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. Balinskas,

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

[FR Doc. 01–12243 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 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–AI10

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).

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 on the Internet through FedBizOpps.

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

enhanced) for gaining access to Federal business opportunities.

Some comments have urged greater reliance on the private sector in providing access. The Government has a strong interest in ensuring potential sources have reliable electronic access to notices of open market contracting opportunities. For this reason, until more standardized processes evolve to ensure more reliable and accurate searches, it is appropriate for the Government to ensure access by managing the technological architecture for doing so. In the future, it may be possible for the Government to rely on sellers' use of commercial tools to identify Government business opportunities without the Government having to manage a technological architecture.

3. This Second Interim Rule

Public comments received in response to first interim rule and the proposed rule were considered in drafting this second interim rule. This rule designates FedBizOpps as the GPE. Agencies must make notices of contracting opportunities that meet the criteria in FAR 5.101 and 5.201 accessible via FedBizOpps. In addition, the rule—

- Adds place of contract performance and set-aside status to the required notice content;
- Requires agencies to make accessible through FedBizOpps other notices that are currently published in the CBD, such as presolicitation notices and award notices supporting subcontracting opportunities;
- Requires agencies to make accessible via FedBizOpps most solicitations and amendments associated with business opportunities listed on the FedBizOpps website;
- Permits contractors to publicize subcontracting opportunities with the intent of supporting achievement of subcontracting goals; and
- Permits agencies to make accessible via FedBizOpps information that allows potential offerors to better understand how they can meet the Government's needs.

Agencies must provide access to all applicable actions through FedBizOpps by October 1, 2001. This phase-in period is designed to better enable agencies to achieve a smooth transition to FedBizOpps.

This second interim rule also implements section 810, which was enacted after publication of the proposed rule. Public comment is specifically sought on this rule's implementation of section 810.

Section 810 amends section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) and section 8(e) of the Small Business Act (15 U.S.C. 637(e)). As amended, these provisions allow agencies to provide access to their notices of solicitation either by transmitting them to the GPE designated in the FAR or by publishing them in the Commerce Business Daily (CBD) rather than mandating notice through the CBD as had previously been required.

This rule establishes FedBizOpps (the designated GPE) as the principal venue for procurement notices. As noted above, agencies must begin transmitting notices to FedBizOpps no later than October 1, 2001. Until January 1, 2002, agencies must also direct FedBizOpps to forward the information to the CBD, using the current format prescribed for the electronic version of CBD, Commerce Business Daily Network (CBDNet). The duplication of notices transmitted to FedBizOpps in the CBD through the end of calendar year 2001 will provide additional time for vendors to become acclimated to FedBizOpps as the GPE. On and after January 1, 2002, agencies will no longer be required to provide duplicate notice in the CBD and instead may rely exclusively on the mandatory notice in FedBizOpps to provide the required access.

Since public comments received in response to the first interim rule and the proposed rule have already been addressed, comments on the issues unique to this second interim rule are especially requested.

This is a significant regulatory action and, therefore, was 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 changes 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 interim rule establishes FedBizOpps as the single GPE for all large and small business entities accessing notices of proposed contract actions, solicitations, and related procurement information. We have prepared an Initial Regulatory Flexibility Analysis. The analysis is summarized as follows:

The interim rule further implements section 850 of the National Defense Authorization Act for Fiscal Year 1998, Pub. L. 105–85 and section 810 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Pub. L. 106–398. Section 850 amends Titles 10, 15, 40, and 41 of the United States Code to eliminate the preference for electronic commerce within Federal agencies to be conducted on the Federal Acquisition Computer Network (FACNET) computer architecture. Section 810 amends 41 U.S.C. 416 and 15 U.S.C. 637 to allow solicitation notices to be published via a single point of entry on the Internet designated in the FAR or via the Commerce Business Daily.

The objectives of the rule are (1) to designate a single point of entry on the Internet, http://www.fedbizopps.gov, where agencies will be required (as of October 1, 2001), to provide convenient and universal public access to information on their procurement opportunities, and (2) to permit electronic access to notices of solicitation through the single point of entry as a substitute for the currently required paper publication in the CBD beginning on January 1, 2002.

The interim rule will apply to all large and small entities that do business or are planning to do business with the Government. FedBizOpps is designed to be sufficiently versatile to allow sellers and service providers to access and download information through different commercial electronic means, including web-based technology, bulk data feeds, and electronic mail. This versatility will enable the more than 47,340 small and 29,200 large businesses to have easy access to Government business opportunities.

The rule imposes no reporting, recordkeeping, or other compliance requirements. Basic skill in operating a personal computer with access to the Internet is required to access the GPE website. The estimated purchase cost of a personal computer, modem, software, telephone lines, and Internet access is $1,600. The benefit of increased access to Federal contracting opportunities should far outweigh these additional costs.

The rule does not duplicate, overlap, or conflict with any other Federal rules. There are no practical alternatives that will accomplish the objectives of this rule.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR Parts 2, 4, 5, 6, 7, 9, 12, 13, 14, 19, 22, 34, 35, and 36 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 1997–304), 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

The public has previously been given an opportunity to comment on the proposed designation of FedBizOpps as the Governmentwide point of entry (GPE). 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 the remainder of this interim rule (*i.e.*, the ending on January 1, 2002, of the mandatory forwarding of notices through the GPE to the Commerce Business Daily (CBD)) without prior opportunity for public comment. Permitting electronic notice of business opportunities through the designated GPE as a substitute for the currently required paper publication in the CBD is key to agencies' ability to realize the efficiencies in electronic processes that justify agency investments in these processes. This action is, therefore, necessary to reinforce agency commitment to the use of electronic processes that provide enhanced, user friendly vendor access to Federal business opportunities. 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 2, 4, 5, 6, 7, 9, 12, 13, 14, 19, 22, 34, 35, and 36

Government procurement.

Dated: May 10, 2001.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 4, 5, 6, 7, 9, 12, 13, 14, 19, 22, 34, 35, and 36 as set forth below:

1. The authority citation for 48 CFR parts 2, 4, 5, 6, 7, 9, 12, 13, 14, 19, 22, 34, 35, 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 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by adding, in alphabetical order, the definition ''Commerce Business Daily (CBD)''; revising the definition ''Federal Acquisition Computer Network (FACNET) Architecture''; and adding the definition ''Governmentwide point of entry (GPE)'' to read as follows:

2.101 Definitions.

* * * * *

Commerce Business Daily (CBD) means the publication of the Secretary of Commerce used to fulfill statutory requirements to publish certain public notices in paper form.

* * * * *

Federal Acquisition Computer Network (FACNET) Architecture is a Government system that provides user access, employs nationally and internationally recognized data formats, and allows the electronic data interchange of acquisition information between the private sector and the Federal Government.

* * * * *

Governmentwide point of entry (GPE) means the single point where Government business opportunities greater than $25,000, including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public. The GPE is located at http://www.fedbizopps.gov.

* * * * *

PART 4—ADMINISTRATIVE MATTERS

4.502 [Amended]

3.–4. Amend section 4.502 in paragraph (b)(4) by adding the word ''single'' after the word ''a'' the first time it is used; and by removing ''single,'' which precedes ''Governmentwide''.

5. Amend section 4.803 by revising paragraph (a)(4) to read as follows:

4.803 Contents of contract files.

* * * * *

(a) * * *

(4) Synopsis of proposed acquisition as required by part 5 or a reference to the synopsis.

* * * * *

PART 5—PUBLICIZING CONTRACT ACTIONS

6. Add section 5.003 to read as follows:

5.003 Governmentwide point of entry.

For any requirement in the FAR to publish a notice, the contracting officer may transmit the notice to the Commerce Business Daily (CBD) if the contracting office lacks the capability to access the Governmentwide point of entry (GPE) and the notice is issued prior to October 1, 2001. Effective October 1, 2001, the contracting officer must transmit all notices to the GPE.

7. Amend section 5.101 by removing the introductory paragraph and revising paragraph (a) to read as follows:

5.101 Methods of disseminating information.

(a) As required by the Small Business Act (15 U.S.C. 637(e)) and the Office of Federal Procurement Policy Act (41 U.S.C. 416), contracting officers must disseminate information on proposed contract actions as follows:

(1) For proposed contract actions expected to exceed $25,000, by synopsizing in the GPE (see 5.201), unless covered by 5.003.

(2) For proposed contract actions expected to exceed $10,000, but not expected to exceed $25,000, by displaying in a public place, or by any appropriate electronic means, an unclassified notice of the solicitation or a copy of the solicitation satisfying the requirements of 5.207(d) and (g). The notice must include a statement that all responsible sources may submit a response which, if timely received, must be considered by the agency. The information must be posted not later than the date the solicitation is issued, and must remain posted for at least 10 days or until after quotations have been opened, whichever is later.

(i) If solicitations are posted instead of a notice, the contracting officer may employ various methods of satisfying the requirements of 5.207(d) and (g). For example, the contracting officer may meet the requirements of 5.207(d) and (g) by stamping the solicitation, by a cover sheet to the solicitation, or by placing a general statement in the display room.

(ii) The contracting officer need not comply with the display requirements of this section when the exemptions at 5.202(a)(1), (a)(4) through (a)(9), or (a)(11) apply, when oral or Federal Acquisition Computer Network (FACNET) solicitations are used, or when providing access to a notice of proposed contract action and solicitation through the GPE and the notice permits the public to respond to the solicitation electronically.

(iii) Contracting officers may use electronic posting of requirements in a place accessible by the general public at the Government installation to satisfy the public display requirement. Contracting offices using electronic systems for public posting that are not accessible outside the installation must periodically publicize the methods for accessing the information.

* * * * *

8. Revise section 5.102 to read as follows:

5.102 Availability of solicitations.

(a)(1) Except as provided in paragraph (a)(4) of this section, the contracting

officer must make available through the GPE solicitations synopsized through the GPE, including specifications and other pertinent information determined necessary by the contracting officer. Transmissions to the GPE must be in accordance with the interface description available via the Internet at http://www.fedbizopps.gov.

(2) The contracting officer is encouraged, when practicable and cost-effective, to make accessible through the GPE additional information related to a solicitation.

(3) The contracting officer must ensure that solicitations transmitted to FACNET are forwarded to the GPE to satisfy the requirements of paragraph (a)(1) of this section.

(4) The contracting officer need not make a solicitation available through the GPE when—

(i) Disclosure would compromise the national security (*e.g.*, would result in disclosure of classified information) or create other security risks. The fact that access to classified matter may be necessary to submit a proposal or perform the contract does not, in itself, justify use of this exception;

(ii) The nature of the file (*e.g.*, size, format) does not make it cost-effective or practicable for contracting officers to provide access through the GPE;

(iii) The agency's senior procurement executive makes a written determination that access through the GPE is not in the Government's interest; or

(iv) The contracting office lacks the capability to access the GPE and the synopsis is issued prior to October 1, 2001.

(b) When the contracting officer does not make a solicitation available through the GPE pursuant to paragraph (a)(4) of this section, the contracting officer—

(1) Should employ other electronic means (*e.g.*, CD–ROM or electronic mail) whenever practicable and cost-effective. When solicitations are provided electronically on physical media (*e.g.*, disks) or in paper form, the contracting officer must—

(i) Maintain a reasonable number of copies of solicitations, including specifications and other pertinent information determined necessary by the contracting officer (upon request, potential sources not initially solicited should be mailed or provided copies of solicitations, if available);

(ii) Provide copies on a ''first-come-first-served'' basis, for pickup at the contracting office, to publishers, trade associations, information services, and other members of the public having a legitimate interest (for construction, see 36.211); and

(iii) Retain a copy of the solicitation and other documents for review by and duplication for those requesting copies after the initial number of copies is exhausted; and

(2) May require payment of a fee, not exceeding the actual cost of duplication, for a copy of the solicitation document.

(c) In addition to the methods of disseminating proposed contract information in 5.101(a) and (b), provide, upon request to small business concerns, as required by 15 U.S.C. 637(b)—

(1) A copy of the solicitation and specifications. In the case of solicitations disseminated by electronic data interchange, solicitations may be furnished directly to the electronic address of the small business concern;

(2) The name and telephone number of an employee of the contracting office who will answer questions on the solicitation; and

(3) Adequate citations to each applicable major Federal law or agency rule with which small business concerns must comply in performing the contract.

(d) When electronic commerce (see subpart 4.5) is used in the solicitation process, availability of the solicitation may be limited to the electronic medium.

(e) Provide copies of a solicitation issued under other than full and open competition to firms requesting copies that were not initially solicited, but only after advising the requester of the determination to limit the solicitation to a specified firm or firms as authorized under part 6.

(f) This section 5.102 applies to classified contracts to the extent consistent with agency security requirements (see 5.202(a)(1)).

9. Revise section 5.201 to read as follows:

5.201 General.

(a) As required by the Small Business Act (15 U.S.C. 637(e)) and the Office of Federal Procurement Policy Act (41 U.S.C. 416), agencies must make notices of proposed contract actions available as specified in paragraph (b) of this section.

(b)(1) For acquisitions of supplies and services, other than those covered by the exceptions in 5.202 and the special situations in 5.205, the contracting officer must transmit a notice to the GPE, for each proposed—

(i) Contract action meeting the threshold in 5.101(a)(1);

(ii) Modification to an existing contract for additional supplies or services that meets the threshold in 5.101(a)(1); or

(iii) Contract action in any amount when advantageous to the Government.

(2) When transmitting notices to the GPE before January 1, 2002, contracting officers must direct the GPE to forward the notice to the CBD.

(3) When transmitting notices to FACNET, contracting officers must ensure the notice is forwarded to the GPE. For notices published before January 1, 2002, contracting officers must ensure that the notices are forwarded by the GPE to the CBD.

(c) The primary purposes of the notice are to improve small business access to acquisition information and enhance competition by identifying contracting and subcontracting opportunities.

(d)(1) The GPE may be accessed via the Internet at http://www.fedbizopps.gov.

(2) Subscriptions to the CBD must be placed with the Superintendent of Documents, Government Printing Office, Washington, DC 20402, Telephone (202) 512–1800.

10. Amend section 5.202 by revising paragraph (a)(13)(ii) to read as follows:

5.202 Exceptions.

* * * * *

(a) * * *

(13) * * *

(ii) Will be made through a means that provides access to the notice of proposed contract action through the GPE; and

* * * * *

11. Amend section 5.203 by revising the introductory text, paragraphs (a), (b), (e), the first sentence of paragraph (g), and paragraph (h) to read as follows:

5.203 Publicizing and response time.

Whenever agencies are required to publicize notice of proposed contract actions under 5.201, they must proceed as follows:

(a) An agency must transmit a notice of proposed contract action to the GPE (see 5.201). All publicizing and response times are calculated based on the date of publication. For notices published before January 1, 2002, the publication date is the date the notice is published in the CBD. For notices published on or after January 1, 2002, the publication date is the date the notice appears on the GPE. The notice must be published at least 15 days before issuance of a solicitation except that, for acquisitions of commercial items, the contracting officer may—

(1) Establish a shorter period for issuance of the solicitation; or

(2) Use the combined synopsis and solicitation procedure (see 12.603).

(b) The contracting officer must establish a solicitation response time that will afford potential offerors a reasonable opportunity to respond to each proposed contract action, (including actions via FACNET or for which the notice of proposed contract action and solicitation information is accessible through the GPE), in an amount estimated to be greater than $25,000, but not greater than the simplified acquisition threshold; or each contract action for the acquisition of commercial items in an amount estimated to be greater than $25,000. The contracting officer should consider the circumstances of the individual acquisition, such as the complexity, commerciality, availability, and urgency, when establishing the solicitation response time.

* * * * *

(e) Agencies must allow at least a 45-day response time for receipt of bids or proposals from the date of publication of the notice required in 5.201 for proposed contract actions categorized as research and development if the proposed contract action is expected to exceed the simplified acquisition threshold.

* * * * *

(g) Contracting officers may, unless they have evidence to the contrary, presume that notice has been published 10 days (6 days if electronically transmitted through the GPE or other means) following transmittal of the synopsis to the CBD.

* * * * *

(h) In addition to other requirements set forth in this section, for acquisitions subject to NAFTA or the Trade Agreements Act (see subpart 25.4), the period of time between publication of the synopsis notice and receipt of offers must be no less than 40 days. However, if the acquisition falls within a general category identified in an annual forecast, the availability of which is published, the contracting officer may reduce this time period to as few as 10 days.

12. Revise section 5.204 to read as follows:

5.204 Presolicitation notices.

Contracting officers must provide access to presolicitation notices through the GPE (see 15.201 and 36.213–2). The contracting officer must synopsize a proposed contract action before issuing any resulting solicitation (see 5.201 and 5.203).

13. Revise section 5.205 to read as follows:

5.205 Special situations.

(a) *Research and development (R&D) advance notices.* Contracting officers may transmit to the GPE advance notices of their interest in potential R&D programs whenever market research does not produce a sufficient number of concerns to obtain adequate competition. Advance notices must not be used where security considerations prohibit such publication. Advance notices will enable potential sources to learn of R&D programs and provide these sources with an opportunity to submit information which will permit evaluation of their capabilities. Potential sources which respond to advance notices must be added to the appropriate solicitation mailing list for subsequent solicitation. Advance notices must be entitled ''Research and Development Sources Sought,'' cite the appropriate Numbered Note, and include the name and telephone number of the contracting officer or other contracting activity official from whom technical details of the project can be obtained. This will enable sources to submit information for evaluation of their R&D capabilities. Contracting officers must synopsize (see 5.201) all subsequent solicitations for R&D contracts, including those resulting from a previously synopsized advance notice, unless one of the exceptions in 5.202 applies.

(b) *Federally Funded Research and Development Centers.* Before establishing a Federally Funded Research and Development Center (FFRDC) (see Part 35) or before changing its basic purpose and mission, the sponsor must transmit at least three notices over a 90-day period to the GPE and the **Federal Register**, indicating the agency's intention to sponsor an FFRDC or change the basic purpose and mission of an FFRDC. The notice must indicate the scope and nature of the effort to be performed and request comments. Notice is not required where the action is required by law. When transmitting notices to the GPE before January 1, 2002, contracting officers must direct the GPE to forward the notice to the CBD.

(c) *Special notices.* Contracting officers may transmit to the GPE special notices of procurement matters such as business fairs, long-range procurement estimates, prebid or preproposal conferences, meetings, and the availability of draft solicitations or draft specifications for review.

(d) *Architect-engineering services.* Contracting officers must publish notices of intent to contract for architect-engineering services as follows:

(1) Except when exempted by 5.202, contracting officers must transmit to the GPE a synopsis of each proposed contract action for which the total fee (including phases and options) is expected to exceed $25,000. When transmitting notices to the GPE before January 1, 2002, contracting officers must direct the GPE to forward the notice to the CBD. The notice must reference the appropriate CBD Numbered Note.

(2) When the total fee is expected to exceed $10,000 but not exceed $25,000, the contracting officer must comply with 5.101(a)(2). When the proposed contract action is not required to be synopsized under paragraph (d)(1) of this section, the contracting officer must display a notice of the solicitation or a copy of the solicitation in a public place at the contracting office. Other optional publicizing methods are authorized in accordance with 5.101(b).

(e) *Effort to locate commercial sources under OMB Circular A–76.* When determining the availability of commercial sources under the procedures prescribed in subpart 7.3 and OMB Circular A–76, the contracting officer must not arrive at a conclusion that there are no commercial sources capable of providing the required supplies or services until publicizing the requirement through the GPE at least three times in a 90 calendar-day period, with a minimum of 30 calendar days between notices. When necessary to meet an urgent requirement, this may be limited to a total of two notices through the GPE in a 30 calendar-day period, with a minimum of 15 calendar days between each. When transmitting notices to the GPE before January 1, 2002, contracting officers must direct the GPE to forward the notice to the CBD.

(f) *Section 8(a) competitive acquisition.* When a national buy requirement is being considered for competitive acquisition limited to eligible 8(a) concerns under subpart 19.8, the contracting officer must transmit a synopsis of the proposed contract action to the GPE. When transmitting notices to the GPE before January 1, 2002, contracting officers must direct the GPE to forward the notice to the CBD. The synopsis may be transmitted to the GPE concurrent with submission of the agency offering (see 19.804–2) to the Small Business Administration (SBA). The synopsis should also include information—

(1) Advising that the acquisition is being offered for competition limited to eligible 8(a) concerns;

(2) Specifying the North American Industry Classification System (NAICS) code;

(3) Advising that eligibility to participate may be restricted to firms in either the developmental stage or the developmental and transitional stages; and

(4) Encouraging interested 8(a) firms to request a copy of the solicitation as expeditiously as possible since the solicitation will be issued without further notice upon SBA acceptance of the requirement for the section 8(a) program.

14. Amend section 5.206 by revising the introductory text of paragraph (a) to read as follows:

5.206 Notices of subcontracting opportunities.

(a) The following entities may transmit a notice to the GPE, the CBD, or both to seek competition for subcontracts, to increase participation by qualified HUBZone small business, small, small disadvantaged, and small women-owned business concerns, and to meet established subcontracting plan goals:

* * * * *

15. Amend section 5.207 by—

a. Redesignating paragraphs (a) through (h) as (b) through (i), respectively, and by adding a new paragraph (a);

b. Revising newly designated paragraph (b);

c. Revising the introductory text of newly designated paragraph (c), and adding under ''Format Item and Explanation/Description of Entry'' item numbers 18 and 19; and

d. Revising the newly designated paragraph (i). The revised text reads as follows:

5.207 Preparation and transmittal of synopses.

(a) *Content.* Each synopsis transmitted to the GPE or CBD must address the following data elements, as applicable:

(1) Action Code.

(2) Date.

(3) Year.

(4) Government Printing Office (GPO) Billing Account Code.

(5) Contracting Office Zip Code.

(6) Classification Code.

(7) Contracting Office Address.

(8) Subject.

(9) Proposed Solicitation Number.

(10) Opening and Closing Response Date.

(11) Contact Point or Contracting Officer.

(12) Contract Award and Solicitation Number.

(13) Contract Award Dollar Amount.

(14) Contract Line Item Number.

(15) Contract Award Date.

(16) Contractor.

(17) Description.

(18) Place of Contract Performance.

(19) Set-aside Status.

(b) *Transmittal*—(1) *GPE.* Transmissions must be in accordance with the interface description available via the Internet at http://www.fedbizopps.gov.

(2) *CBD*—(i) *Electronic transmission.* All synopses transmitted electronically to the CBD, other than through the GPE (see 5.003), must be in ASCII Code. Contact your agency's communications center for the appropriate transmission instructions or services.

(ii) *Hard copy transmission.* When electronic transmission is not feasible (see 5.003), synopses should be sent to the CBD via mail or other physical delivery of hard copy and should be addressed to the Commerce Business Daily, U.S. Department of Commerce, P.O. Box 77880, Washington, DC 20013-8880.

(c) *Format for the CBD.* The contracting officer must prepare the synopsis in the following style and format to assure timely processing of the synopsis by the Commerce Business Daily.

* * * * *

Format Item and Explanation/Description of Entry

* * * * *

18. PLACE OF CONTRACT PERFORMANCE. (Include where applicable; where not applicable, enter N/A.)

19. SET-ASIDES. (Identify if the proposed acquisition provides for a total or partial set-aside, a very small business set-aside, or a HUBZone small business set-aside. If not a set-aside, enter N/A.)

* * * * *

(i) *Cancellation of synopsis.* Contracting officers should not publish notices of solicitation cancellations (or indefinite suspensions) of proposed contract actions in the GPE or CBD. Cancellations of solicitations must be made in accordance with 14.209 and 14.404–1.

16. Amend section 5.301 by revising the introductory text of paragraph (a); by revising paragraphs (b)(7)(ii) and (c); and by adding paragraph (d) to read as follows:

5.301 General.

(a) Except for contract actions described in paragraph (b) of this section and as provided in 5.003, contracting officers must synopsize through the GPE awards exceeding $25,000 that are—

* * * * *

(b) * * *

(7) * * *

(ii) Was made through a means where access to the notice of proposed contract action was provided through the GPE; and

* * * * *

(c) With respect to acquisitions subject to the Trade Agreements Act, contracting officers must submit synopses in sufficient time to permit publication in the CBD, through the GPE, not later than 60 days after award.

(d) When transmitting notices to the GPE before January 1, 2002, contracting officers must direct the GPE to forward the notice to the CBD.

17. Amend section 5.404–1 by revising paragraph (b)(3)(iii) to read as follows:

5.404–1 Release procedures.

* * * * *

(b) * * *

(3) * * *

(iii) More specific information relating to any individual item or class of items will not be furnished until the proposed action is synopsized through the GPE or the solicitation is issued;

* * * * *

18. Revise section 5.404–2 to read as follows:

5.404–2 Announcements of long-range acquisition estimates.

Further publicizing, consistent with the needs of the individual case, may be accomplished by announcing through the GPE that long-range acquisition estimates have been published and are obtainable, upon request, from the contracting officer.

PART 6—COMPETITION REQUIREMENTS

6.303–2 [Amended]

19. Amend section 6.303–2 in paragraph (a)(6) by removing ''CBD''.

PART 7—ACQUISITION PLANNING

20. Amend section 7.303 in paragraph (a) and the introductory text of paragraph (b) by removing ''shall'' and adding ''must'' in their place; and by revising paragraph (b)(1) to read as follows:

7.303 Determining availability of private commercial sources.

* * * * *

(b) * * *

(1) Synopsizing the requirement through the Governmentwide point of

entry (GPE) in accordance with 5.205(e) until a reasonable number of potential sources are identified. If necessary, a synopsis must be submitted up to three times in a 90-day period with a minimum of 30 days between notices (but, when necessary to meet an urgent requirement, this notification may be limited to a total of two notices in a 30-day period with a minimum of 15 days between them); and

* * * * *

PART 9—CONTRACTOR QUALIFICATIONS

21. Amend section 9.204 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:

9.204 Responsibilities for establishment of a qualification requirement.

* * * * *

(a) * * *

(1) Periodically furnish through the Governmentwide point of entry (GPE) a notice seeking additional sources or products for qualification unless the contracting officer determines that such publication would compromise the national security. When transmitting notices to the GPE, contracting officers must direct the GPE to forward the notice to the Commerce Business Daily (CBD) to satisfy the requirements of 10 U.S.C. 2319(d)(1)(A) and 41 U.S.C. 253c(d)(1)(A).

* * * * *

22. Amend section 9.205 by revising the introductory text of paragraph (a) to read as follows:

9.205 Opportunity for qualification before award.

(a) If an agency determines that a qualification requirement is necessary, the agency activity responsible for establishing the requirement must urge manufacturers and other potential sources to demonstrate their ability to meet the standards specified for qualification and, when possible, give sufficient time to arrange for qualification before award. The responsible agency activity must, before establishing any qualification requirement, furnish notice through the GPE. When transmitting notices to the GPE, contracting officers must direct the GPE to forward the notice to the CBD to satisfy the requirements of 10 U.S.C. 2319(d)(1)(A) and 41 U.S.C. 253c(d)(1)(A). The notice must include—

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

23. Amend section 12.603 by revising paragraphs (a), (c)(2)(xv), (c)(3), and (c)(4) to read as follows:

12.603 Streamlined solicitation for commercial items.

(a) When a written solicitation will be issued, the contracting officer may use the following procedure to reduce the time required to solicit and award contracts for the acquisition of commercial items. This procedure combines the synopsis required by 5.203 and the issuance of the solicitation into a single document. Section 5.207 limits descriptions in the CBD to 12,000 textual characters (approximately 3½ single-spaced pages).

* * * * *

(c) * * *

(2) * * *

(xv) A statement regarding any applicable Numbered Notes.

* * * * *

(3) Allow response time for receipt of offers as follows:

(i) Because the synopsis and solicitation are contained in a single document, it is not necessary to publicize a separate synopsis 15 days before the issuance of the solicitation.

(ii) When using the combined synopsis and solicitation, contracting officers must establish a response time in accordance with 5.203(b) (but see 5.203(h)).

(4) Publicize amendments to solicitations in the same manner as the initial synopsis and solicitation.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

24. Amend the introductory paragraph of section 13.104 and the introductory text of paragraph (a) by removing ''shall'' and adding ''must'' in their place; and revise the first sentence of paragraph (b) to read as follows:

13.104 Promoting competition.

* * * * *

(b) If using simplified acquisition procedures and neither using FACNET nor providing access to the notice of proposed contract action and solicitation information through the Governmentwide point of entry (GPE), maximum practicable competition ordinarily can be obtained by soliciting quotations or offers from sources within the local trade area.* * *

13.105 [Amended]

25. Amend section 13.105 in the introductory text of paragraph (a) by removing ''shall'' and adding ''must'' in its place; in paragraph (a)(1)(ii) by removing ''single, Governmentwide point of entry'' and adding ''GPE'' in its place; in the first sentence of paragraph (b) by removing ''synopsis/solicitation'' and ''adding synopsis and solicitation'' in its place; and in the second sentence by removing ''such'' and adding ''these'' in its place.

PART 14—SEALED BIDDING

26. Revise section 14.203–2 to read as follows:

14.203–2 Dissemination of information concerning invitations for bids.

(a) Procedures concerning display of invitations for bids in a public place, information releases to newspapers and trade journals, paid advertisements, and synopsizing through the Governmentwide point of entry (GPE) are set forth in 5.101 and Subpart 5.2.

(b) For procedures that apply to publicizing notices through the GPE to determine whether commercial sources are available, as prescribed by OMB Circular A–76, see 5.205(e) and 7.303(b).

27. Amend section 14.503–2 by revising paragraphs (a)(4) and (b) to read as follows:

14.503–2 Step two.

(a) * * *

(4) Not be synopsized through the Governmentwide point of entry (GPE) as an acquisition opportunity nor publicly posted (see 5.101(a)).

(b) The names of firms that submitted acceptable proposals in step one will be listed through the GPE for the benefit of prospective subcontractors (see 5.207(b)(1)).

PART 19—SMALL BUSINESS PROGRAMS

28. Amend section 19.202–2 by revising paragraph (c) to read as follows:

19.202–2 Locating small business sources.

* * * * *

(c) Publicize solicitations and contract awards through the Governmentwide point of entry (see subparts 5.2 and 5.3).

29. Amend section 19.804–2—

a. In the first sentence of the introductory text of paragraph (a) by removing ''shall'' and adding ''must'' in its place;

b. In paragraph (a)(9) by removing ''in'' and ''Commerce Business Daily'' and adding ''through'' and ''Governmentwide point of entry (GPE)'' in their places, respectively; and

c. By revising the third and fourth sentences of paragraph (c) to read as follows:

19.804–2 Agency offering.

* * * * *

(c) * * * All requirements, including construction, must be synopsized 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