



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

JUN 21 2010

In reply refer to
DARS Tracking Number: 2010-O0013

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(ACQUISITION & LOGISTICS MANAGEMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING)
DIRECTORS, DEFENSE AGENCIES
DIRECTORS, DOD FIELD ACTIVITIES

SUBJECT: Class Deviation—Notification of Employee Rights under the National
Labor Relations Act

I am issuing this class deviation to implement Executive Order 13496, Notification of Employee Rights under Federal Labor Laws. This class deviation is effective immediately and provides a clause (attached) for all departments and agencies to use in solicitations issued after the effective date and resultant contracts, except for acquisitions—

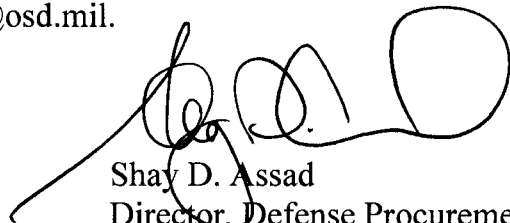
- Under the simplified acquisition threshold;
- For work performed exclusively outside the United States;
- Covered (in their entirety) by an exemption granted by the Secretary of Labor.

Executive Order 13496, requires contractors to display a notice to employees of their rights under Federal labor laws. The Executive Order applies to contracts resulting from solicitation issued on or after the effective date of the implementing rule issued by the Secretary of Labor. The Department of Labor's final rule implementing Executive Order 13496, codified at 29 CFR part 471, was published on May 20, 2010, with an effective date of June 21, 2010.

The Defense Federal Acquisition Regulations Council and the Civilian Agency Acquisition Council are processing an interim rule under FAR Case 2010-006 to

implement the Executive Order and the Department of Labor implementing regulations in the FAR. It is necessary to issue this class deviation in order to enable contractors to comply with the requirements of the Executive Order, pending issuance of an interim rule under FAR Case 2010-006.

This class deviation remains in effect until implemented in the FAR or otherwise rescinded. My point of contact is Ms. Amy Williams, who may be reached at 703-602-0328, or amy.williams@osd.mil.

A handwritten signature in black ink, appearing to read 'Shay D. Assad', written over the printed name and title.

Shay D. Assad
Director, Defense Procurement
and Acquisition Policy

Attachment:
As stated

Class Deviation 2010-00013
Notification of Employee Rights under the National Labor
Relations Act

Clause prescription:

Insert the following clause 52.222-99, Notification of Employee Rights under the National Labor Relations Act (DEVIATION 2010-00013), in all solicitations issued after the date of this deviation and in resultant contracts, except for acquisitions-

(1) Under 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;

(2) For work performed exclusively outside the United States;
or

(3) Covered (in their entirety) by an exemption granted by the Secretary.

This clause is applicable to the acquisition of commercial items, including commercially available off-the-shelf items.

A contracting agency may modify this clause if necessary to reflect an exemption granted by the Secretary of Labor.

* * * * *

52.222-99 Notification of Employee Rights under the National Labor Relations Act.

NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR
RELATIONS ACT (DEVIATION 2010-00013) (JUN 2010)

(a) During the term of this contract, the Contractor shall post a notice, of such size and in such form, and containing such content as prescribed by the Secretary of Labor, in conspicuous places in and about its plants and offices where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract, including all places where notices to employees are customarily

posted both physically and electronically, in the languages employees speak, in accordance with 29 CFR 471.2 (d) and (f).

(1) Physical posting of the employee notice shall be in conspicuous places in and about the Contractor's plants and offices so that the notice is prominent and readily seen by employees who are covered by the National Labor Relation Act and engage in activities related to the performance of the contract.

(2) If the Contractor customarily posts notices to employees electronically, then the Contractor shall also post the required notice electronically by displaying prominently, on any website that is maintained by the Contractor and is customarily used for notices to employees about terms and conditions of employment, a link to the Department of Labor's website that contains the full text of the poster. The link to the Department's website, as referenced in (b)(3) of this section, must read, "Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers."

(b) This required notice, printed by the Department of Labor, may be-

(1) Obtained from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-5609, Washington, DC 20210, (202) 693-0123, or from any field office of the Office of Labor-Management Standards or Office of Federal Contract Compliance Programs;

(2) Provided by the Federal contracting agency, if requested];

(3) Downloaded from the Office of Labor-Management Standards web site at www.dol.gov/olms/regs/compliance/E013496; or

(4) Reproduced and used [as] exact duplicate copies of the Department of Labor's official poster.

(c) The required text of the Employee Notification referred to in this clause is located at Appendix A, Subpart A, 29 CFR part 471.

(d) The Contractor shall comply with all provisions of the Employee Notice and related rules, regulations, and orders of the Secretary of Labor.

(e) In the event that the Contractor does not comply with the requirements set forth in paragraphs (a) through (d) of this clause, this contract may be terminated or suspended in whole or in part, and the Contractor may be suspended or debarred in accordance with 29 CFR 471.14 and FAR Subpart 9.4. Such other sanctions or remedies may be imposed as are provided by 29 CFR Part 471, which implements E.O. 13496 or as otherwise provided by law.

(f) *Subcontracts.* (1) The Contractor shall include the substance of this clause, including this paragraph (f), in every subcontract that exceeds \$10,000 and will be performed wholly or partially in the United States, unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order 13496 of January 30, 2009, so that such provisions will be binding upon each subcontractor.

(2) The Contractor shall not procure supplies or services in a way designed to avoid the applicability of Executive Order 13496 or this clause.

(3) The Contractor shall take such action with respect to any such subcontract as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for non compliance.

(4) However, if the Contractor becomes involved in litigation with a subcontractor, 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)