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Mr. LeVier  
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**GAO**

United States General Accounting Office  
Washington, DC 20548

Office of  
General Counsel

In Reply  
Refer to: B-199713

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~~is not made available to public~~

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:

Your office has requested our comments on a draft segment of the Federal Acquisition Regulation (FAR) covering subpart 42.9 - Waiver of Government Surveillance Requirements. The draft segment sets forth procedures under which contractor profit centers operating predominantly in a competitive environment may obtain a two-year waiver of certain Government surveillance requirements.

Under the terms of the proposed regulation a contractor must satisfy two criteria in order to obtain a waiver. First, each corporate profit center must, in its most recently completed fiscal year, have incurred more than 75 percent of its total costs under competitive Government or commercial contracts. Second, each profit center must not have incurred costs of more than \$10 million under non-competitive Government contracts.

Once approved, a waiver remains in effect for two years unless either terminated because the \$10 million limit is exceeded, or canceled in total or in part based on a good cause determination by the head of the contracting agency. However, the draft regulation does not specifically require termination of the waiver for the contractor's failure to maintain a 75 percent price-competitive environment. Thus, while the 75 percent criterion must be met in the year prior to obtaining a waiver, the contractor is not required to maintain its competitive status during the subsequent two-year term of the waiver.



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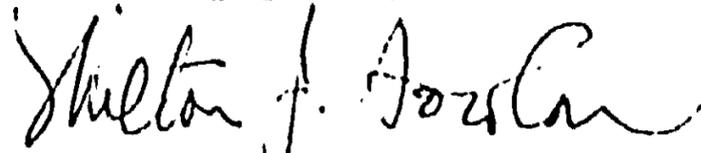
We believe this arrangement provides little assurance that the waivers will be granted only to contractors whose operations will actually be conducted "predominantly in a competitive environment," and recommend that the draft be revised to provide for automatic termination of a waiver where a profit center does not meet the 75 percent requirement. We recognize that if a contractor wants to maintain an uninterrupted series of waivers, it will have to consistently achieve a 75 percent competitive status during the last year of each successive two-year waiver period, but even then, the contractor would be required under the proposed draft arrangement to achieve competitive status only 50 percent of the time.

We are also concerned about the blanket authority given to agency heads or their designees under section 42.903(a)(4) to independently waive, so long as the two basic waiver criteria are met, reviews or surveillance actions prescribed by agency acquisition regulations. We oppose this broad, nonspecific type of waiver authority and recommend that it either be deleted or revised to indicate those specific surveillance requirements which are considered to be appropriate for waiver.

Furthermore, in the interest of enhancing the probability of the long-term effectiveness of the waiver program, we feel it is advisable to proceed carefully in implementing subpart 42.9. Implementation plans should provide for a test period of perhaps a year or two during which actual results can be observed and measured against the objectives set forth at section 42.902. At the end of the test period, informed judgments can be made with respect to the effectiveness of the waiver procedures in light of these objectives. In this regard, we believe that possible related undesirable side effects of reduced surveillance such as increases in the incidence of poor schedule performance, poor quality, claims, defaults, and so forth should be considered.

We appreciate the opportunity to provide these comments.

Sincerely yours,



Milton J. Socblar  
General Counsel