



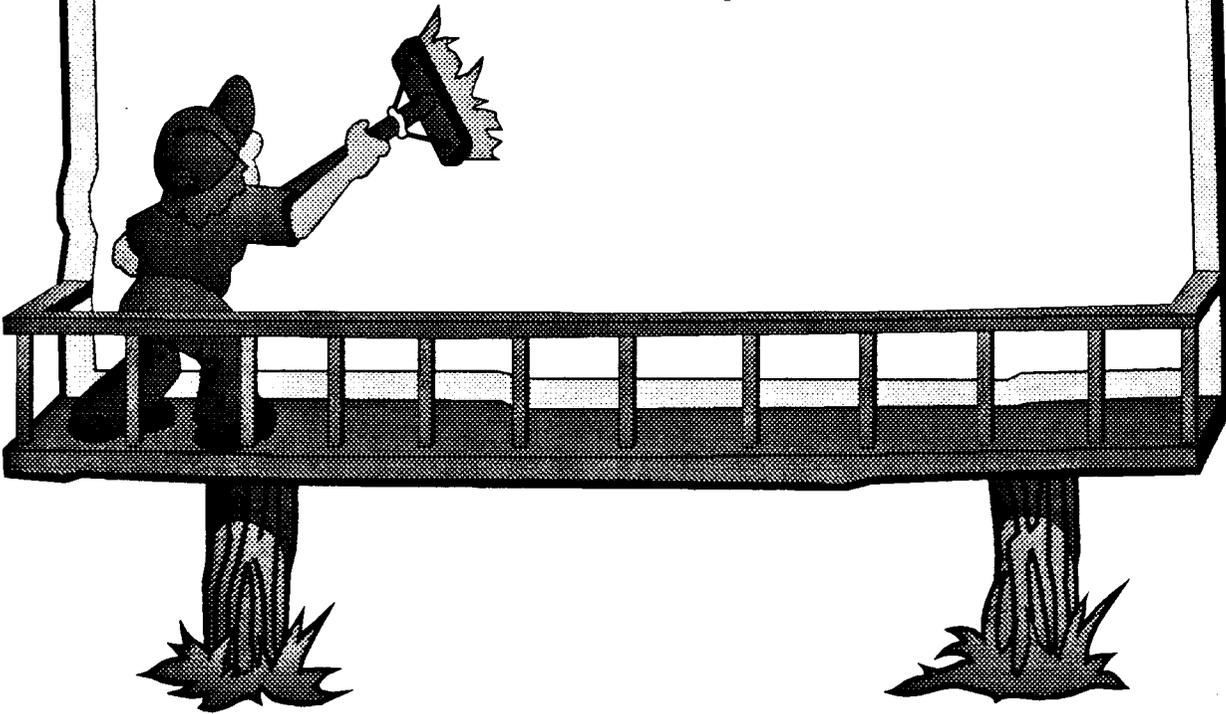
Headquarters Policy Flash

Flash #99-05

DATE: March 19, 1999
TO: Distribution
FROM: Office of Procurement and Assistance Policy (MA-51)
Office of Procurement and Assistance Management

SUBJECT: **Federal Acquisition Circular (FAC) 97-11,
DOE's Final Rule Addressing Fee Policies,
and, Acquisition Letter 99-02**

SUMMARY: This Flash provides a summary of the 9 items included in the recently issued FAC 97-11, a brief description of a Final Rule addressing the Department's Fee Policies, and a summary of AL 99-02, which addresses Executive Compensation.



FAC 97-11

FAC 97-11 was published in the Federal Register on March 4, 1999 (64 FR 10530) and included the following 9 items:

1. Review of FAR Representations (Effective May 3, 1999)

This final rule amends FAR parts 1, 4, 12, 14, 26, 27, 32, 41, and 52 to reduce certain contractual requirements for representations or other affirmations that place an unnecessary burden on offerors or contractors, and to make editorial changes to standardize the FAR terminology for contractor affirmations.

2. Very Small Business Concerns (Effective March 4, 1999)

This interim rule amends Federal Acquisition Regulation (FAR) Parts 5, 8, 12, 19, and 52 to implement the Small Business Administration's Very Small Business Pilot Program (13 CFR parts 121 and 125). The rule provides for the set-aside of certain acquisitions between \$2,500 and \$50,000 for very small business (VSB) concerns. The pilot VSB program is limited to buying activities and VSBs located in 10 geographic regions specified by the Small Business Administration and will run through September 30, 2000.

3. Variation in Quantity (Effective May 3, 1999)

This final rule revises the prescription in 11.703(a) for the clause at 52.211-16, Variation in Quantity, to require use of the clause only in solicitations and contracts where a variation in quantity is authorized. This change makes the clause prescription consistent with language in FAR 11.701(a).

4. Electronic Funds Transfer (Effective May 3, 1999)

This final rule amends FAR Parts 13, 16, 32, and 52 to address the use of electronic funds transfer (EFT) for Federal contract payments, and to facilitate implementation of Public Law 104-134 which mandates payment by EFT in most situations. The final rule mainly differs from the interim rule by removing references to the "phase one" time period, which ended on January 1, 1999; by implementing applicable provisions of the Department of the Treasury's final rule at 31 CFR part 208 which addresses the "phase two" time period beginning January 2, 1999; by addressing the situation where contractors furnish EFT information by registering in the Central Contractor Registration database; and by permitting agencies to collect EFT banking information at various time periods ranging from prior to award (as a condition of award) to after award (concurrent with the initial invoice).

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5. Waiver of Cost or Pricing Data for Subcontracts (Effective May 3, 1999)

Section 805 of Public Law 105-261 clarifies that waivers of requirements for submittal of prime contractor cost or pricing data do not automatically waive requirements for subcontractors to submit cost or pricing data. Although this is consistent with the current requirements of FAR 15.403-1(c)(4), the final rule clarifies the requirement to provide rationale supporting any waiver of subcontracts.

6. Executive Order 12933, Nondisplacement of Qualified Workers Under Certain Contracts (Effective May 3, 1999)

The interim rule published as Item III in FAC 97-01 is converted to a final rule with minor changes. The final rule makes changes to the definition of "building service contract" at FAR 22.1202, and paragraphs (c) and (j) of the clause at 52.222-50, Nondisplacement of Qualified Workers.

7. Recruitment Costs Principle (Effective May 3, 1999)

This final rule amends FAR 31.205-1, Public relations and advertising costs, and FAR 31.205-34, Recruitment costs, to remove excessive wording and details for streamlining purposes.

8. Compensation for Senior Executives (Effective March 4, 1999)

This interim rule revises FAR section 31.205-6(p) to implement Section 804 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261). Section 804 revises the definition of "senior executive" at 10 U.S.C. 2324(1)(5) and at 41 U.S.C. 256(m)(2) to be "the five most highly compensated employees in management positions at each home office and each segment of the contractor." This change applies to costs of compensation incurred after January 1, 1999, regardless of the date of contract award.

Also, see Acquisition Letter No. 99-02, dated March 11, 1999, which addresses this subject for DOE's M&O contracts. A copy of the AL is attached.

9. Technical Amendments (Effective March 4, 1999)

Amendments are being made at FAR 1.106, 25.402, 52.219-8, 53.228, and 53.301-1418 to update references and make editorial changes.

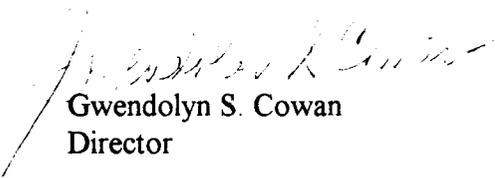
Final Rule On Fee Policies

In the Department's Final Rule, published in the Federal Register on March 11, 1999 (64 FR 12219), the DEAR was amended to revise the fee policies and related procedures for M&O contracts and other designated contracts. The final rule implements a fee policy that ensures that fees: are reasonable and commensurate with performance, business and cost risks; create and implement tailored incentives for performance-based management contracts; are structured to attract best business partners; and afford flexibility to provide incentives to contractors to perform better at less cost. *The final rule is effective for new awards and extensions after April 12, 1999.* Any questions regarding this final rule may be addressed to the Office of Contract and Resource Management (MA-53) at 202-586-1368.

Acquisition Letter 99-02

The attached AL, effective on March 21, 1999, provides a change to the definition of the term "senior executives;" rescinds AL 98-07, dated May 21, 1998; and, restates existing guidance on management controls and salary approval requirements for top contractor management officials.

Questions regarding this AL may be addressed to Terry Sheppard at terry.sheppard@hq.doe.gov or at 202-586-8193.



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