

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 5

[Docket No. FR-4695-F-02]

RIN 2501-AC98

Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule provides for codification of the requirements of Executive Order 13202 (the Executive Order), entitled "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects." The Executive Order provides that, to the extent permitted by law, agencies may not permit inclusion of contract conditions requiring or prohibiting entering into or adhering to agreements with a labor organization, or otherwise discriminating against parties entering into or adhering to such agreements, as a condition for award of any federally funded contract or subcontract for construction. This final rule follows publication of a May 22, 2003, interim rule. HUD did not receive any public comments on the interim rule and, therefore, is adopting the interim rule without change.

DATES: Effective Date: November 17, 2003.

FOR FURTHER INFORMATION CONTACT:

Edward L. Johnson, Director, Office of Labor Relations, Office of Departmental Operations and Coordination, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000; telephone (202) 708-0370 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background—HUD's May 22, 2003, Interim Rule

On May 22, 2003 (68 FR 28102), HUD published an interim rule establishing regulations to codify the requirements of Executive Order 13202 for HUD's programs. President George W. Bush signed Executive Order 13202, entitled "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor

Relations on Federal and Federally Funded Construction Projects" on February 17, 2001 (the Order was published in the **Federal Register** on February 22, 2001, at 66 FR 11225). Executive Order 13202 is intended to improve the internal management of the Executive Branch. The Order provides that agencies may not require or prohibit bidders, offerors, contractors, or subcontractors from entering into or adhering to agreements with one or more labor organizations. The Executive Order also permits agency heads to exempt a project from its requirements under special circumstances, but the exemption may not be related to the possibility of or an actual labor dispute.

The Order was amended by Executive Order 13208, issued on April 6, 2001. The amendment was to add a paragraph (c) to section 5 of Executive Order 13202. The new paragraph (c) addresses exemption of a project from the provisions of sections 1 and 3 of the Executive Order. (Executive Order 13208 was published in the **Federal Register** on April 11, 2001, at 66 FR 18717.)

HUD's May 22, 2003, interim rule added a new section § 5.108 to HUD's regulations in 24 CFR part 5, subpart A. The interim rule codified the requirements of Executive Order 13202 for HUD's programs. The regulations in subpart A of part 5 contain the definitions and federal requirements generally applicable to all of HUD's programs. By placing the requirements of the Executive Order in those HUD regulations that contain across-the-board requirements, HUD is ensuring the broadest applicability of the requirements of Executive Order 13202. The preamble to the May 22, 2003, interim rule provides a detailed description of the regulatory amendments to 24 CFR part 5.

II. This Final Rule

This final rule follows publication of the May 22, 2003, interim rule. The interim rule became effective on June 23, 2003, and provided for a 60-day public comment period. The comment period on the interim rule closed on July 21, 2003. HUD did not receive any public comments on the interim rule. Accordingly, this final rule adopts the interim rule without changes.

III. Findings and Certifications

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant

economic impact on a substantial number of small entities. The final rule implements Executive Order 13202, which revokes previous requirements encouraging the inclusion of project labor agreements as a condition for award of federally funded contracts or subcontracts on construction projects. The Executive Order directs government neutrality towards the use of such agreements, thus placing the decision of whether to enter into a project labor agreement with individual contractors and subcontractors.

This applies equally to large and small entities that seek federally funded construction contracts and does not establish requirements applicable to entities based on their size. Further, HUD neither requires nor prohibits the use of project labor agreements on HUD-funded construction projects. Although some HUD-funded construction projects are subject to project labor agreements, in many instances this is due to the voluntary decision of individual contractors and subcontractors. Therefore, the final rule will not significantly revise existing practices or hiring costs for small contractors and subcontractors participating in HUD's construction programs. To the extent the rule has an impact on small entities, it should be a positive economic impact on those small entities that are not union shops, because the rule may provide additional opportunities to work on federally funded construction projects by non-union small businesses.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the interim rule stage, in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531-1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This final rule does not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of the UMRA.

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct

compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

List of Subjects in 24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Public

housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, the interim rule for part 5 of subtitle A of title 24 of the Code of Federal Regulations, published on May 22, 2003, at 68 FR 28102, is promulgated as final, without change.

Dated: October 7, 2003.

Mel Martinez,

Secretary.

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