

CLIENT ALERT

Executive Order Provides for Nondisplacement of Certain Workers Covered by the Service Contract Act

November 22, 2021

On November 18, 2021, President Biden signed an executive order, “[Executive Order on Nondisplacement of Qualified Workers Under Service Contracts](#)” requiring, in most instances, that federal Service contracts and solicitations for such contracts include a clause which mandates that the awardee (and its subcontractors) of a follow-on Service contract for “same or similar services,” must offer employment to “qualified workers” on the predecessor contract. In this context, a “Service contract” means any contract, contract-like instrument, or subcontract for services covered by the Service Contract Act of 1965 (41 U.S.C. §§ 6701–6707).

This executive order generally affords a right of first refusal to service employees, (as that term is defined under the Service Contract Act), working on a predecessor contract if those employees would otherwise lose their jobs as a result of the predecessor contract’s termination or expiration. The executive order is intended to avoid the need for a carryover work force and “provides the Federal Government with the benefits of an experienced and well-trained work force that is familiar with the Federal Government’s personnel, facilities, and requirements.” The White House also released a [fact sheet](#) highlighting that the executive order advances the administration’s equity goals, as service contract workers are disproportionately women and workers of color. The executive order provides agencies with the ability to grant exceptions to this rule, pursuant to specific limitations, and empowers the Department of Labor with enforcement authority to prescribe sanctions and remedies, including debarment in instances of willful violations.

The executive order contemplates that the outgoing contractor must furnish the Contracting Officer a list of the names of all service employees working under this contract and its subcontracts during the last month of contract performance. The executive order also notes that “when an agency prepares a solicitation for a service contract that succeeds a contract for performance of the same or similar work, the agency shall consider whether performance of the work in the same locality or localities in which the contract is currently being performed is reasonably necessary to ensure economical and efficient provision of services.” If such a determination is made, the agency can include a requirement or preference in the solicitation for the successor contract that it be performed in the same locality or localities.

The executive order directs the Department of Labor to issue final regulations implementing the requirements of the order within 180 days and that following the issuance of such regulations, the FAR Council is directed to amend the Federal Acquisition Regulation accordingly. Although only solicitations issued after the FAR Council promulgates its final regulations will be required to include this clause, agencies are already “strongly encouraged, to the extent permitted by law” to amend existing solicitations to account for the new rule.

The executive order essentially reverts back to the rules that were in effect before the previous administration revoked them in late 2019. Critically, as noted in the fact sheet, although the original rule only applied to successor contracts that were

performed at the “same location,” the executive order goes further in removing this requirement “to account for the flexible nature of service sector work in today’s economy.”

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Peter Eyre

Partner – Washington, D.C.

Phone: +1.202.624.2807

Email: peyre@crowell.com

Trina Fairley Barlow

Partner – Washington, D.C.

Phone: +1.202.624.2830

Email: tbarlow@crowell.com

Issac D. Schabes

Associate – Washington, D.C.

Phone: +1.202.654.6706

Email: ischabes@crowell.com