

Dated: August 7, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR Parts 19 and 52 which was published at 61 FR 67420, December 20, 1996, is adopted as final with the following change:

1. The authority citation for 48 CFR Parts 19 and 52 continues to read as follows:

PART 19—SMALL BUSINESS PROGRAMS

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 19.804-2 is amended by revising paragraphs (b)(2) and (c) to read as follows:

19.804-2 Agency offering.

* * * * *

(b) * * *

(2) Sole source requirements, other than construction, should be forwarded directly to the district office that services the nominated firm. If the contracting officer is not nominating a specific firm, the offering letter should be forwarded to the district office servicing the geographical area in which the contracting office is located.

(c) All requirements for 8(a) competition, other than construction, should be forwarded to the district office servicing the geographical area in which the contracting office is located. All requirements for 8(a) construction competition should be forwarded to the district office servicing the geographical area in which all or the major portion of the construction is to be performed. All requirements, including construction, shall be synopsized in the Commerce Business Daily. For construction, the synopsis shall include the geographical area of the competition set forth in the SBA's acceptance letter.

[FR Doc. 97-21496 Filed 8-21-97; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22 and 52

[FAC 97-01; FAR Case 94-610; Item XII]

RIN 9000-AH62

Federal Acquisition Regulation; Executive Order 12933, Nondisplacement of Qualified Workers Under Certain Contracts

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

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Executive Order 12933, Nondisplacement of Qualified Workers Under Certain Contracts, signed by the President on October 20, 1994 (59 FR 53559, October 24, 1994). The Executive Order requires that workers on certain building service contracts be given the right of first refusal for employment with the successor contractor, if the workers would otherwise lose their jobs as a result of the award of the successor contract. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

DATES: *Effective Date:* August 22, 1997.

Applicability: With respect to solicitations and contracts for building service contracts covered by this regulation, the following applies:

(1) For solicitations issued and contracts awarded on or after the effective date of this rule, include the clause at 52.222-50, Nondisplacement of Qualified Workers, except as provided in paragraph (2)(a) below.

(2) Include the clause at 52.222-50, Nondisplacement of Qualified Workers, where practicable by—

(a) Amending solicitations issued, but not awarded, prior to the effective date of the rule; or

(b) Modifying contracts awarded prior to the effective date of this rule.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before October 21, 1997 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405.

E-Mail comments submitted over the Internet should be addressed to: farcase.94-610@gsa.gov.

Please cite FAC 97-01, FAR case 94-610 in all correspondence related to this case.

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. Jack O'Neill, Procurement Analyst, at (202) 501-3856. Please cite FAC 97-01, FAR case 94-610.

SUPPLEMENTARY INFORMATION:

A. Background

Executive Order 12933 was signed October 20, 1994, by President Clinton and published in the **Federal Register** on October 24, 1994 (59 FR 53559). The purpose and need for the Executive Order are clearly stated in the Executive Order itself:

When a service contract for the maintenance of a public building expires and a follow-on contract is awarded for the same service, the successor contractor typically hires the majority of the predecessor's employees. On occasion, however, a follow-on contractor will hire a new work force, and the predecessor's employees are displaced.

As a buyer and participant in the marketplace, the Government is concerned about hardships to individuals that may result from the operation of our procurement system. Furthermore, the Government's procurement interests in economy and efficiency benefit from the fact that a carryover work force will minimize disruption to the delivery of services during any period of transition and provide the Government the benefits of an experienced and trained work force rather than one that may not be familiar with the Government facility.

In order to address these concerns, Section 1 of the Executive Order makes the following statement of policy:

It is the policy of the Federal Government that solicitations and building service contracts for public buildings shall include a clause that requires the contractor under a contract that succeeds a contract for performance of similar services at the same public building to offer those employees (other than managerial or supervisory employees) under the predecessor contract whose employment will be terminated as a result of the award of the successor contract, a right of first refusal to employment under the contract in positions for which they are qualified. There shall be no employment openings under the contract until such right

of first refusal has been provided. Nothing in this order shall be construed to permit a contractor to fail to comply with any provision of any other Executive order or laws of the United States.

The Executive Order requires implementing regulations to be issued by the Secretary of Labor in consultation with the Federal Acquisition Regulatory Council, and that Department of Labor (DoL) regulations and the Federal Acquisition Regulation require inclusion of a contract clause in covered Federal solicitations and contracts. The Executive Order provides that it does not confer any right or benefit enforceable against the United States, but that it is not intended to preclude judicial review of final decisions by the Secretary of Labor in accordance with the Administrative Procedure Act (5 U.S.C. 701, *et seq.*).

To obtain public input and assist in the development of these regulations, the DoL invited comment through a notice of proposed rulemaking in the **Federal Register** on July 18, 1995 (60 FR 36756). The final DoL rule was published in the **Federal Register** on May 22, 1997 (62 FR 28175). This FAR interim rule implements the DoL rule.

Regarding certification requirements of this interim rule, the certification requirement in paragraph (e) of the clause at 52.222-50 is considered identical to the certification requirement in paragraph (n) of the clause at 52.222-41. Therefore, for the purposes of Section 29 of the Office of Federal Procurement Policy Act (41 U.S.C. 425), this rule does not impose a new certification requirement.

B. Regulatory Flexibility Act

The General Services Administration, Department of Defense, and National Aeronautics and Space Administration certify that this interim rule will not have a significant economic impact on a substantial number of small entities because the Executive Order mandates a practice that is already followed in most cases. This rule implements the requirements of the Executive Order, as implemented by the DoL in its final rule of May 22, 1997 (62 FR 28175). The DoL certified that its final rule will not have a significant economic impact on a substantial number of small entities. In those cases where the practice was not followed before the Executive Order, the impact would be a result of the Executive Order and the DoL regulation; it would not be a result of the FAR implementation.

C. Paperwork Reduction Act

This interim rule will not impose any additional paperwork burdens beyond

the information collection and recordkeeping requirements required under sections 9.6(c), 9.9(b) and 9.11 of the Department of Labor Regulations, 29 CFR Part 9, and approved under DoL Office of Management and Budget Control No. 1215-0190.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to implement Executive Order 12933 of October 20, 1994, Nondisplacement of Qualified Workers Under Certain Contracts, and the corresponding Department of Labor regulations that became effective on July 21, 1997. However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 22 and 52

Government procurement.

Dated: August 7, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 22 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 22 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 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

2. Subpart 22.12, consisting of sections 22.1200 through 22.1208, is added to read as follows:

Subpart 22.12—Nondisplacement of Qualified Workers Under Certain Contracts

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|-----------|-----------------------------------|
| Sec. | |
| 22.1200 | Scope of subpart. |
| 22.1201 | Statement of policy. |
| 22.1202 | Definitions. |
| 22.1203 | Applicability. |
| 22.1203-1 | General. |
| 22.1203-2 | Exclusions. |
| 22.1204 | Seniority lists. |
| 22.1205 | Notice to employees. |
| 22.1206 | Complaint procedures. |
| 22.1207 | Withholding of contract payments. |
| 22.1208 | Contract clause. |

Subpart 22.12—Nondisplacement of Qualified Workers Under Certain Contracts

22.1200 Scope of subpart.

This subpart prescribes policies and procedures for implementing Executive Order 12933 of October 20, 1994, Nondisplacement of Qualified Workers Under Certain Contracts, and Department of Labor regulations at 29 CFR part 9.

22.1201 Statement of policy.

It is the policy of the Federal Government that contracts for building services at public buildings shall require the contractor under a successor contract for performance of similar services at the same public building, to offer those employees (other than managerial or supervisory employees) under the predecessor contract, whose employment will be terminated as a result of the award of the successor contract, a right of first refusal to employment under the contract in positions for which they are qualified. Executive Order 12933 states that there shall be no employment openings under the contract until such right of first refusal has been provided.

22.1202 Definitions.

Building service contract, as used in this subpart, means a contract for recurring services related to the maintenance of a public building. Recurring services are services that are required to be performed regularly or periodically throughout the course of a contract, and throughout the course of the succeeding or follow-on contract(s), at one or more of the same public buildings. Executive Order 12933 lists examples of building service contracts as including, but not limited to, contracts for the recurring provision of custodial or janitorial services; window washing; laundry; food services; guard or other protective services; landscaping and groundskeeping services; and inspection, maintenance, and repair of fixed equipment such as elevators, air conditioning, and heating systems. Building service contracts do not include—

(1) Contracts that provide maintenance services only on a non-recurring or irregular basis. For example, a contract to provide servicing of fixed equipment once a year, or to mulch a garden on a one-time or annual basis, is a non-recurring maintenance contract that is not covered by this subpart;

(2) Contracts for day-care services in a Federal office building; or

(3) Concessions for sales of goods or services other than food services or laundry services.

Public building, as used in this subpart, means any building owned by the United States that is generally suitable for office or storage space or both for the use of one or more Federal agencies or mixed ownership corporations, its grounds, approaches, and appurtenances.

(1) Public buildings do not include any building on the public domain. The public domain includes only (i) those public lands owned by the United States and administered by the Department of the Interior, Bureau of Land Management, and (ii) the National Forest System administered by the Department of Agriculture, U.S. Forest Service. The public domain does not include Federal buildings, such as office buildings in cities or towns, that are occupied by the Bureau of Land Management or U.S. Forest Service where such buildings are not on lands administered by those agencies.

(2) Buildings on the following are not public buildings:

(i) Properties of the United States in foreign countries;

(ii) Native American and Native Eskimo properties held in trust by the United States;

(iii) Lands used in connection with Federal programs for agricultural, recreational, and conservation purposes, including research in connection therewith;

(iv) Lands used in connection with river, harbor, flood control, reclamation, or power projects; or for chemical manufacturing or development projects; or for nuclear production, research, or development projects;

(v) Land used in connection with housing and residential projects;

(vi) Properties of the United States Postal Service;

(vii) Military installations (including any fort, camp, post, naval training station, airfield, proving ground, military supply depot, military school, or any similar facility of the Department of Defense, but not including the Pentagon);

(viii) Installations of the National Aeronautics and Space Administration, except regular office buildings; and

(ix) Department of Veterans Affairs installations used for hospital or domiciliary purposes.

(3) Buildings leased to the Government are not public buildings unless the building is leased pursuant to a lease-purchase contract.

Service employee, as used in this subpart, means any person engaged in the performance of recurring building services other than a person in a *bona fide* executive, administrative, or professional capacity, as those terms are

defined in 29 CFR part 541, and shall include all such persons regardless of any contractual relationship that may be alleged to exist between a contractor and such person.

22.1203 Applicability.

22.1203-1 General.

(a) This subpart applies to building service contracts where the contract is entered into by the Government in an amount equal to or greater than the simplified acquisition threshold and the contract succeeds a contract for similar work at one or more of the same public buildings.

(b)(1) Except as provided in paragraph (b)(2) of this subsection, a contract that includes a requirement for recurring building services is subject to this subpart even if the contract also contains other non-covered services or non-service requirements, such as construction or supplies, and even if the contract is not subject to the McNamara-O'Hara Service Contract Act, 41 U.S.C. 351, *et seq.* However, the requirements of this subpart apply only to the building services portion of the contract, and only to those public buildings for which services were provided under a predecessor contract.

(2) This subpart does not apply to building services that are only incidental to a contract for another purpose, such as incidental maintenance under a contract to operate a day-care center. Building service requirements will not be considered incidental, and, therefore, will be subject to this subpart where (i) the contract contains specific requirements for a substantial amount of building services or it is ascertainable that a substantial amount of building services will be necessary to the performance of the contract (the word "substantial" relates to the type and quantity of building services to be performed and not merely to the total value of such work, whether in absolute dollars or cost percentages as compared to the total value of the contract); and (ii) the building services work is physically or functionally separate, and as a practical matter is capable of being performed on a segregated basis, from the other work called for by the contract. Building services performed on a building being leased to the Government pursuant to a lease-purchase contract are not covered unless the services are being performed under a contract directly with the Government.

22.1203-2 Exclusions.

(a) This subpart does not apply to—

(1) Contracts under the simplified acquisition threshold;

(2) Contracts for commodities or services produced or provided by the blind or severely handicapped, awarded pursuant to the Javits-Wagner-O'Day Act, 41 U.S.C. 46-48a, and any future enacted law creating an employment preference for some group of workers under building service contracts;

(3) Guard, elevator operator, messenger, or custodial services provided to the Government under contracts with sheltered workshops employing the severely handicapped as outlined in the Edgar Amendment, section 505 of the Treasury, Postal Services and General Government Appropriations Act, 1995, Public Law 103-329; or

(4) Agreements for vending facilities operated by the blind, entered into under the preference provisions of the Randolph-Sheppard Act, 20 U.S.C. 107.

(b) A successor contractor is not required to offer a right of first refusal for employment when a majority of its employees, who will perform the particular service under the contract, will work both at the public building and at other locations under contracts not subject to Executive Order 12933. Examples include, but are not limited to, pest control or trash removal services where the employees periodically visit various Government and non-Government sites, and make service calls to repair equipment at various Government and non-Government buildings. This exclusion does not apply (i) where the service employees' work on non-covered contracts is not performed as a part of the same job as their work on the Federal contract in question, or where they separately apply for work on the non-Federal contracts; or (ii) where the employees are deployed in a manner that is designed to avoid the purposes of Executive Order 12933. In making this determination, all the facts and circumstances are examined, including particularly the manner in which the predecessor contractor deployed its work force to perform the services, the manner in which the work force is typically deployed to perform such services, and the manner in which the contract is structured.

22.1204 Seniority lists.

(a) Not less than 60 days before completion of its contract, the predecessor contractor must furnish the contracting officer with a certified list of the names of all service employees engaged in the performance of building services, working for the contractor at the Federal facility at the time the list is submitted, together with their anniversary dates of employment. The

contracting officer in turn shall provide the list to the successor contractor and, if requested, to employees of the predecessor contractor or their representatives.

(b) The list provided pursuant to paragraph (a) of this section satisfies the requirements of paragraph (n) of the clause at 52.222-41, Service Contract Act of 1965, as Amended.

22.1205 Notice to employees.

(a) Where the successor contract is a contract subject to this subpart, the contracting officer will provide written notice to service employees of the predecessor contractor, who are engaged in building services, of their possible right to an offer of employment. Such notice either may be posted in a conspicuous place at the work site or may be delivered to the employees individually.

(b) Contracting officers may use either the following suggested notice format or another format with the same information.

Notice to Building Service Contract Employees

The contract for [type of service] services currently performed by [predecessor contractor] has been awarded to a new contractor. [Successor contractor] will begin performance on [date successor contract begins].

As a condition of the new contract [successor contractor] is required to offer employment to the employees of [predecessor contractor] working at [the contract work site or work sites] except in the following situations:

- Managerial or supervisory employees on the current contract are not entitled to an offer of employment.

- [Successor contractor] may reduce the size of the current work force. Therefore, only a portion of the existing work force may receive employment offers. However, [successor contractor] must offer employment to the employees of [predecessor contractor] if any vacancies occur in the first 3 months of the new contract.

- [Successor contractor] may employ a current employee on the new contract before offering employment to [predecessor contractor's] employees only if the current employee has worked for [successor contractor] for at least 3 months immediately preceding the commencement of the new contract and would face layoff or discharge if not employed under the new contract.

- Where [successor contractor] has reason to believe, based on credible information from a knowledgeable source, that an employee's performance has been unsuitable on the current contract, the employee is not entitled to employment with the new contractor.

If you are offered employment on the new contract, you will have at least 10 days to accept the offer.

If you are an employee of [predecessor contractor] and believe that you are entitled to an offer of employment with [successor contractor], but have not received an offer, you may file a complaint with [contracting officer or representative], the contracting officer handling this contract at: [address and telephone number of contracting officer]. If the contracting officer is unable to resolve your complaint, the contracting officer will forward a report to the U.S. Department of Labor, Wage and Hour Division. You also may file your complaint directly with [address of the nearest District Office of the Wage and Hour Division].

If you have any questions about your right to employment on the new contract, contact: [Name, address, and telephone number of the contracting officer.]

22.1206 Complaint procedures.

(a) Any employee of the predecessor contractor, who believes that he or she was not offered employment by the successor contractor as required by this subpart, may file a complaint with the contracting officer.

(b) Upon receipt of the complaint, the contracting officer shall provide information to the employee(s) and the successor contractor about their rights and responsibilities under this subpart. If the matter is not resolved through such actions, the contracting officer shall, within 30 days from receipt of the complaint, obtain statements of the positions of the parties and forward the complaint and statements, together with a summary of the issues and any relevant facts known to the contracting officer, to the nearest District Office of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, with copies to the contractor and the complaining employee.

(c) If the contracting officer has not forwarded the complaint to the Wage and Hour Division within 30 days of receipt of the complaint, as required by paragraph (b) of this section, the complainant may refile the complaint directly with the nearest District Office of the Wage and Hour Division.

2.1207 Withholding of contract payments.

(a) The Secretary of Labor has the authority to issue orders prescribing appropriate remedies, including, but not limited to, requiring employment of the predecessor contractor's employees and payment of wages lost.

(b) After an investigation and a determination by the Administrator, Wage and Hour Division, Department of Labor, that lost wages or other monetary relief is due, the Administrator may direct that so much of the accrued payments due on either the contract or any other contract between the contractor and the Government shall be

withheld in a deposit fund as is necessary to pay the moneys due. Upon the final order of the Secretary of Labor that such moneys are due, the Administrator may direct that such withheld funds be transferred to the Department of Labor for disbursement.

(c) If the contracting officer or the Secretary of Labor finds that the predecessor contractor has failed to provide a list of the names of employees working under the contract in accordance with the requirements of the predecessor's contract, the contracting officer may take such action as may be necessary to cause the suspension of the payment of funds until such time as the list is provided to the contracting officer.

22.1208 Contract clause.

The contracting officer shall insert the clause at 52.222-50, Nondisplacement of Qualified Workers, in solicitations and contracts for building services that succeed contracts for performance of similar work at the same public building and that are not excluded by 22.1203.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.222-50 is added to read as follows:

52.222-50 Nondisplacement of Qualified Workers.

As prescribed in 22.1208, insert the following clause:

Nondisplacement of Qualified Workers (Aug 1997)

(a) *Definition. Service employee*, as used in this clause, means any person engaged in the performance of recurring building services other than a person employed in a *bona fide* executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541, and shall include all such persons regardless of any contractual relationship that may be alleged to exist between a contractor and such person.

(b) Consistent with the efficient performance of this contract, the Contractor shall, except as otherwise provided herein, in good faith offer those employees engaged in the performance of building services (other than managerial and supervisory employees) under the predecessor contract, whose employment will be terminated as a result of award of this contract or the expiration of the contract under which the employees were hired, a right of first refusal to employment under the contract in positions for which the employees are qualified. The Contractor shall determine the number of employees necessary for efficient performance of this contract and may elect to employ fewer employees than the predecessor contractor employed in connection with performance of the work. Where the Contractor offers a right of first refusal to fewer employees than were employed by the predecessor contractor, its

obligation under the contract to the predecessor's employees to fill vacancies created by increased staffing levels or by employee termination, either voluntarily or for cause, continues for 3 months after commencement of the contract. Except as provided in paragraph (c) of this clause, the Contractor shall not offer employment under the contract to any person prior to having complied fully with this obligation.

(c) Notwithstanding the Contractor's obligation under paragraph (b) of this clause, the Contractor (1) may employ on the contract any employee who has worked for the Contractor for at least 3 months immediately preceding the commencement of this contract and who would otherwise face layoff or discharge, (2) is not required to offer a right of first refusal to any employee(s) of the predecessor contractor who are not service employees, and (3) is not required to offer a right of first refusal to any employee(s) of the predecessor contractor who the Contractor reasonably believes, based on the particular employee's past performance, has failed to perform suitably on the job. Examples of permissible sources for this determination include evidence of disciplinary action based on poor performance or evidence from the contracting agency that the particular employee did not perform suitably. Offers of employment are governed by the following:

(i) The offer shall state the time within which the employee must accept such offer, but in no case shall the period for acceptance be less than 10 days.

(ii) The offer may be made by separate written notice to each employee, or orally at a meeting attended by a group of the predecessor contractor's employees.

(iii) An offer need not be to a position similar to that which the employee previously held, but the employee must be qualified for the position.

(iv) An offer to a position providing lower pay or benefits than the employee held with the predecessor contractor will be considered *bona fide* if the Contractor shows valid business reasons.

(v) To ensure that an offer is effectively communicated, the Contractor should take reasonable efforts to make the offer in a language that each worker understands; for example, by having a co-worker or other person fluent in the worker's language at the meeting to translate or otherwise assist an employee who is not fluent in English.

(d) For a period of 1 year, the Contractor shall maintain copies of any written offers of employment or a contemporaneous written record of any oral offers of employment, including the date, location, and attendance roster of any employee meeting(s) at which the offers were extended, a summary of each meeting, a copy of any written notice that may have been distributed, and the names of the predecessor's employees to whom an offer was made. Copies of such documentation shall be provided upon request to any authorized representative of the contracting agency or the Department of Labor.

(e) The Contractor shall, no less than 60 days before completion of this contract, furnish the Contracting Officer with a

certified list of the names of all service employees engaged in the performance of building services, working for the Contractor at the Federal facility at the time the list is submitted. The list also shall contain anniversary dates of employment on the contract either with the current or predecessor contractors of each service employee, as appropriate. The Contracting Officer will provide the list to the successor contractor, and the list shall be provided upon request to employees or their representatives. Submission of this list will satisfy the requirements of paragraph (n) of the clause at 52.222-41, Service Contract Act of 1965, as Amended.

(f) The requirements of this clause do not apply to services where a majority of the Contractor's employees performing the particular services under the contract work at the public building and at other locations under contracts not subject to Executive Order 12933, *provided* that the employees are not deployed in a manner that is designed to avoid the purposes of the Executive Order.

(g) If it is determined, pursuant to regulations issued by the Secretary of Labor, that the Contractor is not in compliance with the requirements of this clause or any regulation or order of the Secretary, appropriate sanctions may be imposed and remedies invoked against the Contractor, as provided in Executive Order 12933, the regulations of the Secretary of Labor at 29 CFR part 9, and relevant orders of the Secretary of Labor, or as otherwise provided by law.

(h) The Contractor is advised that the Contracting Officer shall withhold or cause to be withheld from the Contractor, under this or any other Government contract with the Contractor, such sums as an authorized official of the Department of Labor requests, upon a determination by the Administrator of the Wage and Hour Division, the Administrative Law Judge, or the Administrative Review Board, that the Contractor failed to comply with the terms of this clause, and that wages lost as a result of the violations are due to employees or that other monetary relief is appropriate.

(i) The Contractor shall cooperate in any investigation by the contracting agency or the Department of Labor into possible violations of the provisions of this clause and shall make records requested by such official(s) available for inspection, copying, or transcription upon request.

(j) Disputes concerning the requirements of this clause shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with applicable law and the procedures of the Department of Labor set forth in 29 CFR part 9. Disputes concerning the requirements of this clause include disputes between or among any of the following: The Contractor, the contracting agency, the U.S. Department of Labor, and the employees under the contract or its predecessor contract.

(End of clause)

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 25

[FAC 97-01; FAR Case 97-019; Item XIII]

RIN 9000-AH68

Federal Acquisition Regulation; Designation of Hong Kong

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 have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to add Hong Kong as a designated country under the Trade Agreements Act of 1979, as directed by the United States Trade Representative. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

DATE: Effective August 22, 1997.

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. Paul Linfield, Procurement Analyst, at (202) 501-1757. Please cite FAC 97-01, FAR case 97-019.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR 25.401 to add Hong Kong as a designated country under the Trade Agreements Act of 1979, as directed by the United States Trade Representative. The accession of Hong Kong to the World Trade Organization Agreement on Government Procurement became effective on June 19, 1997.

B. Regulatory Flexibility Act

This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR subpart will be considered in