

in the **Federal Register** at 66 FR 27406, May 16, 2001

## 2. Implementation of Section 810 of the Defense Authorization Act for Fiscal Year 2001

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 CBD, rather than mandating notices only through the CBD as had previously been required.

To implement section 810, the interim rule that was published on May 16, 2001 (66 FR 27406), established FedBizOpps (*i.e.*, the designated GPE) as the principal venue for procurement notices. Pursuant to that rule, agencies have been required to transmit notices to FedBizOpps since October 1, 2001. The rule required duplicate notices in the CBD through January 1, 2002, using the current format prescribed for the electronic version of the CBD, Commerce Business Daily Network (CBDNet). The duplication of notices transmitted to FedBizOpps in the CBD through the end of the calendar year 2001 was designed to provide additional time for vendors to become acclimated to FedBizOpps as the GPE.

The interim rule provided that agencies need not provide duplicate notice in the CBD as of January 1, 2002, and instead may rely exclusively on the mandatory notice in FedBizOpps to satisfy the required access. Thus, the interim rule effectively laid the foundation for the phase-out of the CBD and CBDNet by making their use non-mandatory. Agencies have been relying exclusively on FedBizOpps since the beginning of January 2002.

This final rule clarifies that the GPE is the exclusive source for public access to notices of procurement actions over \$25,000. Sole reliance on FedBizOpps is enabling the Government and its business partners to take advantage of the improved access to information and efficiencies made possible through electronic processes.

## 3. Public Comments

Public comments regarding the proposed designation of FedBizOpps as the GPE were solicited and received in response to the proposed rule published in the **Federal Register** at 65 FR 50872, August 21, 2000. For this reason, the subsequent interim rule that was published in the **Federal Register** at 66 FR 27406, May 16, 2001, sought

comments on the issues unique to that rule—namely, those relating to the implementation of section 810—for consideration in the formulation of this final rule.

The majority of the comments received in response to the interim rule focused on technical considerations related to the use of FedBizOpps, as opposed to the policies set forth in the rule. Those comments were referred to the FedBizOpps “users group” for consideration. The users group is comprised of agency representatives who help to manage their agency’s use of FedBizOpps. The remaining comments are briefly summarized as follows:

- Two commenters suggested continuing the publication of printed synopses. This suggestion was not accepted. The Councils believe the cost of issuing printed notices would be excessive for the small number of firms that would be interested in printed copies. Continued operation of a paper-based process would force the Government to shoulder unnecessary cost and burden. By contrast, sole reliance on FedBizOpps enables the Government and its business partners to take advantage of the improved access to information and efficiencies made possible through electronic processes.

- One commenter indicated that the rule should have addressed the underlying requirements for publication of notices and the content of notices. No changes were made to the rule based on this comment. The general requirement to synopsize and the contents of synopses are already addressed in FAR subpart 5.2. This rule does not change the underlying requirement to synopsize, which is rooted in section 18 of the Office of Federal Procurement Policy Act, 41 U.S.C. 416. Agencies’ internal review procedures provide the necessary oversight of contracting personnel to ensure compliance with these requirements.

- One commenter indicated that the interim FAR coverage failed to modify the timeframes for presumption of publication even though FedBizOpps will provide a near-instantaneous display of notices. FAR 5.203(g) has been amended to shorten to one day the time for presumption of publication.

- Finally, one commenter offered several editorial changes to improve the readability of the rule. These comments were accepted where possible.

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 Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule. The Councils prepared a Final Regulatory Flexibility Analysis (FRFA), and it is summarized as follows:

The final 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 Government point of entry (FedBizOpps) or via the CBD.

The objectives of the rule are (1) designate a single Governmentwide point of entry on the Internet, <http://www.fedbizopps.gov>, where agencies are required 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 Governmentwide point of entry as a substitute for the previously required paper publication in the CBD.

One comment was received in response to the Initial Regulatory Flexibility Analysis. The commentator recommended that the rule continue dual publishing of contracting opportunities in FedBizOpps and the CBD so that small businesses would have two sources from which to identify notices and solicitations. The IRFA should then be republished discussing Section 810 based on an interpretation that it does not preclude dual publishing of notices in the CBD and FedBizOpps. In addition, the comment suggested that the time for agencies to become fully compliant with the regulation be extended and that the rule mention the linkage between FedBizOpps and the Procurement Marketing and Access Network (PRO-Net).

No changes were made to the rule based on the comment. While Section 810 does not preclude the continuation of dual publicizing vehicles, the Federal Government is currently taking steps to eliminate duplicative systems in order to reduce operating costs for the Government and to provide one face to industry. Equally, if not more importantly, sole reliance on FedBizOpps enables the Government and its business partners to take advantage of the improved access to information and efficiencies made possible through electronic processes. With regard to extending the time provided for agencies to become compliant, this extension was not considered necessary since agencies have already completed their transition to FedBizOpps, in compliance with the interim rule, which made agency use of FedBizOpps mandatory as of October 1, 2001. With regard to linkage between FedBizOpps and PRO-Net, such linkage has been made on the cover page of FedBizOpps. The Councils do not