CLASS DEVIATION FINDINGS AND DETERMINATION
970.5244-1

Findings

1. FAR Case 2011-028, "Nondisplacement of Qualified Workers under Service Contracts" (effective January 18, 2013) added FAR subpart 22.12 and the associated clause at FAR 52.222-17, Nondisplacement of Qualified Workers, implementing Executive Order 13495.

2. Like the Service Contract Act of 1965 (41 U.S.C. 351-357) (SCA) requirements implemented by the FAR, FAR subpart 22.12 is not applicable to DOE M&O contracts as they are not considered "service contracts." However, both the SCA and the newly effective nondisplacement requirements are applicable to M&O subcontracts for services.

3. The DEAR currently addresses SCA requirements and clause flowdown as required by the FAR, but it does not address the FAR Nondisplacement requirements and clause. FAR 22.1207 requires contractors, including DOE M&Os, to include the clause at 52.222-17 in the contracts between the M&Os and their service subcontractors. Therefore, in order to be in compliance with the executive order and regulation, subcontracts for services issued on or after January 18, 2013, must include FAR 52.222-17.

Determination

It is hereby determined that a class deviation to revise paragraph (x) of DEAR 970.5244-1, *Subcontract Flowdown Requirements* to add the Nondisplacement of Qualified Workers clause prescribed in 48 CFR 22.1207 to the list as subparagraph (7) is appropriate pending formal amendment of the DEAR.

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970.5244-1 Contractor Purchasing System (DEVIATION)

(x) *Subcontract Flowdown Requirements.* In addition to terms and conditions that are included in the prime contract which direct application of such terms and conditions in appropriate subcontracts, the Contractor shall include the following clauses in subcontracts, as applicable:

(1) Davis-Bacon clauses prescribed in 48 CFR 22.407.

(2) Foreign Travel clause prescribed in 48 CFR 952.247-70.

(3) Counterintelligence clause prescribed in 48 CFR 970.0404-4(a).

(4) Service Contract Act clauses prescribed in 48 CFR 22.1006.

(5) State and local taxes clause prescribed in 48 CFR 970.2904-1.

(6) Cost or pricing data clauses prescribed in 48 CFR 970.1504-3-1(b).

(7) Nondisplacement of Qualified Workers clause prescribed in 48 CFR 22.1207.