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APPENDIX TO PART 9—NOTICE TO BUILDING SERVICE CONTRACT EMPLOYEES

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Subpart A—How is Executive Order 12933 Applied?

COVERED CONTRACTS GENERALLY

§ 9.1 What is the purpose of Executive Order 12933?

The Government's procurement interests in both economy and efficiency are furthered when a successor contractor carries over an existing work force. A carryover work force minimizes disruption in the delivery of services during a period of transition and provides the Government the benefit of an experienced and trained work force. Executive Order 12933 therefore generally requires that successor contractors performing building service contracts for public buildings offer a right of first refusal to employment under the contract to those employees under the predecessor contract whose employment will be terminated as a result of the award of the successor contract.

§ 9.2 Which contracts are covered by Executive Order 12933?

(a) The Executive Order and these rules apply to "building service contracts" for "public buildings" where the contract is entered into by the United States in an amount equal to or greater than the simplified acquisition threshold of \$100,000, as set forth in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)).

(b)(1) Except as provided in paragraph (b)(2) of this section, a contract which includes a requirement for recurring building services is subject to the Executive Order and these regulations even if the contract also contains other non-covered services or non-service requirements, such as construction or supplies, and even if the contract is not subject to the McNamara-O'Hara Service Contract Act, 41 U.S.C. 351 *et seq.* However, the requirements of the Executive Order apply only to the building services portion of the contract, and only to those buildings for which services were provided under a predecessor contract.

(2) The requirements of the Executive Order do not apply to building services which are only incidental to a contract for another purpose, such as incidental

maintenance under a contract to operate a day-care center.

(i) Building service requirements will not be considered incidental, and therefore will be subject to the Executive Order, where

(A) The contract contains specific requirements for a substantial amount of building services or it is ascertainable that a substantial amount of building services will be necessary to the performance of the contract (the word "substantial" relates to the type and quantity of building services to be performed and not merely to the total value of such work, whether in absolute dollars or cost percentages as compared to the total value of the contract); and

(B) The building services work is physically or functionally separate from, and as a practical matter is capable of being performed on a segregated basis from the other work called for by the contract.

(ii) Building services performed on a building being leased to the Government pursuant to a lease-purchase contract are considered incidental and not covered unless the services are being performed under a contract directly with the Government.

§ 9.3 What is a "building service contract?"

(a) A *building service contract* is a contract for *recurring services* related to the maintenance of a public building. *Recurring services* are services which are required to be performed regularly or periodically throughout the course of a contract, and throughout the course of the succeeding or follow-on contract(s) at one or more of the same buildings. Examples of building services contracts include, but are not limited to, contracts for the recurring provision of custodial or janitorial services; window washing; laundry; food services; guard or other protective services; landscaping and groundskeeping services; and inspection, maintenance, and repair of fixed equipment such as elevators, air conditioning, and heating systems.

(b)(1) Contracts which provide maintenance services only on a non-recurring basis are not "building service contracts" within the meaning of the

Executive Order and are not subject to its provisions. For example, a contract to perform servicing of fixed equipment once a year, or to mulch a garden on a one-time or annual basis, is a non-recurring maintenance contract that is not covered by the Executive Order.

(2) Contracts for the provision of services which may be performed in a public building but are not "building service contracts" as defined in paragraph (a) of this section are not covered by the Executive Order and these rules. For example, a contract for day care services in a Federal office building would not be subject to the Executive Order.

§ 9.4 What is a "public building?"

(a) A *public building* is any building owned by the United States which is generally suitable for office or storage space or both for the use of one or more Federal agencies or mixed ownership corporations, together with its grounds, approaches, and appurtenances. Public buildings shall include:

- (1) Federal office buildings;
- (2) Customhouses;
- (3) Courthouses;
- (4) Border inspection facilities;
- (5) Warehouses;
- (6) Records centers;
- (7) Appraiser stores;
- (8) Relocation facilities; and
- (9) Similar Federal facilities.

(b)(1) Public buildings do not include any building on the public domain. The public domain includes only: those public lands owned by the United States and administered by the Department of Interior, Bureau of Land Management; and the National Forest System administered by the Department of Agriculture, U.S. Forest Service. The public domain does not include Federal buildings, such as office buildings in cities or towns, which are occupied by the Bureau of Land Management or U.S. Forest Service where such buildings are not on lands administered by those agencies.

(2) Also not covered are any buildings:

- (i) On properties of the United States in foreign countries;