

470 regulation is available online at:
<http://www.dol.gov/esa/regs/fedreg/final/2004006823.pdf> .

B. Exemptions to EO 13201:

- (1) The employee notice clause does not have to be included in Government contracts for purchases below the Simplified Acquisition Threshold (currently \$100,000).
- (2) The posting requirement does not apply to certain contractors or work sites:
 - Contractors and subcontractors with fewer than 15 employees companywide,
 - Contractor establishments or construction work sites where no union has been formally recognized by the contractor or certified as the exclusive bargaining representative,
 - Contractor establishments or construction work sites that involve a prime contractor and one or more subcontractors at a single site where the prime contractor, i.e., the person holding the contract with the government contracting agency, has not formally recognized a union and where no union has been certified as the exclusive bargaining representative of the prime contractor's employees,
 - Contractor establishments where state law forbids enforcement of union-security clauses ("right-to-work" states – see Attachment I),
 - Work performed outside the United States that does not involve the recruitment or employment of workers within the United States, or
 - Those facilities of a contractor at which no work is performed under a Government contract which have received a Separate Facility Exemption/Waiver.

4. **POLICY:** OFCCP Implementation Procedures

OFCCP will investigate contractor compliance with the employee notice clause and the posting requirement during compliance evaluations, or upon receipt of an EO 13201 complaint.

- A. Contractor Notice of Onsite Evaluation. Upon the completion of the desk audit, and if an onsite is necessary, the Compliance Officer will notify the contractor that OFCCP will verify compliance with the EO 13201 requirements to include the clause in subcontracts and purchase orders and to post the EO 13201 notice.

The Compliance Officer will request that the contractor have no more than three subcontracts or purchase orders that were entered into in connection with its Federal contract available for inspection during the onsite review, unless review of a greater number of subcontracts or purchase orders would be necessary to ensure compliance. If OFCCP receives credible evidence that a contractor has not complied with EO 13201, the compliance officer will review a sufficient number of contracts to ensure compliance. For example, OFCCP may receive credible allegations that a contractor altered executed contracts so that the contracts now appear to contain the clause; or that a contractor willfully ignored Beck for years, and only recently began

inserting the contract clause. Where there is information to suggest non-compliance, the Regional Director, or designee, working with the Regional Solicitor of Labor, will review the allegations and determine the number of contracts that will be reviewed as part of the compliance evaluation.

If the subcontracts or purchase orders are not physically maintained at the establishment under evaluation, the contractor will be asked to transfer the subcontracts or purchase orders to the facility for inspection during the onsite review. OFCCP will also inform the contractor that it will verify that the contractor has posted the required notices.

- B. Onsite Evaluation: During the onsite evaluation, OFCCP will determine, if not exempt from EO 13201, if the contractor has complied with the posting requirement. The notice should be posted in conspicuous places in and about the contractor's facilities. If needed, the Compliance Officer should provide copies of the posters to the contractor and inform the contractor that additional copies of the poster can be downloaded.

Additionally, during the onsite, the Compliance Officer will inspect the required number of subcontracts or purchase orders to determine whether nonexempt subcontracts and purchase orders include the employee notice clause, either quoted verbatim or incorporated by citation to 29 CFR Part 470.

If the contractor is not in compliance with the posting requirement or the employee notice clause, the Compliance Officer will attempt to resolve the violation during the evaluation.

The Compliance Officer will document the results of his/her findings regarding the contractor's compliance or noncompliance in Block 8 of the Review Summary page of the Standard Compliance Review Report (SCRR), CC-50.

Upon the completion of the evaluation, a copy of the SCRR Review Summary page will be furnished to the Office of Labor-Management Standards (OLMS) at the following address:

U.S. Department of Labor
Office of Labor-Management Standards
Division of Interpretation and Standards
Room N5605
200 Constitution Ave NW
Washington, DC, 20210

- C. Complaints. OLMS and OFCCP will implement the Final Rule jointly for complaints of violations of the EO 13201. Complaints may be filed with either office at 200 Constitution Avenue, NW, Washington, DC 20210, or with any OLMS or OFCCP field office. However, if the complaint was filed with OFCCP, the agency will handle only complaints alleging failure to post the notice or failure to include the employee notice clause in a specific contract (s). The case record in the SCFR will include findings regarding the contractor's compliance or

noncompliance with these requirements of EO 13201 and, if appropriate, will be forwarded to OLMS for resolution.

D. Compliance Assistance. During compliance assistance activities, Federal contractors will be informed of their EO 13201 obligations. OFCCP Regional and Area Offices will be responsible for answering EO 13201 inquiries with, assistance from SOL and/or OLMS staff. OFCCP also will distribute EO 13201 posters during compliance reviews, compliance assistance events, and as requested.

5. **FILING INSTRUCTIONS:**

Holders of ADM and LEG Binders only: File this Notice with the attachment behind the “JUR” (Jurisdiction/ Coverage) tab in your Administrative Practices Binder.

District and Area Office EOSs and EOAs only:
File this Notice with the attachment behind the tab for ADM Directives in your FCCM Binder.

6. **OBSOLETE DATA:** None

7. **DISTRIBUTION:** A, B (both hard copy and electronically); C (hard copy only)

8. **EXPIRATION DATE:** This directive remains in effect until superseded.

9. **ATTACHMENTS:** List of states with “right-to-work” laws and constitutional amendments as of January 1, 2005; and text of Executive Order 13201.

CHARLES E. JAMES, SR.
Deputy Assistant Secretary for
Federal Contract Compliance

/s/

DATE

June 8, 2005

Attachment I

**STATES WITH “RIGHT-TO-WORK” LAWS AND CONSTITUTIONAL
AMENDMENTS IN EFFECT AS OF JANUARY 1, 2005**

States with “right-to-work” laws and constitutional amendments in effect as of January 1, 2005, include:

ALABAMA
ARIZONA
ARKANSAS
FLORIDA
GEORGIA
IDAHO
INDIANA*
IOWA
KANSAS
LOUISIANA
MISSISSIPPI
NEBRASKA

NEVADA
NORTH CAROLINA
NORTH DAKOTA
OKLAHOMA
SOUTH CAROLINA
SOUTH DAKOTA
TENNESSEE
TEXAS
UTAH
VIRGINIA
WYOMING

*only applicable to school employees

More detailed information can be found on
www.dol.gov/esa/programs/whd/state/righttowork.htm#book1

Attachment II
Page i

EXECUTIVE ORDER
NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING
PAYMENT OF UNION DUES OR FEES

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Property and Administrative Services Act, 40 U.S.C. 471 et seq., and in order to ensure the economical and efficient administration and completion of Government contracts, it is hereby ordered that:

Section 1.

(a) This order is designed to promote economy and efficiency in Government procurement. When workers are better informed of their rights, including their rights under the Federal labor laws, their productivity is enhanced. The availability of such a workforce from which the United States may draw facilitates the efficient and economical completion of its procurement contracts.

(b) The Secretary of Labor (Secretary) shall be responsible for the administration and enforcement of this order. The Secretary shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes of this order.

Section 2.

Except in contracts exempted in accordance with section 3 of this order, all Government contracting departments and agencies shall, to the extent consistent with law, include the following provisions in every Government contract, other than collective bargaining agreements as defined in 5 U.S.C. 7103 (a) (8) and purchases under the "Simplified Acquisition Threshold" as defined in the Office of Federal Procurement Policy Act (41 U.S.C. 403).

1. During the term of this contract, the contractor agrees to post a notice, of such size and in such form as the Secretary of Labor shall prescribe, in conspicuous places in and about its plants and offices, including all places where notices to employees are customarily posted. The notice shall include the following information (except that the last sentence 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)):

Page ii

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:

*National Labor Relations Board
Division of Information
1099 14th Street, N.W.
Washington, D.C. 20570*

To locate the nearest NLRB office, see NLRB's website at www.nlr.gov.

2. The contractor will comply with all provisions of Executive Order—[number as provided by the Federal Register] —of February 17, 2001, and related rules, regulations, and orders of the Secretary of Labor.
3. In the event that the contractor does not comply with any of the requirements set forth in paragraphs (1) or (2) above, this contract may be cancelled, terminated, or suspended in whole or in part, and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in or adopted pursuant to Executive Order [number as provided by the Federal Register] of February 17, 2001. Such other sanctions or remedies may be imposed as are provided in Executive Order [number as provided by the Federal Register] of February 17, 2001, or by rule, regulation, or order of the Secretary of Labor, or as are otherwise provided by law.
4. The contractor will include the provisions of paragraphs (1) through (3) herein in every subcontract or purchase order entered into in connection with this contract unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive

Order [number as provided by the Federal Register] of February 17, 2001, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any such subcontract purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for non-compliance: Provided, however, that 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 to enter into such litigation to protect the interests of the United States.”

- (b) Whenever, through Acts of Congress or through clarification of existing law by the courts or otherwise, it appears that contractual provisions other than, or in addition to, those set out in subsection (a) of this section are needed to inform employees fully and accurately of their rights with respect to union dues, union-security agreements, or the like, the Secretary shall promptly issue such rules, regulations, or orders as are needed to cause the substitution or addition of appropriate contractual provisions in Government contracts thereafter entered into.

Section 3.

- (a) The Secretary may, if the Secretary finds that special circumstances require an exemption in order to serve the national interest, exempt a contracting department or agency from the requirements of any or all of the provisions of section 2 of this order with respect to a particular contract, subcontract, or purchase order.
- (b) The Secretary may, by rule, regulation, or order, exempt from the provisions of section 2 of this order certain classes of contracts to the extent that they involve (i) work outside the United States and do not involve the recruitment or employment of workers within the United States; (ii) work in jurisdictions where State law forbids enforcement of union-security agreements; (iii) work at sites where the notice to employees described in section 2 (a) of this order would be unnecessary because the employees are not represented by a union; (iv) numbers of workers below appropriate thresholds set by the Secretary; or (v) subcontracts below an appropriate tier set by the Secretary.
- (c) The Secretary may provide, by rule, regulation, or order, for the exemption of facilities of a contractor, subcontractor, or vendor that are in all respect separate and distinct from activities related to the performance of the contract: Provided, that such exemption will not interfere with or impede the effectuation of the purposes of this order: And provided further, that in the absence of such an exemption all facilities shall be covered by the provisions of this order.

page iv

Section 4.

- (a) The Secretary may investigate any Government contractor, subcontractor, or vendor to determine whether the contractual provisions required by section 2 of this order have been violated. Such investigations shall be conducted in accordance with procedures established by the Secretary.
- (b) The Secretary shall receive and investigate complaints by employees of a Government contractor, subcontractor, or vendor where such complaints allege a failure to perform or a violation of the contractual provisions required by section 2 of this order.

Section 5.

- (a) The Secretary, or any agency or officer in the executive branch of the Government designated by rule, regulations, or order of the Secretary, may hold such; hearings, public or private, regarding compliance with this order as the Secretary may deem advisable.
- (b) The Secretary may hold hearings, or cause hearings to be held, in accordance with subsection (a) of this section prior to imposing, ordering, or recommending the imposition of sanctions under this order. Neither an order for debarment of any contractor from further Government contracts under section 6 (b) of this order nor the inclusion of a contractor on a published list of noncomplying contractors under section 6 (c) of this order shall be carried out without affording the contractor an opportunity for a hearing.

Section 6.

In accordance with such rules, regulations, or orders as the Secretary may issue or adopt, the Secretary may:

- (a) after consulting with the contracting department or agency, direct that department or agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor to comply with the contractual provisions required by section 2 of this order; contracts may be cancelled, terminated, or suspended absolutely, or continuance of contracts may be conditioned upon future compliance: Provided, that before issuing a directive under this subsection, the Secretary shall provide the head of the contracting department or agency an opportunity to offer written objections to the issuance of such a directive, which objections shall include a complete statement of reasons for the objections, among which reasons shall be a finding that completion

of the contract is essential to the agency's mission: And provided further, that no directive shall be issued by the Secretary under this subsection so long as the head of the contracting department or agency continues personally to object to issuance of such directive;

(b) after consulting with each affected contracting department or agency, provide that one or more contracting departments or agencies shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary that such contractor has complied with and will carry out the provisions of this order: Provided, that before issuing a directive under this subsection, the Secretary shall provide the head of each contracting department or agency an opportunity to offer written objections to the issuance of such directive, which objections shall include a complete statement of reasons for the objections, among which reasons shall be a finding that further contracts with or extensions or other modifications of existing contracts with the noncomplying contractor are essential to the agency's mission: And provided further, that no directive shall be issued by the Secretary under this subsection so long as the head of a contracting department or agency continues personally to object to the issuance of such directive; and

(c) publish, or cause to be published, the names of contractors that have, in the judgment of the Secretary, failed to comply with the provisions of this order or of related rules, regulations, and orders of the Secretary.

Section 7.

Whenever the Secretary invokes section 6 (a) or 6 (b) of this order, the contracting department or agency shall report the results of the action it has taken to the Secretary within such time as the Secretary shall specify.

Section 8.

Each contracting department and 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 under this order.

Section 9.

The Secretary may delegate any function or duty of the Secretary under this order to any officer in the Department of Labor or to any other officer in the executive branch of the Government, with the consent of the head of the department or agency in which that officer serves.

Page v

Section 10.

The Federal Acquisition Regulatory Council (FAR Council) shall take whatever action is required to implement in the Federal Acquisition Regulation (FAR) the provisions of this order and of any related rules, regulations or orders of the Secretary that were issued to implement this Executive Order. The FAR Council shall amend the FAR to require each solicitation of offers for a contract to include a provision that implements section 2 of this order.

Section 11.

As it relates to notification of employee rights concerning payment of union dues or fees, Executive Order 12836 of February 1, 1993, which, among other things revoked Executive Order 12800 of April 13, 1992, is revoked.

Section 12.

The heads of executive departments and agencies shall revoke expeditiously any orders, rules, regulations, guidelines, or policies implementing or enforcing Executive Order 12836 of February 1, 1993, as it relates to notification of employee rights concerning payment of union dues or fees, to the extent consistent with law.

Section 13.

This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it, create any right to administrative or judicial review, or any right, whether substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Section 14.

The provisions of this order shall apply to contracts resulting from solicitations issued on or after the effective date of this order.

Section 15.

This order shall become effective 60 days after the date of this order.

GEORGE W. BUSH

THE WHITE HOUSE
February 17, 2001

