

Advocacy Recommends Changes to FAR Council Employment Eligibility Verification Rule

On August 7, 2008, the Office of Advocacy (Advocacy) filed a comment letter with the Federal Acquisition Council (FAR), Civilian Agency Acquisition Council, and the Defense Acquisition Regulations Council (Councils), in response to their notice of proposed rulemaking entitled, “Employment Eligibility Verification” (73 Fed. Reg. 33374, June 12, 2008). In the public comment letter, Advocacy advised the Councils to better calculate impact on small business contractors and delay implementation of E-Verify for small business contractors until greater accuracy of the system is guaranteed. A copy of Advocacy’s letter to the Councils is available at <http://www.sba.gov/advo/laws/comments>.

I. Background

- In order to ensure greater compliance with immigration laws of the United States by federal contractors and subcontractors, the Councils are mandating the use of the E-Verify system to confirm employment eligibility for new hires to government contracts and for current employees who will be assigned to government contracts.

II. Advocacy’s Comment Letter

- Advocacy believes that the economic analysis did not provide adequate data to measure the economic impact of the rule on small business. Advocacy provided evidence of the gaps existing in the analysis. The cost estimate assumed that only 162,125 small businesses, prime and subcontractors participate in the federal procurement system, but did not adequately measure the different cost compliance levels on these businesses. The rule erroneously assumed that the cost compliance level would be the same on all small businesses.
- This rule is likely to increase the cost of doing business with the government and, due to a lack of clarity in the economic analysis of the regulation, those increased costs could be significant for a substantial number of small businesses. Under these circumstances, the Councils should provide a more detailed economic analysis as required by the Regulatory Flexibility Act.