On February 11, 1997, the Section submitted comments to the Defense Acquisition Regulations Council regarding its interim rule on individual compensation. The interim rule implements Section 8071 of the FY 1997 National Defense Appropriations Act, Pub. L. 104-208, and places a $250,000 ceiling on allowable individual compensation under "new DoD contracts."

The Section expressed its concern that the interim rule does not define the term "new DoD contracts." The Section suggested that the interim rule be amended to read "DoD contracts awarded after September 30, 1996" in subsection 231.206-6(a)(2)(ii).

Dear Sir or Madam:

On behalf of the Section of Public Contract Law of the American Bar Association ("the Section"), I am submitting comments on the above-referenced matter. The Public Contract Law Section consists of attorneys and associated professionals in private practice, industry and Government service. The Section's governing Council and substantive committees contain a balance of members representing these three segments to ensure that all points of view are considered. In this manner, the Section seeks to improve the process of public contracting for needed supplies, services and public works.

The Section is authorized to submit comments on acquisition regulations under special authority granted by the Association's Board of Governors. The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, therefore, should not be construed as representing the policy of the American Bar Association.
The interim rule implements Section 8071 of the FY 1997 National Defense Appropriations Act, Pub. L. 104-208. It places a $250,000 ceiling on allowable individual compensation under "new" DoD contracts funded with FY 1997 appropriations. Nevertheless, the interim rule does not define the term "new DoD contracts," and the introductory language inaccurately suggests that the statutory restriction is applicable to all "DoD contracts when payments are from funds appropriated in fiscal year 1997." The Section of Public Contract Law interprets "new DoD contracts" to mean those DoD contracts awarded after September 30, 1996, and to exclude contracts awarded in prior fiscal years and funded incrementally with FY 1997 funds, e.g., research and development contracts or contract option years.

To avoid confusion and maintain consistency with DFARS 231.205-6(a)(2)(i), the words "DoD contracts awarded after September 30, 1996, and" should be substituted for the term "new DoD contracts" in subsection 231.205-6(a)(2)(ii).

The Section appreciates the opportunity to provide these comments and is available to provide additional information or assistance as you may require.

Sincerely,

John T. Kuelbs
Chair, Section of Public Contract Law

cc: Marcia G. Madsen
    David A. Churchill
    Rand L. Allen
    Lynda Troutman O'Sullivan
    Marshall J. Doke, Jr.
    Frank H. Menaker, Jr.
    John B. Miller
    Alan C. Brown
    Council Members
    Chair and Vice Chair(s) of the Accounting, Cost and Pricing Committee
    Alexander J. Brittin

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