

tract, agencies shall require every contractor or subcontractor engaged in construction on the project to agree, for that project, to negotiate or become a party to a project labor agreement with one or more appropriate labor organizations.

SEC. 4. *Requirements of Project Labor Agreements.* Any project labor agreement reached pursuant to this order shall:

(a) bind all contractors and subcontractors on the construction project through the inclusion of appropriate specifications in all relevant solicitation provisions and contract documents;

(b) allow all contractors and subcontractors on the construction project to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements;

(c) contain guarantees against strikes, lockouts, and similar job disruptions;

(d) set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the term of the project labor agreement;

(e) provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health; and

(f) fully conform to all statutes, regulations, Executive Orders, and Presidential Memoranda.

SEC. 5. *Exceptions Authorized by Agencies.* A senior official within an agency may grant an exception from the requirements of section 3 of this order for a particular contract by, no later than the solicitation date, providing a specific written explanation of why at least one of the following circumstances exists with respect to that contract:

(a) Requiring a project labor agreement on the project would not advance the Federal Government's interests in achieving economy and efficiency in Federal procurement. Such a finding shall be based on the following factors:

(i) The project is of short duration and lacks operational complexity;

(ii) The project will involve only one craft or trade;

(iii) The project will involve specialized construction work that is available from only a limited number of contractors or subcontractors;

(iv) The agency's need for the project is of such an unusual and compelling urgency that a project labor agreement would be impracticable; or

(v) The project implicates other similar factors deemed appropriate in regulations or guidance issued pursuant to section 8 of this order.

(b) Based on an inclusive market analysis, requiring a project labor agreement on the project would substantially reduce the number of potential bidders so as to frustrate full and open competition.

(c) Requiring a project labor agreement on the project would otherwise be inconsistent with statutes, regulations, Executive Orders, or Presidential Memoranda.

SEC. 6. *Reporting.* (a) To the extent permitted by law and consistent with national security and executive branch confidentiality interests, agencies shall publish, on a centralized public website, data showing the use of project labor agreements on large-scale construction projects, as well as descriptions of the exceptions granted under section 5 of this order.

(b) On a quarterly basis, agencies shall report to the Office of Management and Budget (OMB) on their use of project labor agreements on large-scale construction projects and on the exceptions granted under section 5 of this order.

SEC. 7. Nothing in this order precludes an agency from requiring the use of a project labor agreement in circumstances not covered by this order, including projects where the total cost to the Federal Government is less than that for a large-scale construction project, or projects receiving any form of Federal financial assistance (including loans, loan guarantees, revolving funds, tax credits, tax credit bonds, and cooperative agreements). This order also does not require

contractors or subcontractors to enter into a project labor agreement with any particular labor organization.

SEC. 8. *Regulations and Implementation.* (a) Within 120 days of the date of this order [Feb. 4, 2022], the FAR Council, to the extent permitted by law, shall propose regulations implementing the provisions of this order. The FAR Council shall consider and evaluate public comments on the proposed regulations and shall promptly issue a final rule, to the extent permitted by law.

(b) The Director of OMB shall, to the extent permitted by law, issue guidance to implement the requirements of sections 5 and 6 of this order.

SEC. 9. *Contracting Officer Training.* Within 90 days of the date of this order, the Secretary of Defense, the Secretary of Labor, and the Director of OMB shall coordinate in designing a training strategy for agency contracting officers to enable those officers to effectively implement this order. Within 180 days of the date of the publication of proposed regulations, the Secretary of Defense, the Secretary of Labor, and the Director of OMB shall provide a report to the Assistant to the President for Economic Policy and Director of the National Economic Council on the contents of the training strategy.

SEC. 10. *Revocation of Prior Orders, Rules, and Regulations.* Executive Order 13502 of February 6, 2009 (Use of Project Labor Agreements for Federal Construction Projects) [set out above], is revoked as of the effective date of the final regulations issued by the FAR Council under section 8(a) of this order. Upon Executive Order 13502's revocation, the heads of agencies shall consider, to the extent permitted by law, revoking any orders, rules, or regulations implementing Executive Order 13502.

SEC. 11. *Severability.* If any provision of this order, or the application of such provision to any person or circumstance, is held to be invalid, the remainder of this order and its application to any other person or circumstance shall not be affected thereby.

SEC. 12. *Effective Date.* This order shall be effective immediately and shall apply to all solicitations for contracts issued on or after the effective date of the final regulations issued by the FAR Council under section 8(a) of this order [Jan. 22, 2024, see 88 F.R. 88707]. For solicitations issued between the date of this order and the effective date of the final regulations issued by the FAR Council under section 8(a) of this order, or solicitations that have already been issued and are outstanding as of the date of this order, agencies are strongly encouraged, to the extent permitted by law, to comply with this order.

SEC. 13. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

J.R. BIDEN, JR.

§ 3901. Contracts awarded using procedures other than sealed-bid procedures

(a) AUTHORIZED TYPES.—Except as provided in section 3905 of this title, contracts awarded after using procedures other than sealed-bid procedures may be of any type which in the opinion of the agency head will promote the best interests of the Federal Government.

(b) REQUIRED WARRANTY.—

(1) CONTENT.—Every contract awarded after using procedures other than sealed-bid procedures shall contain a suitable warranty, as determined by the agency head, by the contractor that no person or selling agency has been employed or retained to solicit or secure the contract on an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for bona fide employees or bona fide established commercial or selling agencies the contractor maintains to secure business.

(2) REMEDY FOR BREACH OR VIOLATION.—For the breach or violation of the warranty, the Federal Government may annul the contract without liability or deduct from the contract price or consideration the full amount of the commission, percentage, brokerage, or contingent fee.

(3) NONAPPLICATION.—Paragraph (1) does not apply to a contract for an amount that is not greater than the simplified acquisition threshold or to a contract for the acquisition of commercial products or commercial services.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3774; Pub. L. 115-232, div. A, title VIII, §836(b)(16), Aug. 13, 2018, 132 Stat. 1864.)

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3774.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 1: 3902, 41:253l., June 30, 1949, ch. 288, title III, §303L, as added Pub. L. 103-355, title I, §1073, Oct. 13, 1994, 108 Stat. 3271, as amended Pub. L. 104-106, title XLIII, §4321(a)(1), Feb. 10, 1996, 110 Stat. 671.

Statutory Notes and Related Subsidiaries

SEVERABLE SERVICES AND MULTIYEAR CONTRACT AUTHORITY OF JUDICIAL ENTITIES

Pub. L. 113-76, div. E, title III, §306, Jan. 17, 2014, 128 Stat. 203, provided that: "The Supreme Court of the United States, the Federal Judicial Center, and the United States Sentencing Commission are hereby authorized, now and hereafter, to enter into contracts for the acquisition of severable services for a period that begins in one fiscal year and ends in the next fiscal year and to enter into contracts for multiple years for the acquisition of property and services, to the same extent as executive agencies under the authority of 41 U.S.C. sections 3902 and 3903, respectively."

§ 3903. Multiyear contracts

(a) DEFINITION.—In this section, a multiyear contract is a contract for the purchase of property or services for more than one, but not more than 5, program years.

(b) AUTHORITY TO ENTER INTO CONTRACT.—An executive agency may enter into a multiyear contract for the acquisition of property or services if—

(1) funds are available and obligated for the contract, for the full period of the contract or for the first fiscal year in which the contract is in effect, and for the estimated costs associated with a necessary termination of the contract; and

(2) the executive agency determines that—

(A) the need for the property or services is reasonably firm and continuing over the period of the contract; and

(B) a multiyear contract will serve the best interests of the Federal Government by encouraging full and open competition or promoting economy in administration, performance, and operation of the agency's programs.

(c) TERMINATION CLAUSE.—A multiyear contract entered into under the authority of this section shall include a clause that provides that the contract shall be terminated if funds are not made available for the continuation of the contract in a fiscal year covered by the contract. Funds available for paying termination costs shall remain available for that purpose until the costs associated with termination of the contract are paid.

(d) CANCELLATION CEILING NOTICE.—Before a contract described in subsection (b) that contains a clause setting forth a cancellation ceiling in excess of \$10,000,000 may be awarded, the executive agency shall give written notification of the proposed contract and of the proposed cancellation ceiling for that contract to Congress. The contract may not be awarded until

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 1: 3901, 41:254(a), June 30, 1949, ch. 288, title III, §304(a), 63 Stat. 395; Pub. L. 98-369, div. B, title VII, §2714(a)(3)(A), (B), July 18, 1984, 98 Stat. 1184; Pub. L. 103-355, title IV, §4103(c), title VIII, §8204(b), Oct. 13, 1994, 108 Stat. 3341, 3396.

In subsection (b)(2), the words "in its discretion" are omitted as unnecessary.

Editorial Notes

AMENDMENTS

2018—Subsec. (b)(3). Pub. L. 115-232 substituted "commercial products or commercial services" for "commercial items".

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115-232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

§ 3902. Severable services contracts for periods crossing fiscal years

(a) AUTHORITY TO ENTER INTO CONTRACT.—The head of an executive agency may enter into a contract for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year if (without regard to any option to extend the period of the contract) the contract period does not exceed one year.

(b) OBLIGATION OF FUNDS.—Funds made available for a fiscal year may be obligated for the total amount of a contract entered into under the authority of this section.