

## ***Advocacy Urges FAR Council and the Department of Labor to Recalculate the Number of Small Entities that will be Impacted by the Proposed Fair Pay Rule***

On August 26, 2015, the Office of Advocacy of the U.S. Small Business Administration (Advocacy) wrote the FAR Council and the Department of Labor (DOL) regarding a proposed guidance document and proposed regulation that would implement Executive Order 13673 “Fair Pay and Safe Workplaces.” The Executive Order directs DOL to develop guidance to assist federal agencies in implementing the Order’s requirements. In accordance with this direction, the proposed guidance defines administrative merits determinations, civil judgment and arbitral award or decisions and provides guidance on what information related to these determinations must be reported by contractors and subcontractors. The document provides guidance to the Contracting Officers (CO) and to Labor Compliance Advisors (LCA) as to how to assess reported labor law violations. In addition the guidance document ensures that DOL will work with LCAs agencies to minimize the information that contractors have to provide.

The guidance document is to support the proposed FAR Council rule that would require agencies to review a contractor’s prior three-year history of compliance with fourteen Federal labor laws or any equivalent state laws in determining contractor responsibility. The proposed rule would require an offeror, for any solicitation estimated to exceed \$500,000, to represent whether it has had any administrative merits determinations, arbitral awards or decisions, or civil judgments rendered against it within the preceding three years for violations of the fourteen specific Federal labor laws or equivalent state laws. See Advocacy’s complete comments [here](#).

- On May 28, 2015, DOL and the FAR Council published a proposed guidance document and a proposed regulation to implement Executive Order 13673 “Fair Pay and Safe Workplaces.” If an offeror represents that it has a violation of any of the fourteen Federal labor laws or equivalent state labor laws before awarding the contract, the contracting officer will require the offeror to submit additional information on the violations. This proposed regulation would also flow down to all subcontractors.
- The Office of Advocacy wrote a letter to the FAR Council and DOL on August 26, 2015, regarding the proposed regulation and guidance document and urged the FAR Council and DOL to recalculate the number of impacted small businesses because it used multiple labor enforcement agency estimates and each agency has a different unit of analysis and define regulated entities differently.

Advocacy is of the belief that the number of impacted small businesses is higher than projected in the proposed regulation.

- Advocacy urged DOL to republish the guidance document as a proposed rule-making because the guidance provides specific enforcement and compliance requirements that are tantamount to regulations.
- Advocacy recommends that small entities not be required to comply with this guidance document nor regulation until the Council and DOL have improved upon the regulatory scheme of implementation.

For more information, visit Advocacy's webpage at: [www.sba.gov/advocacy](http://www.sba.gov/advocacy) or contact Major Clark at 202-205-7150 or [major.clark@sba.gov](mailto:major.clark@sba.gov).