such times and in such manner as agencies and authorities shall require. For construction contracts, reports are generally due one week to ten days (depending upon the agency/authority) following the end of the first month of the term of the contract and each month thereafter. For all other contracts, reports are generally due one week to ten days (depending upon the agency/authority)

following the end of the first quarter of the term of the contract and each quarter thereafter. Reports containing gross wage information should be provided on a quarterly basis for relevant contracts. For specific reporting instructions, contractors should refer to the terms of each state contract.

- 11. *Who is responsible for reporting on subcontractors' workforces?*** The prime contractor, the entity engaged in a contract with a state agency or authority, is responsible for collecting reports from each of the subcontractors performing work on the state contract or, if directed by a state agency or authority, ensuring that such subcontractors submit workforce utilization reports in such manner as the agency or authority shall require. Each state contract requires prime contractors to include language in any subcontracts requiring subcontractors to complete workforce utilization reports.

Confidentiality

- 12. *Will compensation data be collected in the aggregate?*** In cases where two or more employees of a contractor are members of the same racial/ethnic group, share the same gender, and fall under the same SOC Job Title for the work they both perform on a state contract, the contractor shall report gross wages paid to such employees for work on the state contract in the aggregate. However, in cases where a contractor employs an individual who does not share these characteristics with other employees performing work on the state contract, the contractor must report that employee's gross wages individually.

By way of example, if a contractor employs two Hispanic-American men as electricians and one Caucasian woman as an insulation worker on a state contract, the contractor should report the combined gross wages of the two Hispanic-American men employed in the same job title as one entry on the workforce utilization report. The contractor should report the gross wages of the Caucasian woman as one entry on the workforce utilization report as she is the only Caucasian woman employed by the contractor on the state contract under the title of insulation worker.

- 13. *How will New York State prevent my competitors from learning my compensation arrangements?*** New York State agencies and authorities will inform contractors of any requests under the Freedom of Information Law (FOIL) for workforce utilization reports they have submitted, and will vigorously seek to withhold any information that contractors or subcontractors establish would harm the competitive position of the contractor or subcontractor pursuant to § 87(2)(d) of the Public Officers Law.