

for commercial items, use any appropriate combination of the procedures in Parts 12, 13, 14, and 15 (see paragraph (d) of this section).

\* \* \* \* \*

■ 6. Amend section 13.201 by removing "\$15,000." from the end of paragraph (g)(1) and adding "—" in its place; and adding paragraphs (g)(1)(i) and (g)(1)(ii) to read as follows:

**13.201 General.**

\* \* \* \* \*

(g)(1) \* \* \*

(i) \$15,000 in the case of any contract to be awarded and performed, or purchase to be made, inside the United States; and

(ii) \$25,000 in the case of any contract to be awarded and performed, or purchase to be made, outside the United States.

\* \* \* \* \*

■ 7. Amend section 13.303–5 by revising paragraph (b)(2) to read as follows:

**13.303–5 Purchases under BPAs.**

\* \* \* \* \*

(b) \* \* \*

(2) The limitation for individual purchases for commercial item acquisitions conducted under Subpart 13.5 is \$5 million (\$10 million for acquisitions as described in 13.500(e)).

\* \* \* \* \*

■ 8. Amend section 13.500 by revising the first sentence of paragraph (a); and adding paragraph (e) to read as follows:

**13.500 General.**

(a) This subpart authorizes, as a test program, use of simplified procedures for the acquisition of supplies and services in amounts greater than the simplified acquisition threshold but not exceeding \$5 million (\$10 million for acquisitions as described in 13.500(e)), including options, if the contracting officer reasonably expects, based on the nature of the supplies or services sought, and on market research, that offers will include only commercial items. \* \* \*

\* \* \* \* \*

(e) Under 41 U.S.C. 428a, the simplified acquisition procedures authorized by this test program may be used for acquisitions that do not exceed \$10 million when—

(1) The acquisition is for commercial items that, as determined by the head of the agency, are to be used in support of a contingency operation or to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack; or

(2) The acquisition will be treated as an acquisition of commercial items in accordance with 12.102(f)(1).

■ 9. Amend section 13.501 by revising paragraph (a)(1)(ii) to read as follows:

**13.501 Special documentation requirements.**

(a) \* \* \*

(1) \* \* \*

(ii) Prepare sole source justifications using the format at 6.303–2, modified to reflect an acquisition under the authority of the test program for commercial items (section 4202 of the Clinger-Cohen Act of 1996) or the authority of the Services Acquisition Reform Act of 2003 (41 U.S.C. 428a).

\* \* \* \* \*

**PART 15—CONTRACTING BY NEGOTIATION**

**15.403–1 [Amended]**

■ 10. Amend section 15.403–1 in paragraph (c)(3)(ii) by removing "(Pub. L. 108–136, Sec. 1443)" and adding "(41 U.S.C. 428a)" in its place.

[FR Doc. 04–27635 Filed 12–17–04; 8:45 am]

BILLING CODE 6820–EP–S

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 2, 22, and 52**

[FAC 2001–26; FAR Case 2004–010; Item IV]

RIN 9000–AK04

**Federal Acquisition Regulation; Notification of Employee Rights Concerning Payment of Union Dues or Fees**

**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 13201, Notification of Employee Rights Concerning Payment of Union Dues or Fees. The rule requires Government contractors and subcontractors to post notices, in all plants and offices, whether or not used in performing work that supports a Federal contract, informing their employees that under Federal law they

cannot be required to join a union or maintain membership in a union to retain their jobs. The required notice also advises employees who are not union members that they can object to the use of their union dues for certain purposes.

**DATES:** *Effective Date:* December 20, 2004.

The Department of Labor's final rule implementing Executive Order 13201 was published on March 29, 2004, with an effective date of April 28, 2004. This rule amending the FAR is the formal notification to contracting officers to insert the Executive Order 13201 clause in covered solicitations issued on or after the effective date of this rule.

*Comment Date:* Interested parties should submit comments to the FAR Secretariat at the address shown below on or before February 18, 2005 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAC 2001–26, FAR case 2004–010, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Agency Web Site: <http://www.acqnet.gov/far/ProposedRules/proposed.htm>. Click on the FAR case number to submit comments.

- E-mail: [farcase.2004-010@gsa.gov](mailto:farcase.2004-010@gsa.gov). Include FAC 2001–26, FAR case 2004–010 in the subject line of the message.

- Fax: 202–501–4067.

- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

*Instructions:* Please submit comments only and cite FAC 2001–26, FAR case 2004–010, in all correspondence related to this case. All comments received will be posted without change to <http://www.acqnet.gov/far/ProposedRules/proposed.htm>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Craig Goral, Procurement Analyst, at (202) 501–3856. Please cite FAC 2001–26, FAR case 2004–010.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

On April 13, 1992, President George H. W. Bush issued Executive Order (E.O.) 12800. E.O. 12800 required unionized Federal contractors to post a notice in the workplace that workers are

not required to join or support a union and threatened sanctions against contractors who did not comply. The next month, the Councils issued an interim rule implementing E.O. 12800 (57 FR 20373–20375, May 12, 1992).

However, E.O. 12800 was revoked on February 1, 1993, by President Clinton's E.O. 12836 (58 FR 7045, February 3, 1993). On March 2, 1993, the Councils issued a final rule (58 FR 12140) eliminating the interim rule.

On February 17, 2001, President George W. Bush issued E.O. 13201 (66 FR 11221, February 22, 2001). This Executive order revoked President Clinton's E.O. 12836 and reasserts the notification provisions and sanctions of E.O. 12800.

On October 1, 2001, the Department of Labor (DoL) published a proposed rule implementing E.O. 13201 (66 FR 50010). DoL finalized its implementing rule on March 29, 2004 (69 FR 16376).

E.O. 13201 is designed to promote economy and efficiency in Government procurement due to a better-informed American workforce. E.O. 13201 contains requirements similar, but not identical, to those in E.O. 12800.

The interim rule amends the FAR to—

- Provide a new FAR subpart on Notification of Employee Rights Concerning Payment of Union Dues or Fees;

- Add a clause at 52.222–39 to be included in every solicitation and contract, other than purchases that do not exceed the simplified acquisition threshold and contracts covered by an exemption granted by the Secretary of Labor. The new clause applies to contracts (commercial or non-commercial) and subcontracts (commercial or non-commercial) that exceed the simplified acquisition threshold;

- Amend the clause at 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, in order to include the new 52.222–39 clause; and

- Amend the clause at 52.244–6, Subcontracts for Commercial Items, in order to include the new 52.222–39 clause.

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, 5 U.S.C. 601, *et seq.*, because the rule merely requires contractors to post notices and to insert a clause in subcontracts and purchase orders requiring subcontractors and vendors to post the notices also. The notices advise the contractors' and subcontractors' nonunion member employees of their rights under existing law concerning use of their union dues or fees where a union security agreement is in place. The rule provides sanctions for noncompliance, but full compliance with the Executive order and any related rules, regulations, and orders of the Secretary of Labor is expected of all contractors. Further, this interim rule is only implementing the DoL final rule. The Secretary of Labor has certified to the Chief Counsel for Advocacy at the Small Business Administration that the DoL final rule will not substantially change existing obligations for Federal contractors. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 2, 22, and 52 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 2001–26, FAR case 2004–010), in correspondence.

## C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the interim rule contains information collection requirements; however, this rule's changes do not impose additional information collection requirements to the paperwork burden previously submitted to the Office of Management and Budget (OMB) and approved on November 15, 2004, under OMB Control Number 1215–0203. The DoL has identified the burdens associated with the filing and processing of complaints by complainants and contractors in the notice of final rulemaking at 69 FR 16376, March 29, 2004. The Councils believe that the package submitted by DoL meets the requirement imposed by the Paperwork Reduction Act and sufficiently covers this interim rule and no further action is necessary.

## 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 13201 and the DoL rule at 29 CFR part 470 effective April 28, 2004. However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

## List of Subjects in 48 CFR Parts 2, 22, and 52

Government procurement.

Dated: December 9, 2004.

**Laura Auletta,**

*Director, Contract Policy Division.*

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 22, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 22, and 52 is revised to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 in paragraph (b)(2) in the definition “United States” by redesignating paragraphs (4) and (5) as (5) and (6), respectively, and adding a new paragraph (4) to read as follows:

### 2.101 Definitions.

\* \* \* \* \*

(b) \* \* \*

*United States*, when used in a geographic sense, means the 50 States and the District of Columbia, except as follows:

\* \* \* \* \*

(4) For use in Subpart 22.16, see the definition at 22.1601.

\* \* \* \* \*

## PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 3. Add Subpart 22.16, consisting of sections 22.1600 through 22.1605, to read as follows:

### Subpart 22.16—Notification of Employee Rights Concerning Payment of Union Dues or Fees

Sec.

22.1600 Scope of subpart.

22.1601 Definitions.

22.1602 Policy.

22.1603 Exemptions granted by the Secretary of Labor.

22.1604 Compliance investigations and sanctions for violations.

22.1605 Contract clause.

**22.1600 Scope of subpart.**

This subpart prescribes policies and procedures to implement Executive Order 13201, February 17, 2001.

**22.1601 Definitions.**

As used in this subpart—  
*Secretary* means the Secretary of Labor, U.S. Department of Labor.  
*United States* means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

**22.1602 Policy.**

Executive Order 13201 generally requires contractors to post a notice informing employees of their rights concerning payment of union dues or fees and to include this requirement in subcontracts and purchases that exceed the simplified acquisition threshold.

**22.1603 Exemptions granted by the Secretary of Labor.**

(a) The Secretary may grant exemptions from the requirements of this subpart, including the requirement to include the clause at 52.222–39, or parts of that clause, in contracts. Requests for exemptions may be submitted in accordance with Department of Labor regulations at 29 CFR 470.3.

(b) The requirements of this subpart do not apply to contracts or subcontracts or purchases that do not exceed the simplified acquisition threshold.

**22.1604 Compliance investigations and sanctions for violations.**

The Secretary may investigate any contractor, subcontractor, or vendor to determine if any of the requirements of the clause at 52.222–39 have been violated. The procedures for conducting the investigations and effecting the sanctions are in 29 CFR part 470, Subpart B—Compliance Evaluations, Complaint Investigations and Enforcement Procedures. If the Secretary determines that there has been a violation, the Secretary may, to the extent authorized by 29 CFR 470.14 (which, in part, requires coordination between the head of the agency and the Secretary), direct that the contract be cancelled, terminated, or suspended in whole or in part. The Secretary may also declare the contractor ineligible for further Government contracts. Each contracting agency shall cooperate with the Secretary and provide such information and assistance as the Secretary may require in the performance of the Secretary’s functions.

**22.1605 Contract clause.**

Insert the clause at 52.222–39, Notification of Employee Rights Concerning Payment of Union Dues or Fees, in all solicitations and contracts, except—

(a) Acquisitions that do not exceed the simplified acquisition threshold. For indefinite quantity contracts, include the clause only if the value of orders in any calendar year of the contract is expected to exceed the simplified acquisition threshold; or

(b) Contracts covered by an exemption granted by the Secretary of Labor. A contracting agency may modify the clause at 52.222–39, if necessary, to reflect an exemption granted by the Secretary (see 22.1603(a)).

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

- 4. Amend section 52.212–5 by—
- a. Revising the date of the clause;
- b. Redesignating paragraphs (b)(21) through (b)(34) as (b)(22) through (b)(35), respectively, and adding a new paragraph (b)(21);
- c. In the introductory text of paragraph (e)(1), by removing “paragraphs (i) through (vi)” and adding “paragraphs (i) through (vii)” in its place; and redesignating paragraphs (e)(1)(v) and (e)(1)(vi) as (e)(1)(vi) and (e)(1)(vii), respectively, and adding a new paragraph (e)(1)(v) to read as follows:

**52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.**

\* \* \* \* \*

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (DEC 2004)

\* \* \* \* \*

(b) \* \* \*

(21) 52.222–39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004) (E.O. 13201).

\* \* \* \* \*

(e)(1) \* \* \*

(v) 52.222–39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004) (E.O. 13201).

\* \* \* \* \*

**52.213–4 [Amended]**

- 5. Amend section 52.213–4 by removing from the clause heading “(Oct 2004)” and adding “(DEC 2004)” in its place; and removing “(July 2004)” from paragraph (a)(2)(vi) of the clause and adding “(DEC 2004)” in its place.
- 6. Add section 52.222–39 to read as follows:

**52.222–39 Notification of Employee Rights Concerning Payment of Union Dues or Fees.**

As prescribed in 22.1605, insert the following clause:

NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES (DEC 2004)

(a) *Definition.* As used in this clause—  
*United States* means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) Except as provided in paragraph (e) of this clause, during the term of this contract, the Contractor shall post a notice, in the form of a poster, informing employees of their rights concerning union membership and payment of union dues and fees, in conspicuous places in and about all its plants and offices, including all places where notices to employees are customarily posted. The notice shall include the following information (except that the information pertaining to National Labor Relations Board shall not be included in notices posted in the plants or offices of carriers subject to the Railway Labor Act, as amended (45 U.S.C. 151–188)).

*Notice to Employees*  
 Under Federal law, employees cannot be required to join a union or maintain membership in a union in order to retain their jobs. Under certain conditions, the law permits a union and an employer to enter into a union-security agreement requiring employees to pay uniform periodic dues and initiation fees. However, employees who are not union members can object to the use of their payments for certain purposes and can only be required to pay their share of union costs relating to collective bargaining, contract administration, and grievance adjustment.

If you do not want to pay that portion of dues or fees used to support activities not related to collective bargaining, contract administration, or grievance adjustment, you are entitled to an appropriate reduction in your payment. If you believe that you have been required to pay dues or fees used in part to support activities not related to collective bargaining, contract administration, or grievance adjustment, you may be entitled to a refund and to an appropriate reduction in future payments.

For further information concerning your rights, you may wish to contact the National Labor Relations Board (NLRB) either at one of its Regional offices or at the following address or toll free number:

National Labor Relations Board  
 Division of Information  
 1099 14th Street, N.W.  
 Washington, DC 20570  
 1–866–667–6572  
 1–866–316–6572 (TTY)

To locate the nearest NLRB office, see NLRB’s website at <http://www.nlr.gov>.

(c) The Contractor shall comply with all provisions of Executive Order 13201 of February 17, 2001, and related implementing regulations at 29 CFR part 470, and orders of the Secretary of Labor.

(d) In the event that the Contractor does not comply with any of the requirements set forth in paragraphs (b), (c), or (g), the Secretary may direct that this contract be cancelled, terminated, or suspended in whole or in part, and declare the Contractor ineligible for further Government contracts in accordance with procedures at 29 CFR part 470, Subpart B—Compliance Evaluations, Complaint Investigations and Enforcement Procedures. Such other sanctions or remedies may be imposed as are provided by 29 CFR part 470, which implements Executive Order 13201, or as are otherwise provided by law.

(e) The requirement to post the employee notice in paragraph (b) does not apply to—

(1) Contractors and subcontractors that employ fewer than 15 persons;

(2) Contractor establishments or construction work sites where no union has been formally recognized by the Contractor or certified as the exclusive bargaining representative of the Contractor's employees;

(3) Contractor establishments or construction work sites located in a jurisdiction named in the definition of the United States in which the law of that jurisdiction forbids enforcement of union-security agreements;

(4) Contractor facilities where upon the written request of the Contractor, the Department of Labor Deputy Assistant Secretary for Labor-Management Programs has waived the posting requirements with respect to any of the Contractor's facilities if the Deputy Assistant Secretary finds that the Contractor has demonstrated that—

(i) The facility is in all respects separate and distinct from activities of the Contractor related to the performance of a contract; and

(ii) Such a waiver will not interfere with or impede the effectuation of the Executive order; or

(5) Work outside the United States that does not involve the recruitment or employment of workers within the United States.

(f) The Department of Labor publishes the official employee notice in two variations; one for contractors covered by the Railway Labor Act and a second for all other contractors. The Contractor shall—

(1) Obtain the required employee notice poster from the Division of Interpretations and Standards, Office of

Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-5605, Washington, DC 20210, or from any field office of the Department's Office of Labor-Management Standards or Office of Federal Contract Compliance Programs;

(2) Download a copy of the poster from the Office of Labor-Management Standards website at <http://www.olms.dol.gov>; or

(3) Reproduce and use exact duplicate copies of the Department of Labor's official poster.

(g) The Contractor shall include the substance of this clause in every subcontract or purchase order that exceeds the simplified acquisition threshold, entered into in connection with this contract, unless exempted by the Department of Labor Deputy Assistant Secretary for Labor-Management Programs on account of special circumstances in the national interest under authority of 29 CFR 470.3(c). For indefinite quantity subcontracts, the Contractor shall include the substance of this clause if the value of orders in any calendar year of the subcontract is expected to exceed the simplified acquisition threshold. Pursuant to 29 CFR part 470, Subpart B—Compliance Evaluations, Complaint Investigations and Enforcement Procedures, the Secretary of Labor may direct the Contractor to take such action in the enforcement of these regulations, including the imposition of sanctions for noncompliance with respect to any such subcontract or purchase order. If the Contractor becomes involved in litigation with a subcontractor or vendor, or is threatened with such involvement, as a result of such direction, the Contractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

(End of clause)

■ 7. Amend section 52.244-6 by revising the date of the clause; redesignating paragraph (c)(1)(v) as (c)(1)(vi), and adding a new paragraph (c)(1)(v) to read as follows:

**52.244-6 Subcontracts for Commercial Items.**

\* \* \* \* \*

**SUBCONTRACTS FOR COMMERCIAL ITEMS (DEC 2004)**

\* \* \* \* \*

(c)(1) \* \* \*

(v) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004) (E.O. 13201). Flow down as required in

accordance with paragraph (g) of FAR clause 52.222-39).

\* \* \* \* \*

[FR Doc. 04-27636 Filed 12-17-04; 8:45 am]

BILLING CODE 6820-EP-S

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 19**

[FAC 2001-26; FAR Case 2003-010; Item V]

RIN 9000-AJ90

**Federal Acquisition Regulation; Mentor Protégé Program—Delegation of Approval Authority for Mentor Protégé Agreements**

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

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to change the approval authority of Mentor Protégé Agreements to the DoD Military Departments or Defense Agencies.

**DATES:** Effective Date: January 19, 2005.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501-0044. Please cite FAC 2001-26, FAR case 2003-010.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This final rule amends FAR 19.702, Statutory Requirements, to change the approval authority of Mentor Protégé Agreements to the DoD Military Departments or Defense Agencies. This change is being made in order for DOD to streamline and transform itself to more effectively achieve its mission. The Pilot Mentor-Protégé Program was established under Section 831 of Pub. L. 101-510, the National Defense Authorization Act for Fiscal Year 1991 (10 U. S. C. 2302 note). The purpose of the Program is to provide incentives to major Department of Defense (DoD) contractors to assist protégé firms in