25.402 Policy.

* * * * *

(b) The U.S. Trade Representative has determined that in order to promote further economic recovery of the Caribbean Basin countries (as defined in 25.401), products originating in those countries which are eligible for duty-free treatment under the Caribbean Basin Economic Recovery Act shall be treated as eligible products for the purposes of this subpart. Except for products of Panama, this determination is effective until September 30, 1997. For products of Panama, this determination is effective until September 30, 1998. These dates may be extended by the U.S. Trade Representative by means of a notice in the Federal Register.

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[FR Doc. 96–33214 Filed 12–31–96; 8:45 am]

BILLING CODE 6820–EP–P

48 CFR Part 31

[FAC 90–45; FAR Case 96–325; Item XI]

RIN 9000–AH50

Federal Acquisition Regulation; Compensation of Certain Contractor Personnel

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

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 809 of the Fiscal Year 1997 National Defense Authorization Act (Pub. L. 104–201) by placing a Governmentwide ceiling on allowable compensation costs for contractor personnel in senior management positions under contracts that are awarded during fiscal year 1997. 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*: January 1, 1997.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before March 3, 1997 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS),–18th & F Streets, NW, Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405. Please cite FAC 90–45, FAR case 96–325 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph DeStefano at (202) 501–1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–45, FAR case 96–325.

SUPPLEMENTARY INFORMATION:

A. Background

Section 809 of the Fiscal Year 1997 National Defense Authorization Act (Pub. L. 104–201) limits, during fiscal year 1997, allowable compensation costs to $250,000 per year for contractor personnel in senior management positions. Section 809 defines ''compensation'' as the total amount of wages and elective deferrals for the year concerned, as these terms are defined in Sections 3401(a) and 402(g)(3), respectively, of the Internal Revenue Code of 1986. Section 809 also limits the application of the compensation ceiling to an ''officer'' of a company ''who is determined to be in a senior management position as established by regulation.'' The interim rule defines an ''officer in a senior management position'' as the contractor's Chief Executive Officer (CEO), or any individual acting in a similar capacity, and the contractor's four most highly compensated officers in senior management positions, other than the CEO. This definition is consistent with the standard employed by the United States Securities and Exchange Commission (SEC) in its executive compensation disclosure rules. The SEC requires that publicly traded companies disclose to their stockholders the compensation of the CEO (or any individual acting in a similar capacity) as well as that of their four most highly paid senior executive officers, other than the CEO, who earn more than $100,000 per year in salary and bonus.

The interim FAR rule adds a new requirement at 31.205–6(p) to implement the statutory ceiling on allowable compensation costs for officers in senior management positions. This restriction applies to contracts awarded during fiscal year 1997, for compensation costs of certain contractor personnel that are incurred during fiscal year 1997, and that are in excess of $250,000 per year. This restriction also applies to the five most highly compensated individuals in senior management positions at intermediate home offices and/or segments if a contractor is organizationally subdivided into such units.

B. Regulatory Flexibility Act

The interim rule is not expected to 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. In addition, this rule is limited to businesses that incur costs prior to October 1, 1997, under contracts awarded during fiscal year 1997, for compensation in excess of $250,000 per year for an officer in a senior management position. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subpart also will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C 601, *et seq.* (FAR Case 96–325), 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 OMB under 44 U.S.C. 3501, et seq.

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 ensure that contracting activities become aware of the statutory ceiling on allowable compensation costs for certain contractor personnel when forward pricing contracts to be awarded during fiscal year 1997. This rule implements Section 809 of the Fiscal Year 1997 National Defense Authorization Act (Pub. L. 104–201) and applies to Governmentwide contracts awarded during fiscal year 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 the formation of the final rule.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: December 24, 1996.

Edward C. Loeb,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR Part 31 is amended as set forth below:

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 by adding paragraph (p) to read as follows:

31.205–6 Compensation for personal services.

* * * * *

(p) *Limitation on allowability of compensation for certain contractor personnel.* (1) For contracts awarded during fiscal year 1997, costs incurred from October 1, 1996, through September 30, 1997, for compensation of an officer in a senior management position in excess of $250,000 per year are unallowable (Section 809 of Public Law 104–201).

(2) As used in this paragraph:

(i) *Compensation* means—

(A) The total amount of taxable wages paid to the employee for the year concerned; plus

(B) The total amount of elective deferred compensation earned by the employee in the year concerned.

(ii) *Officer in a senior management position means*—

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

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

(C) If the contractor is organizationally subdivided into intermediate home offices and/or segments, the five most highly compensated individuals in senior management positions at each such intermediate home office and/or segment.

[FR Doc. 96–33215 Filed 12–31–96; 8:45 am]

BILLING CODE 6820–EP–P

48 CFR Part 33

[FAC 90–45; FAR Case 95–309; Item XII]

RIN 9000–AH10

Federal Acquisition Regulation; Agency Procurement Protests

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 to amend the Federal Acquisition Regulation (FAR) to provide for informal, procedurally simple, and inexpensive resolution of protests. This final rule implements Executive Order 12979, Agency Procurement Protests. 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.

EFFECTIVE DATE: March 3, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–45, FAR case 95–309.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule revises the agency procurement protest procedures at FAR 33.103 to implement Executive Order 12979 of October 25, 1995, Agency Procurement Protests (60 FR 55171, October 27, 1995). An interim rule was published in the Federal Register at 61 FR 39219, July 26, 1996. Six sources submitted public comments. All comments, including comments from GAO, were considered in developing the final rule.

B. Regulatory Flexibility Act

A Final Regulatory Flexibility Analysis (FRFA) has been performed. A copy of the FRFA may be obtained from the FAR Secretariat. The analysis is summarized as follows:

This rule implements Executive Order 12979, Agency Procurement Protests, which requires the heads of the executive departments and agencies engaged in the procurement of supplies and services to prescribe administrative procedures for the resolution of procurement protests as an alternative to protests in a forum outside the procuring agencies. There were no public comments received in response to the Initial Regulatory Flexibility Analysis. Several changes were made as a result of public comments in response to the interim rule. The time to file a protest was reduced from 14 to 10 days after the basis of protest is known, or should be known, to conform with revisions to General Accounting Office protest procedures. The rule was revised to clarify that agencies may designate an official, other than the contracting officer, to receive protests. Agencies may also designate whether a review of a protest by an official other than the contracting officer is instead of, or in addition to, review of the protest by the contracting officer. The rule was revised to permit agencies to exchange information with a protester while considering the protest.

The rule will apply to all actual or potential bidders or offerors, large and small, whose direct economic interests would be affected by the award or failure to award a Government contract. The number of small entities to which the rule will apply is estimated to be between 35,000 and 45,000. This rule does not impose any reporting, recordkeeping, or other compliance requirements.

This rule is expected to have a beneficial impact on small entities by prescribing informal, procedurally simple, and inexpensive means to resolve protests. The rule encourages the use of alternative dispute resolution techniques, third party neutrals, and another agency's personnel as alternative protest resolution methods.

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 33

Government procurement.

Dated: December 24, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 33 is amended as set forth below:

PART 33—PROTESTS, DISPUTES, AND APPEALS

1. The authority citation for 48 CFR Part 33 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 33.103 is amended—

a. in paragraph (c) by removing ''and permitted by law'';

b. by revising paragraphs (d)(2)(i) and (d)(4);

c. in paragraph (e) by revising ''14 days'' to read ''10 days'';