

**OFFICE OF MANAGEMENT AND BUDGET
OFFICE OF FEDERAL PROCUREMENT POLICY**

ANTI-INFLATION MEASURES

Invitation for Public Comment.

AGENCY: Office of Federal Procurement Policy (OFPP), Office of Management and Budget.

ACTION: Notice of proposed rules concerning anti-inflation measures affecting Federal contracts.

SUMMARY: The President has determined that the Government will benefit by contracting only with firms which cooperate in the fight against inflation. This means that whenever possible, the Government will refrain from awarding contracts to business units which do not cooperate in anti-inflation efforts by keeping price and wage increases within established standards. Proposed regulations and procedures are set forth.

DATE: Comments must be received on or before December 7, 1978.

ADDRESSES: Comments are to be submitted to the Office of Federal Procurement Policy, OMB, 726 Jackson Place, N.W., Room 9013, Washington, D. C. 20503.

FOR FURTHER INFORMATION CONTACT: Mr. LeRoy J. Haugh
Associate Administrator for Regulations
and Procedures
(202) 395-8166


Lester A. Fettig
Administrator

OFPP Policy Letter 78-

Subject: Wage and Price Standards for Federal Contractors

A program of voluntary wage and price standards was announced by President Carter on October 24, 1978. The President directed that Federal procurement of property and services be conducted so as to recognize anti-inflationary efforts and to benefit Federal contracting by doing business with those firms which limit wage and price increases. Accordingly, the following regulations are furnished for compliance by all executive agencies.

The following provisions will be added to General Policies in Section I, Part 3, of the Defense Acquisition Regulation (DAR) and the Federal Procurement Regulations (FPR):

" Wage and Price Standards for Federal Contractors:

(a) The Government will, to the maximum practicable extent, purchase goods and services only from those firms in compliance with the wage and price standards. Firms in noncompliance with the standards will be ineligible for Federal contracts or subcontracts except in accordance with paragraph h below.

(b) Solicitation Provision. All solicitations issued on or after January 1, 1979 expected to result in new contracts, orders under existing contracts, or supplemental agreements to existing contracts, in excess of \$5 million will contain the following provision:

The offeror hereby certifies that he is in compliance with the wage and price standards announced by the President on October 24, 1978.

(c) Contract Provision. All new contracts, orders under existing contracts, and supplemental agreements to existing contracts, in excess of \$5 million, resulting from solicitations issued on or after January 1, 1979, will contain the following provision:

The contractor hereby certifies that he is in compliance with the wage and price standards announced by the President on October 24, 1978. If it is later determined that the contractor was in fact not in compliance as of the date of this action, and knew or should have known that he was not in compliance, then this contract may be terminated in accordance with the provisions of the Termination for Default Clause.

(d) Compliance Determinations. For purposes of certification, companies will determine for themselves whether or not they are in compliance, unless they

are listed as noncompliant. The Council on Wage and Price Stability (CWPS) has established procedures to monitor overall compliance with the Federal Wage and Price Standards. CWPS will from time to time publish a list of companies which it determines to be in noncompliance. The Office of Federal Procurement Policy (OFPP) will disseminate to all procuring agencies a current list of noncompliant companies.

(e) Effect on Prior Awards. Contractors who are determined to be noncompliant, but are already performing under Federal contracts will be treated as follows:

1. If their contracts do not contain the certification provision, they will continue to perform those contracts, but will be ineligible for any further awards until they are removed from the noncompliance list.

2. If they were awarded contracts with a compliance certification, but are later found by CWPS not to be in compliance, such contracts may be terminated for default in accordance with the contract provision in paragraph (c) above.

3. If they were awarded contracts with a compliance certification, but it is determined that they become noncompliant after the award of such contracts, they will continue to perform those contracts, but will be ineligible for any further awards until they are removed from the noncompliance list.

(f) Application to Subcontractors. Certification requirements shall be included in all subcontracts over \$5 million. The same penalties provided with respect to prime contractors shall also apply to subcontractors who are determined by CWPS not to be in compliance. Any waiver or relaxation of these penalties with respect to subcontractors can only be made by the head of the procuring agency involved.

(g) Reduced Penalties.

- (1) Termination for default of contractors or subcontractors who were not in compliance at the time of certification may be waived by the agency head if he determines in writing that:

1. The agency's need for the product or service is essential to National security or public safety, and

2. There are no alternative sources of supply, or that seeking alternative sources is not feasible because of:

- a. urgency of requirements, or

- b. disruption of essential program functions

(2) Termination for default may also be waived by the agency head if he determines that such action would result in severe financial hardship, particularly for small and minority business firms. Such waivers should be limited to those contractors or subcontractors whose ability to survive, if terminated for default, is in question.

(3) In any case in which termination for default is determined to be feasible the agency shall consider negotiating a reduction in the contract price to ensure that the contractor does not profit from his failure to comply with the wage and price standards.

(h) Waiver of Certification.

(1) Waiver of the contract certification should be considered only in situations where the Government cannot forgo or postpone a procurement because of an urgent National security or public safety and where there are no alternative sources.

(2) Such waivers will be granted only by the head of the procuring agency involved, and only after thoroughly exhausting all reasonable alternatives.

(3) Waivers shall be in writing, and a copy of such waiver shall be forwarded within 10 days to the Administrator for Federal Procurement Policy.

(4) A contractor's refusal to accept the certification provision shall be considered in future determinations of responsibility until such time as the contractor accepts the certification provision or is otherwise determined to be in compliance.

(i) Contract Pricing Actions. While determinations of noncompliance are the concern of CWPS, all procuring agencies must be cognizant of the wage and price standards and make every effort to stay within these standards in pricing actions under negotiated contracts. Such pricing actions include cost and price analyses, forward pricing rate agreements, price negotiation objectives, and contract pricing structures."

Lester A. Fettig
Administrator