# **Executive Order No. 162**

# **Frequently Asked Questions[[1]](#footnote-1)**

**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 E.O. 162 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**

***E.O. 162 Workforce Utilization Report*?** Employers selecting “Contractor/Subcontractor’s Total Workforce” on the *E.O. 162 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 E.O. 162 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. For construction contracts, [reports, including gross wage information, are due ten days following the end of the first month of the term of the contract and each month thereafter. For all other contracts, reports are due ten days following the end of the first quarter of the term of the contract and each quarter thereafter.]

***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.

1. This information is provided courtesy of the New York State Empire State Development. [↑](#footnote-ref-1)