

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that any rules implementing E.O. 12933, Nondisplacement of Qualified Workers Under Certain Contracts, be promptly rescinded.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

received in response to this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 22 and 52

Government procurement.

Dated: May 10, 2001.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 22 and 52 as set forth below:

1. The authority citation for 48 CFR parts 22 and 52 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 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 22.12 [Reserved]

2. Remove and reserve Subpart 22.12.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.212–5 [Amended]

3. Amend section 52.212–5 by revising the clause date to read May 2001; and by removing paragraph (c)(6).

52.222–50 [Reserved]

4. Remove and reserve section 52.222–50.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

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

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 97–26 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 97–26 which precedes this document. These documents are also available via the Internet at <http://www.arnet.gov/far>.

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 97–26

Item	Subject	FAR case	Analyst
I	*Electronic Commerce in Federal Procurement	1997–304	Moss.
II	*Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.	2001–016	Nelson.
III	Executive Order 13204, Revocation of Executive Order On Nondisplacement of Qualified Workers Under Certain Contracts.	2001–017	Klein.

Item I—Electronic Commerce in Federal Procurement (FAR Case 1997–304)

This interim rule amends the FAR to (a) further implement section 850 of the National Defense Authorization Act for Fiscal Year 1998, Pub. L. 105–85 (section 850) and (b) implement section 810 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106–398, section 810). Section 850 calls for the use of cost-effective procedures and processes that employ electronic commerce in the conduct and administration of Federal procurement systems. This includes the designation in the FAR of a single point of universal electronic public access to Governmentwide procurement opportunities (the “Governmentwide Point of Entry” or “GPE”). Section 810 allows agencies to provide access to notices through the GPE, as designated

in the FAR, instead of publishing them via the Commerce Business Daily (CBD).

This rule designates Federal Business Opportunities (“FedBizOpps”) as the GPE. Agencies have until October 1, 2001, to complete their transition to, or integration with, FedBizOpps. By that date, all agencies must use FedBizOpps to provide access to public notices of procurement actions over \$25,000 that are currently required to be published in the CBD along with associated solicitations and amendments. In addition, agencies will not be required to provide notice in the CBD as of January 1, 2002, since access to this information will be provided via the Internet through FedBizOpps.

Item II—Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects (FAR Case 2001–016)

This interim rule amends the FAR to provide language in Part 36 and revises Subparts 17.6 and 22.1 to add cross-references to Part 36. The Executive order (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.