

237 to FAR Part 37, and elevated a DFARS solicitation provision to FAR 52.237-10, Identification of Uncompensated Overtime. However, the FAR rule in FAC 97-01 did not address the evaluation of proposals that include uncompensated overtime.

Therefore, a proposed FAR rule was published in the **Federal Register** on August 24, 1998 (63 FR 45112), to add guidance at FAR 15.305(a)(1) and FAR 37.115-2(c) on the evaluation of proposed uncompensated overtime hours. One respondent submitted comments in response to the proposed rule. The Councils considered the respondent's comments in the development of the final rule and converted the proposed rule to a final rule without change.

This rule was not subject to Office of Management and Budget 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 Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not 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 guidance added to FAR Parts 15 and 37 is consistent with the existing policy pertaining to uncompensated overtime at FAR 37.115 and 52.237-10.

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.*

List of Subjects in 48 CFR Parts 15 and 37

Government procurement.

Dated: September 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR Parts 15 and 37 as set forth below:

1. The authority citation for 48 CFR Parts 15 and 37 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 15—CONTRACTING BY NEGOTIATION

2. In section 15.305, amend paragraph (a)(1) by adding a parenthetical as the penultimate sentence to read as follows:

15.305 Proposal evaluation.

(a) * * *
(1) * * * (See 37.115 for uncompensated overtime evaluation.)
* * *

PART 37—SERVICE CONTRACTING

3. In section 37.115-2, add paragraph (c) to read as follows:

37.115-2 General policy.

(c) Contracting officers must ensure that the use of uncompensated overtime in contracts to acquire services on the basis of the number of hours provided will not degrade the level of technical expertise required to fulfill the Government's requirements (see 15.305 for competitive negotiations and 15.404-1(d) for cost realism analysis). When acquiring these services, contracting officers must conduct a risk assessment and evaluate, for award on that basis, any proposals received that reflect factors such as:

(1) Unrealistically low labor rates or other costs that may result in quality or service shortfalls; and

(2) Unbalanced distribution of uncompensated overtime among skill levels and its use in key technical positions.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 17 and 52

[FAC 97-14; FAR Case 98-606; Item IX]

RIN 9000-AI26

Federal Acquisition Regulation; Option Clause Consistency

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense

Acquisition Regulations Council (Councils) have agreed to adopt the amendments of the proposed rule without change into the CFR. The rule amends the Federal Acquisition Regulation (FAR) to make the format of all option clauses consistent and to clarify that contracting officers may tailor the time period for providing a preliminary notice of the Government's intent to exercise an option.

EFFECTIVE DATE: November 23, 1999.

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 Mr. Ralph DeStefano, Procurement Analyst, at (202) 501-1758. Please cite FAC 97-14, FAR case 98-606.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils published a proposed rule in the **Federal Register** at 64 FR 3618, January 22, 1999, to amend FAR 17.208(g) to clarify that the time period for providing a preliminary notice of the Government's intent to exercise a contract option in the clause at FAR 52.217-9, Option to Extend the Term of the Contract, may be tailored, and amend the clause at FAR 52.217-8 to make the format of the Option to Extend Services clause consistent with the format of other option clauses in the FAR.

Two respondents submitted public comments. The Councils considered the comments in finalizing the rule.

This rule was not subject to Office of Management and Budget 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 Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not 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 rule merely clarifies an existing practice.

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.*

List of Subjects in 48 CFR Parts 17 and 52:

Government procurement.

Dated: September 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR Parts 17 and 52 as set forth below:

1. The authority citation for 48 CFR Parts 17 and 52 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 17—SPECIAL CONTRACTING METHODS

2. In section 17.208, amend paragraphs (a), (b), (c) introductory text, (d), (e), and (f) by removing "The contracting officer shall insert" and add "Insert" in its place; and revise paragraph (g) to read as follows:

17.208 Solicitation provisions and contract clauses.

* * * * *

(g) Insert a clause substantially the same as the clause at 52.217-9, Option to Extend the Term of the Contract, in solicitations and contracts when the inclusion of an option is appropriate (see 17.200 and 17.202) and it is necessary to include in the contract any or all of the following:

- (1) A requirement that the Government must give the contractor a preliminary written notice of its intent to extend the contract.
- (2) A statement that an extension of the contract includes an extension of the option.
- (3) A specified limitation on the total duration of the contract.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. In section 52.217-8, revise the date of the clause and the last sentence to read as follows:

52.217-8 Option to Extend Services.

* * * * *

Option to Extend Services (Nov 1999)

* * * The Contracting Officer may exercise the option by written notice to the Contractor within __ [insert the period of time within which the Contracting Officer may exercise the option].

(End of clause)

3. In section 52.217-9, revise the date of the clause and paragraph (a) to read as follows:

52.217-9 Option to Extend the Term of the Contract.

* * * * *

Option to Extend the Term of the Contract (Nov 1999)

(a) The Government may extend the term of this contract by written notice to the Contractor within __ [insert the period of time within which the Contracting Officer may exercise the option]; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least __ days [60 days unless a different number of days is inserted] before the contract expires. The preliminary notice does not commit the Government to an extension.

* * * * *

(End of clause)

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DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Part 31**

[FAC 97-14; FAR Case 98-301; Item X]

RIN 9000-AI32

Federal Acquisition Regulation; Compensation for Senior Executives

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule to implement Section 804 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261). Section 804 revises the definition of "senior executive" at 10 U.S.C. 2324(l)(5) and at 41 U.S.C. 256(m)(2).

EFFECTIVE DATE: September 24, 1999.

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 97-14, FAR case 98-301.

SUPPLEMENTARY INFORMATION:**A. Background**

The Councils published an interim rule in the **Federal Register** on March 4, 1999 (64 FR 10547). The rule revised

FAR 31.205-6(p) to implement Section 804 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261). Section 804 revises the definition of "senior executive" at 10 U.S.C. 2324(l)(5) and at 41 U.S.C. 256(m)(2) to be "the five most highly compensated employees in management positions at each home office and each segment of the contractor" even though the home office or segment might not report directly to the contractor's headquarters.

There were no public comments submitted in response to the interim rule. Therefore, the Councils have agreed to convert the interim rule to a final rule without change.

This regulatory action was not subject to Office of Management and Budget 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 Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not 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 most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule.

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.*

List of Subjects in 48 CFR Part 31:

Government procurement.

Dated: September 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final Without Change

Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR Part 31, which was published in the **Federal Register** on March 4, 1999 (64 FR 10547), as a final rule without change.