

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Part 16

[FAC 97-05; FAR Case 97-042; Item IV]

RIN 9000-A101

**Federal Acquisition Regulation; Limits
on Fee for Cost-Plus-Incentive-Fee and
Cost-Plus-Award-Fee 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 fee limitations pertaining to cost-reimbursement contracts. 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: August 21, 1998.

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 97-05, FAR case 97-042.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Part 16 to clarify fee limitations pertaining to cost-reimbursement contracts. Federal Acquisition Circular 97-02, FAR Part 15 Rewrite, published as a final rule on September 30, 1997 (62 FR 51224), eliminated non-statutory fee limitations for cost-plus-incentive-fee and cost-plus-award-fee contracts. This final rule makes conforming amendments to FAR Part 16.

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 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 97-05, FAR case 97-042), 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: June 11, 1998.

Edward C. Loeb,*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).

16.301-3 [Amended]

2. Section 16.301-3 is amended by removing paragraph (a)(3).

3. Section 16.306 is amended by revising paragraph (c) to read as follows:

16.306 Cost-plus-fixed-fee contracts.

* * * * *

(c) *Limitations.* No cost-plus-fixed-fee contract shall be awarded unless the contracting officer complies with all limitations in 15.404-4(c)(4)(i) and 16.301-3.

* * * * *

16.405-2 [Amended]

4. Section 16.405-2 is amended at the end of paragraph (c)(1) by adding "and"; by removing paragraph (c)(2) and redesignating paragraph (c)(3) as (c)(2).

[FR Doc. 98-16115 Filed 6-19-98; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Parts 22 and 52

[FAC 97-05; FAR Case 96-610; Item V]

RIN 9000-AH99

**Federal Acquisition Regulation;
Rehabilitation Act, Workers With
Disabilities**

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 revised Department of Labor regulations regarding affirmative action to employ and advance in employment qualified individuals with disabilities. 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 June 22, 1998.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before August 21, 1998 to be considered in the formulation of a final rule.

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

E-Mail comments submitted over the Internet should be addressed to: farcase.96-610@gsa.gov.

Please cite FAC 97-05, FAR case 96-610 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 97-05, FAR case 96-610.

SUPPLEMENTARY INFORMATION:

A. Background

On May 1, 1996, the Department of Labor (DoL) issued a final rule (61 FR 19335) to revise its regulations (41 CFR 60-741) that implement Section 503 of the Rehabilitation Act of 1973 (29 U.S.C. 793). The rule was effective August 29, 1996. This interim rule amends FAR Subpart 22.14 and the clauses at 52.212-5 and 52.222-36 to conform to the DoL regulations.

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 the rule merely implements existing Department of Labor regulations, and imposes no new requirements. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited. Comments from small entities concerning the affected FAR subparts also 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.* (FAR Case 96-610), 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 collection 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.*

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 rule amends the FAR to conform to Department of Labor regulations at 41 CFR 60-741 that implement Section 503 of the Rehabilitation Act of 1973 (29 U.S.C. 793). Immediate publication is necessary to ensure that Government contractors take affirmative action required by statute to employ, and advance in employment, qualified individuals with disabilities. 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 Parts 22 and 52

Government procurement.

Dated: June 11, 1998.

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

Subpart 22.14—Employment of Workers With Disabilities

2. The heading of Subpart 22.14 is revised to read as set forth above.

3. Sections 22.1401 and 22.1402 are revised to read as follows:

22.1401 Policy.

Government contractors, when entering into contracts subject to the Act, are required to take affirmative action to employ, and advance in employment, qualified individuals with disabilities, without discrimination based on their physical or mental disability.

22.1402 Applicability.

(a) Section 503 of the Act applies to all Government contracts in excess of \$10,000 for supplies and services (including construction) except as waived by the Secretary of Labor. The clause at 52.222-36, Affirmative Action for Workers with Disabilities, implements the Act.

(b) The requirements of the clause at 52.222-36, Affirmative Action for Workers with Disabilities, in any contract with a State or local government (or any agency, instrumentality, or subdivision) shall not apply to any agency, instrumentality, or subdivision of that government that does not participate in work on or under the contract.

4. Section 22.1403 is amended by revising paragraph (a) introductory text; in (b)(1) by revising "Director of OFCCP" to read "Deputy Assistant Secretary"; in (b)(2) and the first sentence of (d) by revising "Director" to read "Deputy Assistant Secretary"; and in the last sentence of (d) by removing the word "calendar". The revised text reads as follows:

22.1403 Waivers.

(a) The agency head, with the concurrence of the Deputy Assistant

Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary), may waive any or all of the terms of the clause at 52.222-36, Affirmative Action for Workers with Disabilities, for—

* * * * *

5. Section 22.1404 is revised to read as follows:

22.1404 Department of Labor notices.

The contracting officer shall furnish to the contractor appropriate notices that state the contractor's obligations and the rights of individuals with disabilities. The contracting officer may obtain these notices from the Office of Federal Contract Compliance Programs (OFCCP) regional office.

22.1405 [Amended]

6. Section 22.1405 is amended in the first sentence by replacing "Handicapped Workers" with "Workers with Disabilities".

22.1406 [Amended]

7. Section 22.1406 is amended by revising "OFCCP" to read "Deputy Assistant Secretary for Federal Contract Compliance" the first time it appears.

8. Section 22.1407 is amended by revising the introductory paragraph to read as follows:

22.1407 Actions because of noncompliance.

The contracting officer shall take necessary action, as soon as possible upon notification by the appropriate agency official, to implement any sanctions imposed on a contractor by the Department of Labor for violations of the clause at 52.222-36, Affirmative Action for Workers with Disabilities. These sanctions (see 41 CFR 60-741.66) may include—

* * * * *

9. Section 22.1408 is amended by revising paragraph (a) introductory text and (a)(1) to read as follows:

22.1408 Contract clause.

(a) The contracting officer shall insert the clause at 52.222-36, Affirmative Action for Workers with Disabilities, in solicitations and contracts that exceed \$10,000 or are expected to exceed \$10,000, except when—

(1) Work is to be performed outside the United States by employees recruited outside the United States (for the purpose of this subpart, *United States* includes 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); or

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

10. Section 52.212-5 is amended by revising the date of the clause and paragraphs (b)(8) and (e)(3) to read as follows:

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (Jun 1998)

* * * * *

(b) * * *

(8) 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793).

* * * * *

(e) * * *

(3) 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793); and

* * * * *

(End of clause)

11. Section 52.213-4 is amended by revising the clause date and paragraph (b)(1)(iv) of the clause to read as follows:

52.213-4 Terms and Conditions Simplified Acquisitions (Other Than Commercial Items).

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Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (Jun 1998)

* * * * *

(b)(1) * * *

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793) (Applies to contracts over \$10,000).

* * * * *

12. Section 52.222-36 is revised to read as follows:

52.222-36 Affirmative Action for Workers With Disabilities.

As prescribed in 22.1408(a), insert the following clause:

Affirmative Action for Workers With Disabilities (Jun 1998)

(a) *General.* (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as—

(i) Recruitment, advertising, and job application procedures;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(iii) Rates of pay or any other form of compensation and changes in compensation;

(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(v) Leaves of absence, sick leave, or any other leave;

(vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;

(vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(viii) Activities sponsored by the Contractor, including social or recreational programs; and

(ix) Any other term, condition, or privilege of employment.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) *Postings.* (1) The Contractor agrees to post employment notices stating—

(i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and

(ii) The rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

(c) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance. (End of clause)

Alternate I (Jun 1998). As prescribed in 22.1408(b), add the following as a preamble to the clause:

Notice: The following term(s) of this clause are waived for this contract:

_____ [List term(s)].

[FR Doc. 98-16116 Filed 6-19-98; 8:45 am]

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DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Part 25**

[FAC 97-05; FAR Case 97-044; Item VI]

RIN 9000-AI02

Federal Acquisition Regulation; Trade Agreements Thresholds

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 implement revised thresholds for application of the Trade Agreements Act and the North American Free Trade Agreement. 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: August 21, 1998.

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 97-05, FAR case 97-044.

SUPPLEMENTARY INFORMATION:**A. Background**

This final rule amends FAR Part 25 to implement revised thresholds for application of the Trade Agreements Act and the North American Free Trade Agreement, as published by the Office of the United States Trade Representative in the **Federal Register** on January 14, 1998 (63 FR 2295).

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the