

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Chapter 1

**Federal Acquisition Circular 97–26;
Introduction**

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

ACTION: Summary presentation of interim rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 97–26. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at <http://www.arnet.gov/far>.

DATES: For effective dates and comment dates, see separate documents which follow.

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 the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 97–26 and specific FAR case number(s). Interested parties may also visit our website at <http://www.arnet.gov/far>.

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.

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Federal Acquisition Circular 97–26 amends the FAR as specified below:

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 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 Executive order under special circumstances but the exemption may not be related to the possibility of, or an actual labor dispute.

Item III—Executive Order 13204, Revocation of Executive Order on Nondisplacement of Qualified Workers Under Certain Contracts (FAR Case 2001–017)

This interim rule amends the FAR to remove Subpart 22.12, Nondisplacement of Qualified Workers Under Certain Contracts. Executive Order 12933, Nondisplacement of

Qualified Workers Under Certain Contracts (October 20, 1994), 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 in Subpart 22.12.

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).

Dated: May 10, 2001.

Al Matera,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 97–26 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

All Federal Acquisition Regulation (FAR) changes and other directive

material contained in FAC 97–26 are effective May 16, 2001.

Dated: April 25, 2001.

Deidre A. Lee,

Director, Defense Procurement.

Dated: April 12, 2001.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: April 13, 2001.

James A. Balinskis,

Acting Associate Administrator for Procurement, National Aeronautics and Space Administration.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 5, 6, 7, 9, 12, 13, 14, 19, 22, 34, 35, and 36

[FAC 97–26; FAR Case 1997–304; Item I]

RIN 9000-A110

Federal Acquisition Regulation; Electronic Commerce in Federal Procurement

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 further implement section 850 of the National Defense Authorization Act for Fiscal Year 1998; and implement section 810 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001.

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).

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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.1997–304@gsa.gov

Please submit comments only and cite FAC 97–26, FAR case 1997–304 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. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 97–26, FAR case 1997–304.

SUPPLEMENTARY INFORMATION:

A. Background

1. The First Interim Rule

An interim rule was published in the **Federal Register** at 63 FR 58590, October 30, 1998, amending FAR Subpart 4.5 and making associated changes to FAR Parts 2, 5, 13, 14, and 32 to implement Section 850. Section 850 amended Titles 10, 15, 40, and 41 of the United States Code to eliminate the statutory preference for the Federal Acquisition Computer Network (FACNET) computer architecture in conducting transactions electronically. Towards this end, the first interim rule revised the FAR to—

- Promote the use of cost-effective procedures and processes that employ electronic commerce in the conduct and administration of Federal procurement systems; and

- Require Federal procurement systems that employ electronic commerce to apply nationally and internationally recognized standards that broaden interoperability and ease the electronic interchange of information.

The Councils received and considered public comments from 28 respondents that were used in the development of this second interim rule.

2. The Proposed Rule—Designation of FedBizOpps

Section 850 calls for “any notice of agency requirements or agency solicitation for contract opportunities” to be provided in a form that allows “convenient and universal user access through a single, Government-wide point of entry.” Subsequent to the consideration of public comments on the first interim rule, the Office of Federal Procurement Policy (OFPP) recommended that FedBizOpps (<http://www.fedbizopps.gov>) be designated as the GPE. The Councils published a proposed rule in the **Federal Register** at 65 FR 50872, August 21, 2000, to solicit public comments on the implementation of OFPP’s recommendation. The preamble to the proposed rule describes the Government’s objectives in designating a GPE (*i.e.*, to create a central point for electronic access to business opportunities, to follow the commercial lead, and to facilitate re-engineering for sellers and buyers) and how FedBizOpps meets these objectives.

The Councils received and considered public comments from 22 respondents. OFPP also reviewed the comments on the proposed designation and continues to believe that FedBizOpps can most effectively meet the Government’s objectives, including improved and enhanced access to information for businesses small and large. Among other things, GSA and the agencies using FedBizOpps have sought to shape FedBizOpps to take advantage of electronic tools that have widespread commercial acceptance and interface with sellers’ electronic tools, and can adapt to new tools as they gain commercial acceptance. FedBizOpps allows sellers and service providers to access and download information through different commercial electronic means and business applications, including web-based technology, bulk data feed, and push technology through electronic mail (e-mail). This ability to accommodate various business techniques means that sellers can choose the means they find more suitable (*i.e.*, direct or service-provider