

19.804-2 Agency offering.

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(c) * * * All requirements, including construction, must be synopsisized through the GPE. For construction, the synopsis must include the geographical area of the competition set forth in the SBA's acceptance letter.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

30. Amend section 22.1009-4 in paragraph (a) by removing "shall" and adding "must" in its place; and by revising the introductory text of paragraph (b) to read as follows:

22.1009-4 All possible places of performance not identified.

* * * * *

(b) Include the following information in the notice of contract action (see 5.207(g)(4)):

* * * * *

PART 34—MAJOR SYSTEM ACQUISITION**34.005-2 [Amended]**

31. Amend section 34.005-2 in paragraph (a)(1) by removing "publication in the Commerce Business Daily" and adding "publicizing through the Governmentwide point of entry" in its place.

PART 35—RESEARCH AND DEVELOPMENT CONTRACTING

32. Amend section 35.004 in the introductory text of paragraph (a) by removing "shall" and adding "must" in its place; and by revising paragraph (a)(1) to read as follows:

35.004 Publicizing requirements and expanding research and development sources.

(a) * * *

(1) Early identification and publication of agency R&D needs and requirements, including publicizing through the Governmentwide point of entry (GPE) (see part 5);

* * * * *

33. Amend section 35.016 by revising paragraph (c) to read as follows:

35.016 Broad agency announcement.

* * * * *

(c) The availability of the BAA must be publicized through the Governmentwide point of entry (GPE) and, if authorized pursuant to subpart 5.5, may also be published in noted scientific, technical, or engineering periodicals. The notice must be published no less frequently than

annually. When transmitting a notice to the GPE before January 1, 2002, contracting officers must direct the GPE to forward the notice to the Commerce Business Daily.

* * * * *

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

34. Amend section 36.213-2 in the introductory text of paragraph (b) by removing "shall" and adding "must" in its place; and by revising paragraph (b)(9) to read as follows:

36.213-2 Presolicitation notices.

* * * * *

(b) * * *

(9) Be publicized through the Governmentwide point of entry in accordance with 5.204.

[FR Doc. 01-12244 Filed 5-15-01; 8:45 am]

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DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 17, 22, and 36**

[FAC 97-26; FAR Case 2001-016; Item II]

RIN 9000-AJ14

Federal Acquisition Regulation; Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects, which prohibits including requirements for affiliation with a labor organization as a condition for award of any contract or

subcontract for construction or construction management services.

DATES: *Effective Date:* May 16, 2001.

Applicability Date: This rule applies to contracts awarded after February 17, 2001.

Comment Date: Interested parties must submit comments to the FAR Secretariat at the address shown below on or before July 16, 2001 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: farcase.2001-016@gsa.gov.

Please submit comments only and cite FAC 97-26, FAR case 2001-016 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 97-26, FAR case 2001-016.

SUPPLEMENTARY INFORMATION:**A. Background**

On February 17, 2001, President George W. Bush signed E.O. 13202 revoking E.O. 12836 of February 1, 1993, and Presidential Memorandum of June 5, 1997, entitled "Use of Project Labor Agreements for Federal Construction Projects." The E.O. was published in the **Federal Register** at 66 FR 11225, February 22, 2001, and amended by E.O. 13208 published in the **Federal Register** at 66 FR 18717, April 11, 2001. The E.O. 13202 is intended to improve the internal management of the Executive branch by—

- Promoting and ensuring open competition on Federal and federally funded or assisted construction projects;
- Maintaining Government neutrality towards Government contractors' labor relations on Federal and federally funded or assisted construction projects;
- Reducing construction costs to the Government and to the taxpayers;
- Expanding job opportunities, especially for small and disadvantaged businesses;
- Preventing discrimination against Government contractors or their employees based upon labor affiliation or lack thereof, thereby promoting the economical, nondiscriminatory, and efficient administration and completion of Federal and federally funded or assisted construction projects; and

• Preventing the inefficiency that may result from the disruption of a previously established contractual relationship in particular cases.

The interim rule amends the FAR to provide language in Part 36 on the new E.O. The E.O. provides that agencies may not require or prohibit offerors, contractors, or subcontractors from entering into or adhering to agreements with one or more labor organizations. It also permits agency heads to exempt a project from the requirements of the E.O. under special circumstances, but the exemption may not be related to the possibility of or an actual labor dispute. The amended E.O. also allows for exemption of a project governed by a project labor agreement in place as of February 17, 2001, which had a construction contract awarded as of February 17, 2001.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration believe that this interim rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule will assist in expanding job opportunities for small and small disadvantaged businesses in Federal and federally funded construction projects. Therefore, we have prepared an Initial Regulatory Flexibility Analysis that is summarized as follows:

The rule amends FAR Parts 17, 22, and 36 to implement Executive Order 13202 that requires that any construction contract awarded after February 17, 2001, or any obligation of funds pursuant to such contract, must not require or prohibit offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations on the same or other related construction project(s); or otherwise discriminate against offerors, contractors, or subcontractors for becoming or refusing to become or remaining signatories or otherwise adhering to agreements with one or more organizations, on the same or other related construction projects. The rule will apply to all large and small entities that seek Federal construction contracts. The rule should have a positive economic impact on those small businesses that are not union shops, and that want to bid on Federal construction contracts, because it may provide additional opportunities for work on Federal

construction projects by non-union small businesses.

We invite comments from small businesses and other interested parties. We will consider comments from small entities concerning the affected FAR Parts in accordance with 5 U.S.C. 610. Small entities must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–26, FAR Case 2001–016), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not impose or remove information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to implement Executive Order (E.O.) 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects, dated February 17, 2001. Section 7 of the E.O. directed that, within 60 days of the E.O. the Federal Acquisition Regulations Council amend the FAR to implement the provisions of the E.O. However, pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 17, 22, and 36

Government procurement.

Dated: May 10, 2001.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 17, 22, and 36 as set forth below:

1. The authority citation for 48 CFR parts 17, 22, and 36 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 17—SPECIAL CONTRACTING METHODS

2. Amend section 17.603 by adding paragraph (c) to read as follows:

17.603 Limitations.

* * * * *

(c) For use of project labor agreements, see 36.202(d).

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

3. Amend section 22.101–1 by removing the paragraph designation “(b)” and adding “(b)(1)” in its place, and adding a new paragraph (b)(2) to read as follows:

22.101–1 General.

* * * * *

(b)(1) * * *

(2) For use of project labor agreements, see 36.202(d).

* * * * *

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

4. Amend section 36.202 by adding paragraph (d) to read as follows:

36.202 Specifications.

* * * * *

(d) In accordance with Executive Order 13202, of February 17, 2001, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects, as amended on April 6, 2001—

(1) The Government, or any construction manager acting on behalf of the Government, must not—

(i) Require or prohibit offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations (as defined in 42 U.S.C. 2000e(d)) on the same or other related construction projects; or

(ii) Otherwise discriminate against offerors, contractors, or subcontractors for becoming, refusing to become, or remaining signatories or otherwise adhering to agreements with one or more labor organizations, on the same or other related construction projects.

(2) Nothing in this paragraph prohibits offerors, contractors, or subcontractors from voluntarily entering into project labor agreements.

(3) The head of the agency may exempt a construction project from this policy if the agency head finds that, as of February 17, 2001—

(i) The agency or a construction manager acting on behalf of the

Government had issued or was a party to bid specifications, project agreements, agreements with one or more labor organizations, or other controlling documents with respect to that particular project, which contained any of the requirements or prohibitions in paragraph (d)(1) of this section; and

(ii) One or more construction contracts subject to such requirements or prohibitions had been awarded.

(4) The head of the agency may exempt a particular project, contract, or subcontract from this policy upon a finding that special circumstances require an exemption in order to avert an imminent threat to public health or safety, or to serve the national security. A finding of "special circumstances" may not be based on the possibility or presence of a labor dispute concerning the use of contractors or subcontractors who are nonsignatories to, or otherwise do not adhere to, agreements with one or more labor organizations, or concerning employees on the project who are not members of or affiliated with a labor organization.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22 and 52

[FAC 97-26; FAR Case 2001-017; Item III]

RIN 9000-AJ13

Federal Acquisition Regulation; Executive Order 13204, Revocation of Executive Order on Nondisplacement of Qualified Workers Under Certain Contracts

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 13204, Revocation of Executive Order on Nondisplacement of Qualified Workers Under Certain Contracts, signed by the President on February 17, 2001. The

E.O. requires that any rules implementing E.O. 12933, Nondisplacement of Qualified Workers Under Certain Contracts, be promptly rescinded.

DATES: *Effective Date:* May 16, 2001.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before July 16, 2001 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: farcase.2001-017@gsa.gov

Please submit comments only and cite FAC 97-26, FAR case 2001-017 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501-3775. Please cite FAC 97-26, FAR case 2001-017.

SUPPLEMENTARY INFORMATION:

A. Background

Executive Order 12933 was signed October 20, 1994, by President Clinton and published in the *Federal Register* on October 24, 1994 (59 FR 53559). The E.O. required that building service contracts for public buildings include a clause requiring the contractor under a contract that succeeds a contract for performance of similar services at the same public building to offer certain employees under the predecessor contract, a right of first refusal to employment under the new contract. E.O. 12933 was implemented in the FAR as an interim rule in FAC 97-01 (62 FR 44823) dated August 22, 1997. The regulation was finalized with minor changes in FAC 97-11 (64 FR 10545) dated March 4, 1999. A further change was made in FAC 97-15 adding the clause to the commercial item clause list at 52.212-5 (64 FR 72450, December 27, 1999).

On February 17, 2001, President George W. Bush signed E.O. 13204 rescinding E.O. 12933 and calling for the prompt recession of any orders, rules, regulations, guidelines, or policies implementing or enforcing E.O. 12933, to the extent consistent with law. Contracting officers should not take any action on any complaint filed under former FAR Subpart 22.12.

Effective March 23, 2001, the Department of Labor rescinded its rule implementing E.O. 12933 (66 FR 16126, March 23, 2001).

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 51 U.S.C. 601, *et seq.*, because the rule merely removes requirements from the FAR that implemented regulations issued by the Department of Labor (DoL) for which DoL certified would not have a significant economic effect on a substantial number of small entities (62 FR 28175, May 22, 1997). This rule implements the requirements of E.O. 13204. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97-26, FAR case 2001-017), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to implement E.O. 13204, Revocation of Executive Order on Nondisplacement of Qualified Workers Under Certain Contracts, dated February 17, 2001. E.O. 13204 required the Federal Acquisition Regulatory Council to promptly rescind any orders, rules, regulations, guidelines, or policies implementing or enforcing E.O. 12933. However, pursuant to Public Law 98-577 and FAR 1.501, public comments