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LEVER
UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

November 9, 1981

B-204499

Mr. William J. Maraist
Assistant Administrator for Regulations
Office of Federal Procurement Policy
Office of Management and Budget
Executive Office of the President

Dear Mr. Maraist:

By letter dated August 20, 1981, you requested our comments on a draft segment of the Federal Acquisition Regulation covering Part 16 - Types of Contracts.

We note that paragraph 16.301-4(b) provides that cost-plus-incentive-fee and cost-plus-award-fee contracts are subject to the fee limitations set forth in 10 U.S.C. § 2306(d) (1976) and 41 U.S.C. § 254(b) (1976). We also note that the paragraph provides that the maximum fee limitations for cost-plus-incentive-fee and cost-plus-award-fee contracts may be waived by agency heads or their designees.

Under 10 U.S.C. § 2306(d) and 41 U.S.C. § 254(b) fees under cost-plus-fixed-fee contracts are limited to a maximum of up to 15 percent of estimated costs depending on the work required. Currently, both the Defense Acquisition Regulation (DAR) and the Federal Procurement Regulations (FPR) provide that cost-plus-incentive-fee and cost-plus-award-fee contracts are subject to these maximum fee limitations. The regulations do not, however, permit the maximum fee limitations to be waived by agency heads or their designees. No explanation is given why the FAR permits agency heads or their designees to waive the maximum fee limitations. Without an explanation regarding the need for permitting the waiver, we cannot determine whether this is an appropriate addition to the FAR.

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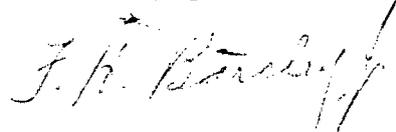
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In any event, the draft segment does not establish guidelines for determining when a waiver of the maximum fee limitation is appropriate. We believe the regulation should at least provide guidance as to when a waiver would be appropriate. Furthermore, it is unclear to what extent the waiver authority may be delegated. If this section is to be retained, authority to waive the maximum fee limitations should be situated at a high level within the procuring agencies and should not be delegated to the contracting officer level.

We have no further comments to offer.

Sincerely yours,



For Harry R. Van Cleve
Acting General Counsel