

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAR Case 1999-612]

RIN 9000-AI95

Federal Acquisition Regulation; Application of Labor Clauses

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

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) by amending the clause, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items), to include the Prohibition of Segregated Facilities clause and to clarify the application of labor clauses below the simplified acquisition threshold. The Councils are also proposing to amend the Equal Opportunity clause to incorporate the exception for work performed outside the United States.

DATES: Interested parties should submit comments in writing on or before December 26, 2000 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVRs), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: farcase.1999-612@gsa.gov.

Please submit comments only and cite FAR case 1999-612 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501-3775. Please cite FAR case 1999-612.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed rule amends the clause at 52.213-4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items), to include the clause at 52.222-21, Prohibition of Segregated Facilities. This amendment

clarifies the existing requirements of 41 CFR 60-1.8, promulgated by the Department of Labor under E.O. 112146. The Prohibition of Segregated Facilities clause must be included in contracts whenever the Equal Opportunity clause (FAR 52.222-26) is included.

Upon review of the requirements for inclusion of the Equal Opportunity clause, the Councils moved the Equal Opportunity clause from the list at paragraph (b), to the list at paragraph (a), because the clause must be included in almost all contracts, even those under \$10,000, in accordance with the requirements at FAR 22.802(a)(1) and 22.807(b). Even though included, the clause is inapplicable unless the aggregate value of contracts and subcontracts awarded to the contractor exceeds \$10,000 in a year.

The Councils have made other revisions to paragraphs (b)(1)(i), (b)(1)(iv), and (b)(1)(vi) of the clause at FAR 52.213-4, and paragraph (a) of the clause at FAR 52.222-26, relating to geographic applicability of labor clauses, to comply with the current regulations at FAR 22.603, 22.807(b)(2), 22.1001, 22.1003-2, and 22.1408(a)(1).

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule 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 this rule only clarifies the existing requirements. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Part in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, et seq. (FAR case 1999-612), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that 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 52

Government procurement.

Dated: October 20, 2000.

Al Matera,

Acting Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR part 52 be amended as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 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).

- 2. Amend section 52.213-4 by—
a. Revising the date of the clause;
b. Redesignating paragraphs (a)(1)(ii) and (a)(1)(iii) as (a)(1)(iv) and (a)(1)(v), respectively;
c. Adding new paragraphs (a)(1)(ii) and (a)(1)(iii); and
d. Revising paragraphs (b)(1)(i), (b)(1)(iv), and (b)(1)(vi) and removing and reserving paragraph (b)(1)(ii) to read as follows:

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

* * * * *

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

- (a) * * *
(1) * * *
(ii) 52.222-21, Prohibition of Segregated Facilities (FEB 1999) (E.O. 11246).
(iii) 52.222-26, Equal Opportunity (DATE) (E.O. 11246).

* * * * *

- (b) * * *
(1) * * *
(i) 52.222-20, Walsh-Healey Public Contracts Act (DEC 1996) (41 U.S.C. 35-45) (Applies to supply contracts over \$10,000 in the United States, Puerto Rico, or the U.S. Virgin Islands).
(ii) [Reserved]

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- (iv) 52.222-36, Affirmative Action for Workers with Disabilities (JUN 1998) (29 U.S.C. 793) (Applies to contracts over \$10,000, unless the work is to be performed outside the United States by employees recruited outside the United States (for purposes of this clause, "United States" includes the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island).

* * * * *

- (vi) 52.222-41, Service Contract Act of 1965, As Amended (May 1989) (41 U.S.C. 351, et seq.) (Applies to service contracts over \$2,500 that are subject to the Service Contract Act and will be performed in the United States, District of Columbia, Puerto Rico, the Northern Mariana Islands,

American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, or the outer continental shelf lands).

* * * * *

3. Amend section 52.222-26 by—

a. Revising the date of the clause;

b. Removing the paragraph designation and the introductory text of paragraph (b);

c. Redesignating paragraph (a) as paragraph (b) and revising the introductory text; and

d. Adding a new paragraph (a) to read as follows:

52.222-26 Equal Opportunity.

* * * * *

Equal Opportunity (Date)

(a) *Definition. United States*, as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has

been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with paragraphs (b)(1) through (11) of this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

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