

Fact Sheet # 67A: Nondisplacement of Qualified Workers Under Service Contracts

This fact sheet provides general information concerning Executive Order 13495

Coverage

Executive Order (E.O.) 13495, “Nondisplacement of Qualified Workers Under Service Contracts,” signed by President Obama on January 30, 2009, applies to federal government service contracts. It requires that qualified workers on a Federal service contract who would otherwise lose their jobs as a result of the completion or expiration of a contract be given the right of first refusal for employment with the successor contractor. Generally, a successor contractor may not hire any new employees under the contract until this right of first refusal has been provided. The E.O. applies to a successor contract for the performance of the same or similar services at the same location.

The E.O. applies (subject to certain exceptions) to all service contracts and their solicitations that succeed contracts for the same or similar service at the same location. The E.O. defines service contracts or contract to mean any contract or subcontract for services entered into by the Federal Government or its contractors that is covered by the McNamara-O’Hara Service Contract Act.

What is the purpose of Executive Order 13495?

The Federal Government’s procurement interests in economy and efficiency are served when the successor contractor hires the predecessor’s employees. A carryover work force reduces disruption to the delivery of services during the period of transition between contractors and provides the Federal Government the benefits of an experienced and trained work force that is familiar with the Federal Government’s personnel, facilities, and requirements. The E.O. recognizes that successor contractors or subcontractors already often hire the majority of the predecessor’s employees when a service contract expires and a follow-on contract is awarded for the same or similar services at the same location. Sometimes, however, a successor contractor or subcontractor displaces the predecessor’s employees and hires a new work force.

Will any service contracts be excluded from the Nondisplacement requirements?

The E.O. contains a number of exclusions, including contracts under the simplified acquisition threshold (currently \$150,000) and certain contracts awarded for services produced or provided by persons who are blind or have severe disabilities.

Contracts exempted by Federal agency.

Contracts, subcontracts, or purchase orders (or any class of contracts, subcontracts, or purchase orders) may be excluded if the head of a contracting department or agency finds that the application of any of its requirements of this part would not serve the purposes of Executive Order 13495 or would impair the

ability of the Federal Government to procure services on an economical and efficient basis. The agency determination shall be made no later than the contract solicitation date, and incumbent workers and their collective bargaining representatives are to be notified in writing of the agency determination no later than 5 business days after the solicitation date. As an alternative to waiving all provisions of this part, the head of a contracting department or agency may waive one or more individual provisions no later than the contract solicitation date.

How will employees learn of their rights

Service employees must be advised of their right of first refusal in the event a service contract expires and a follow-on contract is awarded for the same or similar services at the same location. The E.O. requires the predecessor contractor to either post a notice or give individual notice to the predecessor contractor's employees in English and, where a significant portion of the workforce is not fluent in English, in the language with which the employees are more familiar.

Contractor Obligations

The predecessor contractor must provide the contracting officer a certified list of all service employees working under the contract and its subcontracts 30 days before the end of the contract. The list must contain the anniversary date of employment of each service employee. The contracting officer, in turn, will furnish the list to the successor contractor. The successor contractor is required to offer the right of first refusal of employment to all qualified employees whose names appear on the predecessor's certified list (as well as any omitted from the list), except that:

The successor contractor may employ on the contract employees who worked for that contractor for at least three months immediately preceding commencement of the contract and who would otherwise face lay-off or discharge.

The successor contractor has the discretion to determine how many employees are needed for efficient performance of the contract, may employ fewer employees than the predecessor contractor, and has the discretion to determine which employees will first be offered the right of first refusal.

Where the successor offers a right of first refusal to fewer employees than were employed by the predecessor, the obligation to provide a right of first refusal of employment under the contract to the predecessor's employees continues to apply for 90 days after commencement of the contract to fill vacancies, including those due to increased staffing levels.

What constitutes a bona fide offer of employment?

As a general matter, a bona fide offer of employment need not be in a position similar to that which the employee previously held, but only in a position for which the employee is qualified. Information regarding an employee's qualifications shall ordinarily come directly from the employee. If a question arises concerning an employee's qualifications, that question shall be decided based upon the employee's education and employment history, with particular emphasis on the employee's experience on the predecessor contract.

An offer of employment to a position providing lower pay or benefits than those of the position the employee held with the predecessor contractor will nonetheless be considered bona fide if the business

reasons for the offer are valid (not related to a desire that the employee refuse the offer or that other employees be hired). Also, where the timing of an employee's termination by the successor contractor suggests that the offer of employment may not have been bona fide, the facts and circumstances of the offer and the termination will be closely examined to determine whether the offer was bona fide.

What are the obligations of the predecessor contractor?

Not less than 30 days before completion of its contract, the predecessor contractor must furnish the contracting officer with a certified list of the names of all service employees working for the contractor at the time the list is submitted, together with their anniversary dates of employment. The contracting officer in turn shall provide the list to the successor contractor and, if requested, to employees of the predecessor contractor or their collective bargaining representatives.

Unless the predecessor contractor (either directly or through the contracting agency) or the individual employee in question provides evidence to the contrary, the successor contractor must presume that all service employees of the predecessor contractor who are working at the same location during the final month of contract performance will be terminated when the contract ends.

Complaint Procedures

Any employee or authorized employee representative who believes that he or she is entitled to an offer of employment with the successor contractor and who has not received an offer, may file a complaint directly with the Wage and Hour Division within 120 days from the first date of contract performance. The employee may file a complaint directly with the Branch of Government Contracts Enforcement, Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210 or via email at displaced@dol.gov and by telephone at 202-693-1399.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is general information and is not to be considered in the same light as official statements of position contained in the regulations.

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Washington, DC 20210

1-866-4-USWAGE
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