

included in their proposals and subcontractor proposals. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct (see 48 CFR 1815.608-72).

4. Section 1837.110 is revised to read as follows:

1837.110 Solicitation provisions and contract clauses.

(a) The contracting officer shall obtain the Associate Administrator for Procurement's (Code HC) approval before using in a solicitation, contract, or negotiated contract modification for additional work any installation-developed clause involving pension portability.

(b) The following provision applies to procurements under which professional and technical services are acquired on the basis of the number of hours to be provided, rather than on the task to be performed.

(1) If the resulting contract is expected to exceed \$500,000, the contracting officer shall insert in the solicitation the provision at 48 CFR 1852.237-72, Identification of Uncompensated Overtime.

(2) If the resulting contract is expected to exceed \$100,000 but not exceed \$500,000, the contracting officer may insert in the solicitation the provisions at 48 CFR 1852.237-72, Identification of Uncompensated Overtime.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 1852.237-72 is added to read as follows:

1852.237-72 Identification of Uncompensated Overtime.

As prescribed in 48 CFR 1827.110(b), insert the following provision:

IDENTIFICATION OF UNCOMPENSATED OVERTIME

(APRIL 1995)

The use of uncompensated overtime is neither encouraged nor discouraged. When the proposed uncompensated overtime is consistent with an offeror's written policies and practices, NASA will consider it in proposal evaluation, including the evaluation of cost and of professional compensation (see 48 CFR (FAR) subpart 22.11).

(a) *Definitions.* As used in this provision: *Uncompensated overtime* means the hours worked in excess of an average of 40 hours per week, by direct charge employees who are exempt from the Fair Labor Standards Act (FLSA) without additional compensation. Compensated personal absences, such as holidays, vacations, and sick leave shall be included in the normal work week for

purposes of computing uncompensated overtime hours.

Effective hourly rate is the rate that results from multiplying the hourly rate for a 40-hour work week by 40, and then dividing by the proposed hours per week. For example, 45 hours proposed on a 40-hour work week basis at \$20.00 per hour would be converted to an effective hourly rate of \$17.78 per hour [(\$20.00×40) divided by 45=\$17.78.]

(b) For any hours proposed against which an effective hourly rate is applied, the Offeror shall identify in its proposal the hours in excess of an average of 40 hours per week, at the same level of detail as compensated hours, and the effective hourly rate, whether at the prime or subcontract level. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct. The proposal shall include the rationale and methodology used to estimate the proposed amount of uncompensated overtime.

(c) The Offeror's accounting practices used to estimate uncompensated overtime must be consistent with its cost accounting practices used to accumulate and report uncompensated overtime hours.

(d) Proposals that include unrealistically low labor rates, or that do not otherwise demonstrate cost realism, will be considered in a technical and cost risk assessment and evaluated for award in accordance with that assessment.

(e) The Offeror shall include with its proposal a copy of its policy addressing uncompensated overtime, a description of the timekeeping and accounting systems used to record all hours worked by FLSA-exempt employees, and the historical basis for the uncompensated overtime hours proposed.

(End of provision)

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DEPARTMENT OF JUSTICE

48 CFR Part 2801

[Justice Acquisition Circular 95-1]

Amendment to the Justice Acquisition Regulations (JAR) Regarding Career Development, Contracting Authority, and Responsibilities

AGENCY: Office of the Procurement Executive, Justice Management Division, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the JAR by revising policies and procedures for redelegation of authority for contractual actions of goods and services; revising regulations to set forth the Department of Justice system for selection, appointment, and termination of appointment of contracting officers; and incorporating the agency's policies and procedures regarding the

Procurement Career Management Program.

EFFECTIVE DATE: March 29, 1995.

FOR FURTHER INFORMATION CONTACT: Janis Sposato, Procurement Executive, Justice Management Division (202) 514-3103.

SUPPLEMENTARY INFORMATION: The determination is hereby made that this amendment must be issued as a final rule. This amendment was not published for public comment because it does not have an effect beyond the internal operating procedures of the agency. The Director, Office of Management and Budget, by memorandum dated December 14, 1984, exempted agency procurement regulations from review under Executive Order 12291, except for selected areas. The exception applies to this rule. The Department of Justice certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601-612) because the amendment sets forth, wholly, internal departmental procedures. No additional time or cost burden will be placed on contractors by the promulgation of this regulation.

List of Subjects in 48 CFR Part 2801

Government procurement.

Dated: March 21, 1995.

Stephen R. Colgate,
Assistant Attorney General for Administration.

PART 2801—DEPARTMENT OF JUSTICE ACQUISITION REGULATION SYSTEM

1. The authority citation for 48 CFR Part 2801 continues to read as follows:

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

2. The heading of subpart 2801.6 is revised to read as follows:

Subpart 2801.6—Career Development, Contracting Authority, and Responsibilities

3. Section 2801.601 is amended by revising paragraph (d) to read as follows:

2801.601 General.

* * * * *

(d) The redelegation of contracting authority directly to specific persons without regard for intermediate organizational levels only establishes authority to represent the Government in its commercial business dealings. It is not intended to affect the organizational

relationship between the contracting officers and higher administrative and supervisory levels in the performance of their duties.

* * * * *

4. Section 2801.603 is revised to read as follows:

2801.603 Selection, appointment and termination of appointment.

2801.603-2 Selection.

Selection of contracting officers shall be in accordance with criteria and procedures established by each Bureau Procurement Chief in his or her component.

5. Section 2801.670 is added to read as follows:

2801.670 Department of Justice Procurement Career Management Program.

(a) Each Bureau Procurement Chief shall develop a procurement career management program for contracting personnel in his or her component.

(b) The program shall cover all contracting personnel with less than

seven year experience in the categories described below:

(1) Occupational series 1102;

(2) Contracting officers with contracting authority above the simplified acquisition threshold;

(3) Occupational series 1105, other individuals performing purchasing duties and individuals with contracting authority at or under the simplified acquisition threshold.

(c)(1) The program shall include:

(i) An individual assessment by a supervisor of each covered employee's state of competence to perform the full range of potential duties of his or his job; and

(ii) An individual development plan to schedule classroom, on-the-job training, or other training to develop the employee's skill level to an appropriate level in each area of competence necessary to perform his or her job.

(2) Individual assessments and development plans should be designed to fit the needs of the component, but they should build upon the units of competence and instruction prepared by the Federal Acquisition Institute

wherever feasible. Individual development plans should attempt to bring the employee to an appropriate level of skill in all necessary competencies by the time the employee has obtained seven years of experience in the field of procurement. In general, a proficiency skill level of 3, as defined in Attachment 1 to OFPP Policy Letter 92-3, shall be attained for any contracting duty that is actually required to be performed on the job.

(3) Employees who perform only purchasing duties, regardless of occupational series, shall be required to obtain the requisite level of skill only in competencies involving small purchases. If the employee's duties are expanded to include contracting duties, then skill in procurement competencies must be assessed and developed.

(4) Individual assessments of covered employee skills shall be completed by June 27, 1995, or within 90 days of the employee's entry on duty.

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