

February 21, 2012

Ms. Debra A. Carr  
Director  
Division of Policy, Planning and Program Development  
Office of Federal Contract Compliance Programs, Room C-3325  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, D.C. 20210

Re: Notice of Proposed Rulemaking Pertaining to Section 503 of the Rehabilitation Act, as Amended (Docket ID OFCCP-2010-0001)

Dear Ms. Carr:

On behalf of the more than 5,000 members of the American Road & Transportation Builders Association (ARTBA), I respectfully offer comments on the December 9, 2011, Notice of Proposed Rulemaking issued by the Department of Labor's Office of Federal Contracting Compliance Program (OFCCP) regarding the expansion of affirmative action and equal employment opportunity requirements under Section 503 of the Rehabilitation Act, as amended.

ARTBA's membership includes public agencies, private firms and organizations that own, plan, design, supply and construct transportation projects throughout the country. Our industry generates more than \$200 billion annually in U.S. economic activity and sustains more than 2.2 million American jobs.

ARTBA appreciates OFCCP's goals of increasing employment opportunities for people with disabilities. The transportation construction industry has a long-standing commitment to hiring a diverse workforce and in particular employing veterans – many of them with related disabilities – in positions in which they can utilize skills they have acquired in the armed forces. In fact, much of the Interstate Highway System was built by World War II and Korean War-era veterans, while today the Army Corps of Engineers serves an important role in maintaining and improving the nation's intermodal infrastructure network.

Though the goals of this rulemaking are laudable, ARTBA is concerned that the implementation of this proposed rule would increase costs while undermining the safety and efficiency of transportation projects designed and built for federal agencies. We join a number of our member-companies in expressing these concerns through the comment process. In general, ARTBA believes that the transportation construction industry should be exempted from this proposed rule, in favor of incentives that reward industry companies for hiring disabled workers when at all possible.



The top priority for the transportation construction industry is the safety of its workers and all users (motorists, riders, etc.) of the system that the industry builds. Because of the often-dangerous nature of transportation construction, employers must often consider physical ability in making an employment choice, while of course complying with existing employment laws. Specifically, the Americans with Disabilities Act already provides protections for employees and applicants against discrimination on the basis of disability and further provides an avenue for employers to make accommodations to employees and applicants to enable them to perform their duties. However, the OFCCP's proposed seven percent hiring requirement would go well beyond existing law. It would unduly narrow the discretion of employers in the transportation construction industry who seek, above all else, to ensure the safety and well-being of their workforce by matching the appropriate worker with the appropriate job.

On the administrative side, the transient nature of construction work makes compliance with the proposed rule's expanded tracking and reporting requirements extremely difficult and costly. This administrative burden will ultimately add to the costs borne by the taxpayers for these transportation infrastructure projects.

We respectfully offer one additional consideration for your review. The transportation construction industry has disproportionately suffered from the effects of a weak economy. The contracting community has laid-off tens of thousands of employees over the past few years, with an unemployment rate often exceeding 20 percent. Many of these individuals still await the call to return to work. Moreover, many transportation construction contractors are signatories to collective bargaining agreements in which labor unions provide the workers for various stages of the construction project. The proposed rule's hiring requirements would make it more difficult to rehire a contractor's former skilled workforce and/or comply with its labor agreements as described.

Many of our member-companies are vigorous and pro-active employers of people with disabilities, particularly veterans with service-related injuries. To maintain and grow these ranks of employers, OFCCP should explore an incentive hiring program rather than mandates such as those in the proposed rule. ARTBA stands ready to assist the agency in such an effort. Doing so will help the transportation construction industry achieve its objectives of building projects safely, efficiently, at the lowest possible cost and in the shortest possible length of time. Maximizing opportunities for industry workers, including those with disabilities when possible, is an important part of this equation.

Thank you for your consideration of ARTBA's concerns about the proposed rule.

Sincerely,



T. Peter Ruane  
President & C.E.O.