

DEPARTMENT OF DEFENSE**General Services Administration****National Aeronautics and Space Administration****48 CFR Part 16**

[FAC 97-10; FAR Case 98-016; Item II]

RIN 9000-A118

Federal Acquisition Regulation; Limits for Indefinite-Quantity Contracts

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 clarify guidance regarding how limits on indefinite-quantity contracts are expressed.

EFFECTIVE DATE: February 16, 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 97-10, FAR case 98-016.

SUPPLEMENTARY INFORMATION:**A. Background**

This final rule amends FAR 16.504(a) to clarify that maximum and minimum limits for indefinite-quantity contracts may be expressed as a number of units or dollar value.

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.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98-577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97-10, FAR case 98-016), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the

FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which 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 16

Government procurement.

Dated: December 14, 1998.

Ralph DeStefano,

Acting Director, Federal Acquisition Policy Division.

Therefore, 48 CFR part 16 is amended as set forth below:

PART 16—TYPES OF CONTRACTS

1. The authority citation for 48 CFR part 16 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).

2. Section 16.504 is amended at the end of paragraph (a) by adding a sentence; in paragraph (a)(1) by revising the first sentence and adding a new second sentence; and by revising paragraph (a)(4)(ii). The revised text reads as follows:

16.504 Indefinite-quantity contracts.

(a) * * * Quantity limits may be expressed in terms of numbers of units or as dollar values.

(1) The contract shall require the Government to order and the contractor to furnish at least a stated minimum quantity of supplies or services. In addition, if ordered, the contractor shall furnish any additional quantities, not to exceed the stated maximum. * * *

* * * * *

(4) * * *

(ii) Specify the total minimum and maximum quantity of supplies or services to be acquired under the contract;

* * * * *

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DEPARTMENT OF DEFENSE**General Services Administration****National Aeronautics and Space Administration****48 CFR Parts 22 and 52**

[FAC 97-10; FAR Case 98-607; Item III]

RIN 9000-A115

Federal Acquisition Regulation; Office of Federal Contract Compliance Programs National Pre-Award Registry

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 inform the procurement community of the availability of the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) National Pre-Award Registry (Registry), accessible through the Internet, that contains contractor establishments that have been reviewed within the preceding 24 months and found in compliance with the equal opportunity laws enforced by OFCCP, and the option to use the information in the Registry in lieu of submitting a written request for a preaward clearance; and implement revised Department of Labor (DoL) regulations pertaining to equal employment opportunity and affirmative action requirements for Federal contractors and subcontractors.

EFFECTIVE DATE: February 16, 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. Jack O'Neill, Procurement Analyst, at (202) 501-3856. Please cite FAC 97-10, FAR case 98-607.

SUPPLEMENTARY INFORMATION:**A. Background**

Section 60-1.29 of Title 41 of the Code of Federal Regulations provides that agencies shall not enter into contracts or approve the entry into contracts or subcontracts for \$10 million or more with any bidder, prospective prime contractor, or proposed subcontractor until a preaward compliance evaluation has been conducted and the Deputy Assistant

Secretary or his designee has approved a determination that the bidder, prospective prime contractor, or proposed subcontractor will be able to comply with the provisions of the equal employment opportunity regulations.

To streamline the process for obtaining preaward clearance, the Office of Federal Contract Compliance Programs (OFCCP) has developed and implemented the OFCCP National Pre-Award Registry which contains contractor establishments that have been evaluated within the past 24 months and found to be in compliance with its Equal Employment Opportunity regulations.

Since April 15, 1998, agencies who have inquired have been verbally advised by OFCCP that they may review the Registry to search for prospective contractor establishments to whom they intend to award contracts of \$10 million or more. If the specific contractor establishment receiving the contract is listed on the Registry, the agency is not required to request a written preaward clearance from OFCCP. The use of the Registry will reduce the number of requests from the contracting agencies to OFCCP and responses back from OFCCP to the agency. Thus, use of the Registry will reduce the administrative burden of paperwork for both agencies.

Also, this final rule amends FAR subpart 22.8 and the provisions and clauses at FAR 52.212-3, 52.222-21 through 52.222-24, and 52.222-26 through 52.222-29, to implement revised Department of Labor (DoL) regulations, published as a final rule in the **Federal Register** at 62 FR 44173, August 19, 1997. The DoL rule increased, from \$1 million to \$10 million, the threshold for obtaining preaward compliance clearance from OFCCP, and amended administrative procedures for obtaining such clearances; eliminated the requirement for OFCCP clearance of subcontracts after award of the prime contract; and eliminated the requirement to obtain a certification of nonsegregated facilities from prospective contractors.

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.

B. Regulatory Flexibility Act

The 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 comments is not required. However, comments from small entities concerning the affected FAR subparts will be considered in accordance with 5

U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97-10, FAR case 98-607), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which 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 22 and 52

Government procurement.

Dated: December 14, 1998.

Ralph DeStefano,

Acting 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

22.800 [Amended]

2. Section 22.800 is amended by removing "Government."

3. Section 22.801 is revised to read as follows:

22.801 Definitions.

As used in this subpart—

Affirmative action program means a contractor's program that complies with Department of Labor regulations to ensure equal opportunity in employment to minorities and women.

Compliance evaluation means any one or combination of actions that the Office of Federal Contract Compliance Programs (OFCCP) may take to examine a Federal contractor's compliance with one or more of the requirements of E.O. 11246.

Contractor includes the terms "prime contractor" and "subcontractor."

Deputy Assistant Secretary means the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, or a designee.

Equal Opportunity clause means the clause at 52.222-26, Equal Opportunity, as prescribed in 22.810(e).

E.O. 11246 means Parts II and IV of Executive Order 11246, September 24, 1965 (30 FR 12319), and any Executive order amending or superseding this order (see 22.802). This term

specifically includes the Equal Opportunity clause at 52.222-26, and the rules, regulations, and orders issued pursuant to E.O. 11246 by the Secretary of Labor or a designee.

Prime contractor means any person who holds, or has held, a Government contract subject to E.O. 11246.

Recruiting and training agency means any person who refers workers to any contractor or provides or supervises apprenticeship or training for employment by any contractor.

Site of construction means the general physical location of any building, highway, or other change or improvement to real property that is undergoing construction, rehabilitation, alteration, conversion, extension, demolition, or repair; and any temporary location or facility at which a contractor or other participating party meets a demand or performs a function relating to a Government contract or subcontract.

Subcontract means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee)—

(1) For the purchase, sale, or use of personal property or nonpersonal services that, in whole or in part, are necessary to the performance of any one or more contracts; or

(2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken, or assumed.

Subcontractor means any person who holds, or has held, a subcontract subject to E.O. 11246. The term *first-tier subcontractor* means a subcontractor holding a subcontract with a prime contractor.

United States means the several states, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Wake Island.

22.802 [Amended]

4. Section 22.802 is amended in paragraph (a) by removing "Government contracting" and "Government prime"; and in paragraph (b) by removing "Director" and adding "Deputy Assistant Secretary".

5. Section 22.803 is amended in paragraph (b) by removing "Director" and adding "Deputy Assistant Secretary"; and by revising paragraph (d) to read as follows:

22.803 Responsibilities.

* * * * *

(d) In the event the applicability of E.O. 11246 and implementing

regulations is questioned, the contracting officer shall forward the matter to the Deputy Assistant Secretary, through agency channels, for resolution.

6. Section 22.804-1 is revised to read as follows:

22.804-1 Nonconstruction.

Except as provided in 22.807, each nonconstruction prime contractor and each subcontractor with 50 or more employees and either a contract or subcontract of \$50,000 or more, or Government bills of lading that in any 12-month period total, or can reasonably be expected to total, \$50,000 or more, is required to develop a written affirmative action program for each of its establishments. Each contractor and subcontractor shall develop its written affirmative action programs within 120 days from the commencement of its first such Government contract, subcontract, or Government bill of lading.

22.804-2 [Amended]

7. Section 22.804-2 is amended in the first sentence of paragraph (b) by removing "contracting".

8. Section 22.805 is amended by revising the introductory text of paragraph (a); revising paragraphs (a)(1), (a)(2), and (a)(3); by redesignating paragraphs (a)(4) thru (a)(8) as (a)(5) thru (a)(9), respectively, and adding a new paragraph (a)(4); by revising the introductory text of the newly designated paragraph (a)(5); revising newly designated paragraphs (a)(5)(ii) and (v); (a)(6), (a)(7), (a)(8), and (a)(9); and in paragraph (b) by adding "Employment" after "Equal". The revised text reads as follows:

22.805 Procedures.

(a) *Preaward clearances for contracts and subcontracts of \$10 million or more (excluding construction).* (1) Except as provided in paragraphs (a)(4) and (a)(8) of this section, if the estimated amount of the contract or subcontract is \$10 million or more, the contracting officer shall request clearance from the appropriate OFCCP regional office before—

(i) Award of any contract, including any indefinite delivery contract or letter contract; or

(ii) Modification of an existing contract for new effort that would constitute a contract award.

(2) Preaward clearance for each proposed contract and for each proposed first-tier subcontract of \$10 million or more shall be requested by the contracting officer directly from the OFCCP regional office(s). Verbal requests shall be confirmed by letter or facsimile transmission.

(3) When the contract work is to be performed outside the United States with employees recruited within the United States, the contracting officer shall send the request for a preaward clearance to the OFCCP regional office serving the area where the proposed contractor's corporate home or branch office is located in the United States, or the corporate location where personnel recruiting is handled, if different from the contractor's corporate home or branch office. If the proposed contractor has no corporate office or location within the United States, the preaward clearance request action should be based on the location of the recruiting and training agency in the United States.

(4) The contracting officer does not need to request a preaward clearance if—

(i) The specific proposed contractor is listed in OFCCP's National Preaward Registry via the Internet at <http://www.dol-esa.gov/preaward/>;

(ii) The projected award date is within 24 months of the proposed contractor's Notice of Compliance completion date in the Registry; and

(iii) The contracting officer documents the Registry review in the contract file.

(5) The contracting officer shall include the following information in the preaward clearance request:

* * * * *

(ii) Name, address, and telephone number of each proposed first-tier subcontractor with a proposed subcontract estimated at \$10 million or more.

* * * * *

(v) Place or places of performance of the prime contract and first-tier subcontracts estimated at \$10 million or more, if known.

* * * * *

(6) The contracting officer shall allow as much time as feasible before award for the conduct of necessary compliance evaluation by OFCCP. As soon as the apparently successful offeror can be determined, the contracting officer shall process a preaward clearance request in accordance with agency procedures, assuring, if possible, that the preaward clearance request is submitted to the OFCCP regional office at least 30 days before the proposed award date.

(7) Within 15 days of the clearance request, OFCCP will inform the awarding agency of its intention to conduct a preaward compliance evaluation. If OFCCP does not inform the awarding agency within that period of its intention to conduct a preaward compliance evaluation, clearance shall

be presumed and the awarding agency is authorized to proceed with the award. If OFCCP informs the awarding agency of its intention to conduct a preaward compliance evaluation, OFCCP shall be allowed an additional 20 days after the date that it so informs the awarding agency to provide its conclusions. If OFCCP does not provide the awarding agency with its conclusions within that period, clearance shall be presumed and the awarding agency is authorized to proceed with the award.

(8) If the procedures specified in paragraphs (a)(6) and (a)(7) of this section would delay award of an urgent and critical contract beyond the time necessary to make award or beyond the time specified in the offer or extension thereof, the contracting officer shall immediately inform the OFCCP regional office of the expiration date of the offer or the required date of award and request clearance be provided before that date. If the OFCCP regional office advises that a preaward evaluation cannot be completed by the required date, the contracting officer shall submit written justification for the award to the head of the contracting activity, who, after informing the OFCCP regional office, may then approve the award without the preaward clearance. If an award is made under this authority, the contracting officer shall immediately request a postaward evaluation from the OFCCP regional office.

(9) If, under the provisions of paragraph (a)(8) of this section, a postaward evaluation determines the contractor to be in noncompliance with E.O. 11246, the Deputy Assistant Secretary may authorize the use of the enforcement procedures at 22.809 against the noncomplying contractor.

* * * * *

9. Section 22.806 is revised to read as follows:

22.806 Inquiries.

(a) An inquiry from a contractor regarding status of its compliance with E.O. 11246, or rights of appeal to any of the actions in 22.809, shall be referred to the OFCCP regional office.

(b) Labor union inquiries regarding the revision of a collective bargaining agreement in order to comply with E.O. 11246 shall be referred to the Deputy Assistant Secretary.

10. Section 22.807 is amended—

a. In paragraph (a)(1) by removing "Director" and adding "Deputy Assistant Secretary";

b. By revising paragraph (a)(2);

c. In the second sentence of paragraph (b)(1) by removing "or subcontractor";

d. In paragraph (b)(3) by adding a comma following "instrumentality" the second time it appears;

e. By revising paragraph (b)(5);

f. In paragraph (b)(6) by adding a hyphen between "Indefinite quantity" (both times it appears);

g. By revising paragraph (c);

h. By revising the introductory text of (d); and

i. In paragraph (d)(2) by removing "calendar".

The revised text read as follows:

22.807 Exemptions.

(a) * * *

(2) *Specific contracts.* The Deputy Assistant Secretary may exempt an agency from requiring the inclusion of one or more of the requirements of E.O. 11246 in any contract if the Deputy Assistant Secretary deems that special circumstances in the national interest so require. Groups or categories of contracts of the same type may also be exempted if the Deputy Assistant Secretary finds it impracticable to act upon each request individually or if group exemptions will contribute to convenience in the administration of E.O. 11246.

(b) * * *

(5) *Facilities not connected with contracts.* The Deputy Assistant Secretary may exempt from the requirements of E.O. 11246 any of a contractor's facilities that the Deputy Assistant Secretary finds to be in all respects separate and distinct from activities of the contractor related to performing the contract, provided, that the Deputy Assistant Secretary also finds that the exemption will not interfere with, or impede the effectiveness of, E.O. 11246.

* * * * *

(c) To request an exemption under paragraph (a)(2) or (b)(5) of this section, the contracting officer shall submit, under agency procedures, a detailed justification for omitting all, or part of, the requirements of E.O. 11246. Requests for exemptions under paragraph (a)(2) or (b)(5) of this section shall be submitted to the Deputy Assistant Secretary for approval.

(d) The Deputy Assistant Secretary may withdraw the exemption for a specific contract, or group of contracts, if the Deputy Assistant Secretary deems that such action is necessary and appropriate to achieve the purposes of E.O. 11246. Such withdrawal shall not apply—

* * * * *

22.809 [Amended]

11. Section 22.809 is amended in the introductory text by removing

"Director" and adding "Deputy Assistant Secretary"; in paragraph (a) by removing "their" and adding "its"; and in paragraph (d) by removing Director and adding "Deputy Assistant Secretary".

12. Section 22.810 is amended—

a. By revising paragraph (a);

b. In paragraph (b) by adding "for Construction" after "Opportunity" the first time it appears;

c. By revising paragraph (c);

d. By revising paragraph (e),

e. In paragraph (f) by removing "and" the second time it appears and adding "when";

f. By removing paragraph (g); and

g. By redesignating paragraph (h) as (g).

The revised paragraphs read as follows:

22.810 Solicitation provisions and contract clauses.

(a) When a contract is contemplated that will include the clause at 52.222–26, Equal Opportunity, the contracting officer shall insert—

(1) The clause at 52.222–21, Prohibition of Segregated Facilities, in the solicitation and contract; and

(2) The provision at 52.222–22, Previous Contracts and Compliance Reports, in the solicitation.

* * * * *

(c) The contracting officer shall insert the provision at 52.222–24, Preaward On-Site Equal Opportunity Compliance Evaluation, in solicitations other than those for construction when a contract is contemplated that will include the clause at 52.222–26, Equal Opportunity, and the amount of the contract is expected be \$10 million or more.

* * * * *

(e) The contracting officer shall insert the clause at 52.222–26, Equal Opportunity, in solicitations and contracts (see 22.802) unless the contract is exempt from all of the requirements of E.O. 11246 (see 22.807(a)). If the contract is exempt from one or more, but not all, of the requirements of E.O. 11246, the contracting officer shall use the clause with its Alternate I.

* * * * *

22.802, 22.803, 22.807, 22.808, 22.809 [Amended]

13. In addition to the amendments set forth above, subpart 22.8 is also amended by removing "EO" and adding "E.O." in the following places:

a. Section 22.802 (b), and (c);

b. Section 22.803 (a)(1), (a)(2) and (b);

c. Section 22.807 (a) introductory text (twice), (b)(2), (b)(3), and (b)(4) (twice);

d. Section 22.808; and

e. Section 22.809 introductory text, (c), and (d).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

14. Section 52.212–3 is amended by revising the provision date; by removing (d)(1); and redesignating paragraphs (d)(2) and (d)(3) as (d)(1) and (d)(2) respectively; by revising the newly designated (d)(1); and in the newly redesignated paragraph (d)(2)(i) by removing "Subparts" and adding "parts". The revised text reads as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (Feb 1999)

* * * * *

(d) *Certifications and representations required to implement provisions of Executive Order 11246—*(1) Previous contracts and compliance. The offeror represents that—

(i) It ☐ has, ☐ has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation; and

(ii) It ☐ has, ☐ has not filed all required compliance reports.

* * * * *

15. Section 52.222–21 is revised to read as follows:

52.222–21 Prohibition of segregated facilities.

As prescribed in 22.810(a)(1), insert the following clause:

Prohibition of Segregated Facilities (Feb 1999)

(a) *Segregated facilities*, as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(c) The Contractor shall include this clause in every subcontract and purchase order that

is subject to the Equal Opportunity clause of this contract.

(End of clause)

16. Section 52.222-22 is amended by revising the introductory text, the date of the provision, and paragraph (a) to read as follows:

52.222-22 Previous Contracts and Compliance Reports.

As prescribed in 22.810(a)(2), insert the following provision:

Previous Contracts and Compliance Reports (Feb 1999)

* * * * *

(a) It ☐ has, ☐ has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation;

* * * * *

17. Section 52.222-23 is amended by revising the section heading, the introductory text, the provision heading, and the introductory text of paragraph (d) to read as follows:

52.222-23 Notice of Requirement for Affirmative Action To Ensure Equal Employment Opportunity for Construction.

As prescribed in 22.810(b), insert the following provision:

Notice of Requirement for Affirmative Action To Ensure Equal Employment Opportunity for Construction (Feb 1999)

* * * * *

(d) The Contractor shall provide written notification to the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, within 10 working days following award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the —

* * * * *

18. Section 52.222-24 is revised to read as follows:

52.222-24 Preaward On-Site Equal Opportunity Compliance Evaluation.

As prescribed in 22.810(c), insert the following provision:

Preaward On-Site Equal Opportunity Compliance Evaluation (Feb 1999)

If a contract in the amount of \$10 million or more will result from this solicitation, the prospective Contractor and its known first-tier subcontractors with anticipated subcontracts of \$10 million or more shall be subject to a preaward compliance evaluation by the Office of Federal Contract Compliance Programs (OFCCP), unless, within the preceding 24 months, OFCCP has conducted an evaluation and found the prospective Contractor and subcontractors to be in compliance with Executive Order 11246.

(End of provision)

19. Section 52.222-25 is amended by revising the introductory text to read as follows:

52.222-25 Affirmative Action Compliance.

As prescribed in 22.810(d), insert the following provision:

* * * * *

20. Section 52.222-26 is amended—

a. By revising the introductory text and the clause date;

b. In paragraph (a) by removing “below” and adding “of this clause”;

c. By revising paragraphs (b) introductory text and (b)(1);

d. In paragraph (b)(4) by adding “s” to “advertisement”;

e. By revising paragraphs (b)(7), (b)(8), and the last sentence of (b)(9);

f. In paragraph (b)(10) by adding “s” to “subparagraph”;

g. In paragraph (b)(11) by removing “contracting agency” and adding “contracting officer”; and

h. By revising the introductory text of Alternate I.

The revised text reads as follows:

52.222-26 Equal Opportunity.

As prescribed in 22.810(e), insert the following clause:

Equal Opportunity (Feb 1999)

* * * * *

(b) During performance of this contract, the Contractor agrees as follows:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

* * * * *

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) * * * In addition, sanctions may be imposed and remedies invoked against the

Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

* * * * *

Alternate I (Feb 1999). As prescribed in 22.810(e), add the following as a preamble to the clause:

* * * * *

21. Section 52.222-27 is amended—

a. By revising the introductory text and the date of the clause;

b. In paragraph (a) by removing the definition of “Director” and adding “Deputy Assistant Secretary”;

(c) In paragraph (g)(4) by removing “Director” and adding “Deputy Assistant Secretary”;

d. In paragraph (g)(5) by removing “above” and adding “of this clause”;

e. In paragraph (g)(7) by removing “onsite” and adding “on-site” in its place;

f. By revising paragraph (g)(14);

g. In paragraph (h) by adding “of this clause” after “(16)” (both times it appears); and

h. In paragraph (m) by removing “above” and “Director” and adding “of this clause” and “Deputy Assistant Secretary”, respectively.

The revised text reads as follows:

52.222-27 Affirmative Action Compliance Requirements for Construction.

As prescribed in 22.810(f), insert the following clause:

Affirmative Action Compliance Requirements for Construction (Feb 1999)

(a) * * *

Deputy Assistant Secretary, as used in this clause, means the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, or a designee.

* * * * *

(g) * * *

(14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user rest rooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.

* * * * *

52.222-28 [Reserved]

22. Section 52.222-28 is removed and reserved.

23. Section 52.222-29 is revised to read as follows:

52.222-29 Notification of visa denial.

As prescribed in 22.810(g), insert the following clause:

Notification of Visa Denial (Feb 1999)

It is a violation of Executive Order 11246, as amended, for a Contractor to refuse to employ any applicant or not to assign any person hired in the United States, on the basis that the individual's race, color,

religion, sex, or national origin is not compatible with the policies of the country where the work is to be performed or for whom the work will be performed (41 CFR 60-1.10). The Contractor agrees to notify the U.S. Department of State, Assistant Secretary, Bureau of Political-Military Affairs (PM), 2201 C Street NW, Room 7325, Washington, DC 20520, and the U.S. Department of Labor, Deputy Assistant Secretary for Federal Contract Compliance, when it has knowledge of any employee or potential employee being denied an entry visa to a country in which the Contractor is required to perform this contract, and it believes the denial is attributable to the race, color, religion, sex, or national origin of the employee or potential employee.

(End of clause)

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DEPARTMENT OF DEFENSE

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 31

[FAC 97-10; FAR Case 97-303; Item IV]

RIN 9000-AH90

Federal Acquisition Regulation; Limitation on Allowability of Compensation for Certain Contractor Personnel

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

ACTION: Interim rule adopted as final with changes.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to adopt as final, with changes, the interim rule published in the **Federal Register** at 63 FR 9066, February 23, 1998, as Item XIII of Federal Acquisition Circular 97-04. The rule amends the Federal Acquisition Regulation (FAR) to implement Section 808 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85) by limiting the allowable compensation costs for senior executives of contractors to the benchmark compensation amount determined applicable for each fiscal year by the Administrator for Federal Procurement Policy.

EFFECTIVE DATE: February 16, 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 97-10, FAR case 97-303.

SUPPLEMENTARY INFORMATION:

A. Background

Section 808 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85) limits allowable compensation costs of senior executives of contractors for a fiscal year to the benchmark compensation amount determined applicable for each fiscal year by the Administrator, Office of Federal Procurement Policy (OFPP). Section 808 requires OFPP to review commercially available surveys of executive compensation and, on the basis of the results of the review, determine the benchmark compensation amount for each fiscal year. This determination shall be made in consultation with the Defense Contract Audit Agency and other executive agencies as the Administrator deems appropriate.

On February 23, 1998, a notice was published in the **Federal Register** (63 FR 9881) that indicated the Acting Administrator of OFPP had determined the benchmark compensation amount to be \$340,650. The notice further indicated that this amount is to be used as the benchmark amount for contractor fiscal year 1998, and subsequent contractor fiscal years, unless and until revised by OFPP. To date, OFPP has not revised the amount.

An interim FAR rule was published in the **Federal Register** on February 23, 1998 (63 FR 9066). Public comments were received from five sources. All comments were considered in developing the final rule.

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.

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 recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which 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: December 14, 1998.

Ralph DeStefano,

Acting Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR Part 31, which was published at 63 FR 9066, February 23, 1998, is adopted as a final rule with the following changes:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR Part 31 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).

2. Section 31.205-6 is amended in paragraph (k) by revising the heading; and by revising paragraphs (p)(2)(ii) and adding (p)(2)(iv) to read as follows:

31.205-6 Compensation for personal services.

* * * * *

(k) *Deferred compensation other than pensions.* * * *

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(p) * * *

(2) * * *

* * * * *

(ii) *Senior executive* means—

(A) The Chief Executive Officer (CEO) or any individual acting in a similar capacity at the contractor's headquarters;

(B) The four most highly compensated employees in management positions at the contractor's headquarters, other than the CEO; and

(C) If the contractor has intermediate home offices or segments that report directly to the contractor's headquarters, the five most highly compensated employees in management positions at each such intermediate home office or segment.

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(iv) *Contractor's headquarters* means the highest organizational level from