

Advocacy Recommends that Labor Department Clarify Provisions of Rule Implementing Executive Order on Federal Service Contracts

On May 10, 2010, the Office of Advocacy (Advocacy) filed a comment letter with the Department of Labor on its proposed rule, *Nondisplacement of Qualified Workers Under Service Contracts*. A complete copy of Advocacy's letter to the U.S. Department of Labor (DOL) is available at www.sba.gov/advo/laws/comments/.

- This proposed rule implements Executive Order 13495, which was signed by President Obama on January 30, 2009. Executive Order 13495 states that the Federal Government's procurement interests in economy and efficiency are served when a winning contractor and subcontractor (successor contractors) to a federal service contract hire the losing contractor's (predecessor contractor) employees. Executive Order 13495 effectively reinstates a narrower Executive Order 12933, which was signed by President Clinton in 1994. The Clinton Order was rescinded by President Bush with Executive Order 13204 in 2001.
- This rule requires that any federal service contract and contract solicitations include a clause that requires successors and their subcontractors to offer qualified employees of the predecessor contractor a right of first refusal of employment. This regulation governs any contract or subcontract for federal services covered by the McNamara-O'Hara Service Contract Act of 1965 (SCA) above the simplified acquisition threshold of \$100,000.
- Advocacy has spoken to small business stakeholders concerned there may be problems with the implementation of this Executive Order that may add to the compliance costs and regulatory burdens for small contractors. Small contractors are concerned that the deadlines outlined in the proposal may negatively impact a successor contractor's ability to perform a follow-on contract. Small business representatives are also concerned that this proposal may require a successor contractor to hire a poor performing workforce because they may not have enough information about the job performance of the predecessor contractor's employees.
- Advocacy recommends that DOL consider alternatives that provide flexibilities for small businesses and produce a Small Business Compliance Guide to clarify regulatory provisions identified in this comment letter.

For more information, visit Advocacy's Web page at <http://www.sba.gov/advo>, or contact Assistant Chief Counsel Janis Reyes by email at Janis.Reyes@sba.gov or by phone at 202-205-6533.