

Advocacy recommends that DHS republish a revised Certification that provides a more complete analysis of the impact of this proposed rule on small businesses

On August 9, 2010, the U.S. Small Business Administration's (SBA) Office of Advocacy (**Advocacy**) **submitted comments to the United States Department of Homeland Security (DHS)** on DHS's proposed Revision of Department of Homeland Security Acquisition Regulation: Limitations on Subcontracting in Emergency Acquisitions (HSAR Case 2009-005) 75 Federal Register 32723, June 9, 2010. DHS's proposed rule would limit the use of subcontractors by prime contractors on cost-reimbursement type emergency contracts above the simplified acquisition threshold. A complete copy of Advocacy's letter to DHS is available at: www.sba.gov/advo/laws/comments/.

- DHS has certified that the rule will not a significant impact on a substantial number of small businesses. According to DHS, 10 small businesses received contracts of this type in FY 2008 out of the large number of contracts awarded by the Federal Government. The certification is flawed because it does not examine whether this rule will have a significant economic impact on a substantial number of these 10 small businesses.
- The rule provides some degree of flexibility that may lessen the impact on small businesses by allowing for the restriction on subcontracting to be waived by the contracting officer's next level supervisor. The offeror may submit information to show that the restriction should be waived or the contracting officer may recommend through a Determination and Finding process to waive the requirement.
- The rule does not provide the small business seeking a waiver with any guidance on what type of information. Thus this waiver process, if not properly structured, may have the unintended result of being a substantial cost burden on small businesses.

.For more information about the proposed rule, please visit Advocacy's web page at www.sba.gov/advo or contact Major I. Clark, III, Assistant Chief Counsel, at (202) 205-7150 or major.clark@sba.gov.