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Part II

**Department of
Defense**

**General Services
Administration**

**National Aeronautics
and Space
Administration**

**48 CFR Chapter 1, et al.
Federal Acquisition Regulations (FAR);
Final Rules**

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Chapter 1

**Federal Acquisition Circular 2001-01;
Introduction**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2001-01. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at <http://www.arnet.gov/far>.

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2001-01 and specific FAR case number(s). Interested parties may also visit our Web site at <http://www.arnet.gov/far>.

Item	Subject	FAR case	Analyst
I	Application of the Davis-Bacon Act to Construction Contracts With Options to Extend the Term of the Contract.	1997-613	Nelson.
II	Acquisition of Commercial Items	2000-303	Moss.
III	Prompt Payment Under Cost-Reimbursement Contracts for Services (Interim)	2000-308	Olson.
IV	Veterans' Employment	1998-614	Nelson.
V	Veterans Entrepreneurship and Small Business Development Act of 1999 (Interim)	2000-302	Cundiff.
VI	Very Small Business Pilot Program	2001-001	Cundiff.

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Federal Acquisition Circular 2001-01 amends the FAR as specified below:

Item I—Application of the Davis-Bacon Act to Construction Contracts With Options To Extend the Term of the Contract

[FAR Case 1997-613]

This final rule implements the Department of Labor's requirement to incorporate a current Davis-Bacon Act wage determination at the exercise of each option to extend the term of a contract for construction.

Item II—Acquisition of Commercial Items

[FAR Case 2000-303]

This final rule amends the FAR to clarify the definition of "commercial item." The revised language will help contracting officers make commerciality determinations. The rule also alerts contracting officers to be aware of customary commercial terms and conditions that may affect the contract price when pricing commercial items. The rule also clarifies that Subpart 46.8, Contractor Liability for Loss of or Damage to Property of the Government, does not apply to acquisitions of commercial items. Contracting officers should use standard commercial practices instead of the policies in

Subpart 46.8. Finally, the rule amends the clause at 52.212-4, Limitation of liability, to conform it to standard commercial practice.

Item III—Prompt Payment Under Cost-Reimbursement Contracts for Services

[FAR Case 2000-308]

This interim rule implements changes in the Office of Management and Budget's (OMB) Prompt Payment Act regulations at 5 CFR 1315 that implemented Section 1010 of the National Defense Authorization Act for Fiscal Year 2001. Those changes were published by OMB as an interim final rule and became effective on December 15, 2000 (65 FR 78403) and were applicable to all covered contracts awarded on or after December 15, 2000. Section 1010 of the National Defense Authorization Act for Fiscal Year 2001 requires agencies to pay an interest penalty, in accordance with regulations issued, whenever an interim payment under a cost-reimbursement contract for services is paid more than 30 days after the agency receives a proper invoice from a contractor. The Act does not permit payment of late payment penalty interest for any period prior to December 15, 2000.

This FAR amendment eliminates the prior policy and contract clause prohibitions on payment of late payment penalty interest for late interim finance payments under cost-reimbursement contracts for services. It adds new policy and contract clause coverage to provide for those penalty payments.

Item IV—Veterans' Employment

[FAR Case 1998-614]

This final rule amends the FAR to implement statutory and regulatory changes relating to veterans' employment opportunities and reporting. Most significantly for contracting officers, the rule amends the FAR to prohibit contracting officers from obligating or expending appropriated funds to enter into a contract with a contractor that has not met its veterans' employment reporting requirements (VETS-100 Report). This prohibition does not apply to contracts for commercial items or contracts valued at or below the simplified acquisition threshold. The rule adds a new solicitation provision that requires each offeror to represent, by submission of its offer, that it is in compliance with the VETS-100 reporting requirements. The contracting officer may verify compliance by checking with the Department of Labor.

Item V—Veterans Entrepreneurship and Small Business Development Act of 1999

[FAR Case 2000-302]

This interim rule amends the FAR to implement section 803 of the Small Business Reauthorization Act of 2000, part of the Consolidated Appropriations Act, 2001 (Pub. L. 106-554) that was enacted on December 21, 2000.

This rule requires a contractor that is required to submit a subcontracting plan to report as a separate subcontracting plan goal requirement, subcontracting

activity pertaining to service-disabled veteran-owned small business concerns. The rule also changes the Standard Form (SF) 294, "Subcontracting Report for Individual Contracts," and the SF 295, "Summary Subcontract Report," to capture this category of information for the contracting officer.

Item VI—Very Small Business Pilot Program

[FAR Case 2001-001]

This final rule amends FAR Subpart 19.9 to implement Section 503(c) of the Small Business Reauthorization Act of 2000 (part of Public Law 106-554). Section 503(c) extends, for three additional years, the Very Small Business Pilot Program until September 30, 2003. The purpose of the program is to improve access to Government contract opportunities for concerns that are substantially below SBA's size standards by reserving certain acquisitions for competition among such concerns.

Dated: October 12, 2001.

Al Matera,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001-01 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2001-01 is effective December 21, 2001, except for Items III and V, which are effective October 22, 2001.

Dated: August 31, 2001.

Carolyn M. Balven,

Acting Director, Defense Procurement.

Dated: August 28, 2001.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: August 27, 2001.

Anne Guenther,

Acting Associate Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 01-26295 Filed 10-19-01; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 22, and 52

[FAC 2001-01; FAR Case 1997-613; Item I]

RIN 9000-AI47

Federal Acquisition Regulation; Application of the Davis-Bacon Act to Construction Contracts With Options To Extend the Term of the Contract

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement the requirement of Department of Labor (DoL) All Agency Memorandum No. 157 (AAM 157), as clarified in the **Federal Register** on November 20, 1998, at 63 FR 64542. The rule requires incorporation of the current Davis-Bacon Act wage determination at the exercise of each option period in construction contracts.

DATES: *Effective Date:* December 21, 2001.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 2001-01, FAR case 1997-613.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule provides for incorporation of the current Davis-Bacon Act wage determination at the exercise of each option to extend the term of a contract for construction, or a contract that includes substantial and segregable construction work. Unlike the Service Contract Act, the Davis-Bacon Act and its implementing regulations do not state that new or revised wage determinations must be incorporated at the exercise of each contract option period.

On December 9, 1992, DoL issued AAM 157, which required incorporation

of a current Davis-Bacon Act wage determination at the exercise of each option period in construction contracts containing options to extend the term of the contract. Following several years of controversy regarding the authority of the DoL to issue AAM 157, DoL Administrative Review Board confirmed on July 17, 1997, the authority of the DoL Administrator's ruling that a current Davis-Bacon Act wage determination must be incorporated at the exercise of an option to extend the term of the contract. The Review Board also directed DoL to clarify the language of AAM 157 and to republish the memorandum in the **Federal Register** at 63 FR 64542, November 20, 1998.

On December 3, 1999, DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 64 FR 67986. Eight respondents submitted comments on the proposed rule. The comments were considered in the development of the final rule.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule. The Councils prepared a Final Regulatory Flexibility Analysis (FRFA). The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

The FRFA is summarized as follows:

The final rule amends FAR Parts 1, 22, and 52 to implement the requirement of Department of Labor (DoL) All Agency Memorandum No. 157 (AAM 157), as clarified in the **Federal Register** on November 20, 1998. The rule requires incorporation of the current Davis-Bacon Act wage determination at the exercise of each option period in construction contracts. The rule provides four alternative methods of adjusting the contract price when exercising the option to extend the term of the contract.

1. No adjustment in contract price (because the option prices may include an amount to cover estimated increases);

2. Price adjustment based on a separately specified pricing method, such as application of a coefficient to an annually published unit pricing book incorporated at option exercise;

3. A percentage price adjustment, based on a published economic indicator; and

4. A price adjustment based on a specific calculation to reflect the annual increase or decrease in wages and fringe benefits as a result of incorporation of the new wage determination.

The last method, applying calculations similar to the calculations of price

adjustments in contracts subject to the Service Contract Act, removes the risk to the contractor, but imposes some reporting requirements, to provide the required information upon which to base the price adjustment. However, the contractor is already required to keep payroll records upon which the calculations are based, so the burden is not significant. Data for fiscal year 1998 indicates the Government awarded 229 indefinite-delivery construction contracts, of which 121 were awarded to small businesses. Nearly all construction contracts with delivery contracts and most indefinite-delivery contracts have options to extend the term. Although there is no database to determine the number of contracts for other than construction that have substantial and segregable construction requirements, we estimate 225 prime contractors and 675 subcontractors, of which approximately 50 percent are small businesses.

Interested parties may obtain a copy of the FRFA from the FAR Secretariat.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 64 FR 67986, December 3, 1999. Eight respondents submitted comments on the proposed rule. No comments were received on the IRFA.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies. The FAR Secretariat submitted a request for approval of a revised information collection requirement concerning application of the Davis-Bacon Act to construction contracts with options to extend the term of the contract to the Office of Management and Budget (OMB). The burden associated with this rule has been approved under OMB Control No. 9000-0154.

List of Subjects in 48 CFR Parts 1, 22, and 52

Government procurement.

Dated: October 12, 2001.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 22, and 52 as set forth below:

1. The authority citation for 48 CFR parts 1, 22, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Amend section 1.106 in the table following the introductory paragraph by adding an entry to read as follows:

1.106 OMB approval under the Paperwork Reduction Act.

*	*	*	*	*
FAR segment			OMB Control No.	
*	*	*	*	*
52.222-32			9000-0154	
*	*	*	*	*

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.403-4 [Amended]

3. Amend section 22.403-4 in paragraph (b)(5) by removing the words "Wage Appeals" and by adding "Administrative Review" in its place.

4. Amend section 22.404-1(a)(1) by revising the third sentence; and paragraph (b) by revising the fourth sentence to read as follows:

22.404-1 Types of wage determinations.

(a) *General wage determinations.* (1) * * * Once incorporated in a contract, a general wage determination normally remains effective for the life of the contract, unless the contracting officer exercises an option to extend the term of the contract (see 22.404-12). * * *

(b) * * * Once incorporated in a contract, a project wage determination normally remains effective for the life of the contract, unless the contracting officer exercises an option to extend the term of the contract (see 22.404-12).

5. Amend section 22.404-2 by revising paragraph (a) to read as follows:

22.404-2 General requirements.

(a) The contracting officer must incorporate only the appropriate wage determinations in solicitations and contracts and must designate the work to which each determination or part thereof applies. The contracting officer must not include project wage determinations in contracts or options other than those for which they are issued. When exercising an option to extend the term of a contract, the contracting officer must select the most current wage determination(s) from the same schedule(s) as the wage determination(s) incorporated into the contract.

* * * * *

6. In section 22.404-3, revise the last sentence of paragraph (c); remove paragraph (d); and redesignate paragraph (e) as (d) to read as follows:

22.404-3 Procedures for requesting wage determinations.

* * * * *

(c) * * * Accordingly, agencies should submit requests to the Department of Labor at least 45 days (60

days if possible) before issuing the solicitation or exercising an option to extend the term of a contract.

* * * * *

7. In section 22.404-6, revise paragraph (a); and add paragraph (d) to read as follows:

22.404-6 Modifications of wage determinations.

(a) *General.* (1) The Department of Labor may modify a wage determination to make it current by specifying only the items being changed or by reissuing the entire determination with changes incorporated.

(2) All project wage determination modifications expire on the same day as the original determination. The need to include a modification of a project wage determination in a solicitation is determined by the time of receipt of the modification by the contracting agency. Therefore, the contracting agency must annotate the modification of the project wage determination with the date and time immediately upon receipt.

(3) The need for inclusion of the modification of a general wage determination in a solicitation is determined by the publication date of the notice in the **Federal Register**, or by the time of receipt of the modification (annotated with the date and time immediately upon receipt) by the contracting agency, whichever occurs first. (Note the distinction between receipt by the agency (modification is effective) and receipt by the contracting officer, which may occur later.)

* * * * *

(d) The following applies when modifying a contract to exercise an option to extend the term of a contract:

(1) A modified wage determination is effective if—

(i) The contracting agency receives a written action from the Department of Labor prior to exercise of the option, or within 45 days after submission of a wage determination request (22.404-3(c)), whichever is later; or

(ii) The Department of Labor publishes notice of modifications to general wage determinations in the **Federal Register** before exercise of the option.

(2) If the contracting officer receives an effective modified wage determination either before or after execution of the contract modification to exercise the option, the contracting officer must modify the contract to incorporate the modified wage determination, and any changed wage rates, effective as of the date that the option to extend was effective.

8. Revise section 22.404-7 to read as follows:

22.404-7 Correction of wage determinations containing clerical errors.

Upon the Department of Labor's own initiative or at the request of the contracting agency, the Administrator, Wage and Hour Division, may correct any wage determination found to contain clerical errors. Such corrections will be effective immediately, and will apply to any solicitation or active contract. Before contract award, the contracting officer must follow the procedures in 22.404-5(b)(1) or (2)(i) or (ii) in sealed bidding, and the procedures in 22.404-5(c)(3) or (4) in negotiations. After contract award, the contracting officer must follow the procedures at 22.404-6(b)(5), except that for contract modifications to exercise an option to extend the term of the contract, the contracting officer must follow the procedures at 22.404-6(d)(2).

9. In section 22.404-10, revise the first sentence to read as follows:

22.404-10 Posting wage determinations and notice.

The contractor must keep a copy of the applicable wage determination (and any approved additional classifications) posted at the site of the work in a prominent place where the workers can easily see it. * * *

22.404-11 [Amended]

10. In section 22.404-11, amend the first sentence by removing "a Wage Appeals" and adding "an Administrative Review" in its place.

11. Add section 22.404-12 to read as follows:

22.404-12 Labor standards for contracts containing construction requirements and option provisions that extend the term of the contract.

(a) Each time the contracting officer exercises an option to extend the term of a contract for construction, or a contract that includes substantial and segregable construction work, the contracting officer must modify the contract to incorporate the most current wage determination.

(b) If a contract with an option to extend the term of the contract has indefinite-delivery or indefinite-quantity construction requirements, the contracting officer must incorporate the wage determination incorporated into the contract at the exercise of the option into task orders issued during that option period. The wage determination will be effective for the complete period of performance of those task orders without further revision.

(c) The contracting officer must include in fixed-price contracts a clause that specifies one of the following

methods, suitable to the interest of the Government, to provide an allowance for any increases or decreases in labor costs that result from the inclusion of the current wage determination at the exercise of an option to extend the term of the contract:

(1) The contracting officer may provide the offerors the opportunity to bid or propose separate prices for each option period. The contracting officer must not further adjust the contract price as a result of the incorporation of a new or revised wage determination at the exercise of each option to extend the term of the contract. Generally, this method is used in construction-only contracts (with options to extend the term) that are not expected to exceed a total of 3 years.

(2) The contracting officer may include in the contract a separately specified pricing method that permits an adjustment to the contract price or contract labor unit price at the exercise of each option to extend the term of the contract. At the time of option exercise, the contracting officer must incorporate a new wage determination into the contract, and must apply the specific pricing method to calculate the contract price adjustment. An example of a contract pricing method that the contracting officer might separately specify is incorporation in the solicitation and resulting contract of the pricing data from an annually published unit pricing book (e.g., the R.S. Means Cost Estimating System, or the U.S. Army Computer-Aided Cost Estimating System), which is multiplied in the contract by a factor proposed by the contractor (e.g., .95 or 1.1). At option exercise, the contracting officer incorporates the pricing data from the latest annual edition of the unit pricing book, multiplied by the factor agreed to in the basic contract. The contracting officer must not further adjust the contract price as a result of the incorporation of the new or revised wage determination.

(3) The contracting officer may provide for a contract price adjustment based solely on a percentage rate determined by the contracting officer using a published economic indicator incorporated into the solicitation and resulting contract. At the exercise of each option to extend the term of the contract, the contracting officer will apply the percentage rate, based on the economic indicator, to the portion of the contract price or contract unit price designated in the contract clause as labor costs subject to the provisions of the Davis-Bacon Act. The contracting officer must insert 50 percent as the estimated portion of the contract price

that is labor unless the contracting officer determines, prior to issuance of the solicitation, that a different percentage is more appropriate for a particular contract or requirement. This percentage adjustment to the designated labor costs must be the only adjustment made to cover increases in wages and/or benefits resulting from the incorporation of a new or revised wage determination at the exercise of the option.

(4) The contracting officer may provide a computation method to adjust the contract price to reflect the contractor's actual increase or decrease in wages and fringe benefits (combined) to the extent that the increase is made to comply with, or the decrease is voluntarily made by the contractor as a result of incorporation of, a new or revised wage determination at the exercise of the option to extend the term of the contract. Generally, this method is appropriate for use only if contract requirements are predominately services subject to the Service Contract Act and the construction requirements are substantial and segregable. The methods used to adjust the contract price for the service requirements and the construction requirements would be similar.

12. In section 22.406-3, add paragraph (e) to read as follows:

22.406-3 Additional classifications.

* * * * *

(e) In each option to extend the term of the contract, if any laborer or mechanic is to be employed during the option in a classification that is not listed (or no longer listed) on the wage determination incorporated in that option, the contracting officer must require that the contractor submit a request for conformance using the procedures noted in paragraphs (a) through (d) of this section.

22.406-10 [Amended]

13. Amend section 22.406-10 in the last sentence of paragraph (e) by removing the words "Wage Appeals" and by adding "Administrative Review" in its place.

14. In section 22.407, add paragraphs (e), (f), and (g) to read as follows:

22.407 Contract clauses.

* * * * *

(e) Insert the clause at 52.222-30, Davis-Bacon Act—Price Adjustment (None or Separately Specified Pricing Method), in solicitations and contracts if the contract is expected to be—

(1) A fixed-price contract subject to the Davis-Bacon Act that will contain option provisions by which the

contracting officer may extend the term of the contract, and the contracting officer determines the most appropriate contract price adjustment method is the method at 22.404-12(c)(1) or (2); or

(2) A cost-reimbursable type contract subject to the Davis-Bacon Act that will contain option provisions by which the contracting officer may extend the term of the contract.

(f) Insert the clause at 52.222-31, Davis-Bacon Act—Price Adjustment (Percentage Method), in solicitations and contracts if the contract is expected to be a fixed-price contract subject to the Davis-Bacon Act that will contain option provisions by which the contracting officer may extend the term of the contract, and the contracting officer determines the most appropriate contract price adjustment method is the method at 22.404-12(c)(3).

(g) Insert the clause at 52.222-32, Davis-Bacon Act—Price Adjustment (Actual Method), in solicitations and contracts if the contract is expected to be a fixed-price contract subject to the Davis-Bacon Act that will contain option provisions by which the contracting officer may extend the term of the contract, and the contracting officer determines the most appropriate method to establish contract price is the method at 22.404-12(c)(4).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

15. Add sections 52.222-30, 52.222-31, and 52.222-32 to read as follows:

52.222-30 Davis-Bacon Act—Price Adjustment (None or Separately Specified Method).

As prescribed in 22.407(e), insert the following clause:

Davis-Bacon Act—Price Adjustment (None or Separately Specified Method) (Dec 2001)

(a) The wage determination issued under the Davis-Bacon Act by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, that is effective for an option to extend the term of the contract, will apply to that option period.

(b) The Contracting Officer will make no adjustment in contract price, other than provided for elsewhere in this contract, to cover any increases or decreases in wages and benefits as a result of—

(1) Incorporation of the Department of Labor's wage determination applicable at the exercise of the option to extend the term of the contract;

(2) Incorporation of a wage determination otherwise applied to the contract by operation of law; or

(3) An increase in wages and benefits resulting from any other requirement applicable to workers subject to the Davis-Bacon Act.

(End of clause)

52.222-31 Davis-Bacon Act—Price Adjustment (Percentage Method).

As prescribed in 22.407(f), insert the following clause:

Davis-Bacon Act—Price Adjustment (Percentage Method) (Dec 2001)

(a) The wage determination issued under the Davis-Bacon Act by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, that is effective for an option to extend the term of the contract, will apply to that option period.

(b) The Contracting Officer will adjust the portion of the contract price or contract unit price(s) containing the labor costs subject to the Davis-Bacon Act to provide for an increase in wages and fringe benefits at the exercise of each option to extend the term of the contract in accordance with the following procedures:

(1) The Contracting Officer has determined that the portion of the contract price or contract unit price(s) containing labor costs subject to the Davis-Bacon Act is

 [Contracting Officer insert percentage rate] percent.

(2) The Contracting Officer will increase the portion of the contract price or contract unit price(s) containing the labor costs subject to the Davis-Bacon Act by the percentage rate published in [Contracting Officer insert publication].

(c) The Contracting Officer will make the price adjustment at the exercise of each option to extend the term of the contract. This adjustment is the only adjustment that the Contracting Officer will make to cover any increases in wages and benefits as a result of—

(1) Incorporation of the Department of Labor's wage determination applicable at the exercise of the option to extend the term of the contract;

(2) Incorporation of a wage determination otherwise applied to the contract by operation of law; or

(3) An increase in wages and benefits resulting from any other requirement applicable to workers subject to the Davis-Bacon Act.

(End of clause)

52.222-32 Davis-Bacon Act—Price Adjustment (Actual Method).

As prescribed in 22.407(g), insert the following clause:

Davis-Bacon Act—Price Adjustment (Actual Method) (Dec 2001)

(a) The wage determination issued under the Davis-Bacon Act by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, that is effective for an option to extend the term of the contract, will apply to that option period.

(b)(1) The Contractor states that if the prices in this contract contain an allowance for wage or benefit increases, such allowance will not be included in any request for

contract price adjustment submitted under this clause.

(2) The Contractor shall provide with each request for contract price adjustment under this clause a statement that the prices in the contract do not include any allowance for any increased cost for which adjustment is being requested.

(c) The Contracting Officer will adjust the contract price or contract unit price labor rates to reflect the Contractor's actual increase or decrease in wages and fringe benefits to the extent that the increase is made to comply with, or the decrease is voluntarily made by the Contractor as a result of—

(1) Incorporation of the Department of Labor's Davis-Bacon Act wage determination applicable at the exercise of an option to extend the term of the contract; or

(2) Incorporation of a Davis-Bacon Act wage determination otherwise applied to the contract by operation of law.

(d) Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (c) of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance, but will not otherwise include any amount for general and administrative costs, overhead, or profit.

(e) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after receiving a revised wage determination unless this notification period is extended in writing by the Contracting Officer. The Contractor shall notify the Contracting Officer promptly of any decrease under this clause, but nothing in this clause precludes the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data, including payroll records that the Contracting Officer may reasonably require. Upon agreement of the parties, the Contracting Officer will modify the contract price or contract unit price in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(f) Contract price adjustment computations shall be computed as follows:

(1) *Computation for contract unit price per single craft hour for schedule of indefinite-quantity work.* For each labor classification, the difference between the actual wage and benefit rates (combined) paid and the wage and benefit rates (combined) required by the new wage determination shall be added to the original contract unit price if the difference results in a combined increase. If the difference computed results in a combined decrease, the contract unit price shall be decreased by that amount if the Contractor provides notification as provided in paragraph (e) of this clause.

(2) *Computation for contract unit price containing multiple craft hours for schedule of indefinite-quantity work.* For each labor classification, the difference between the actual wage and benefit rates (combined) paid and the wage and benefit rates (combined) required by the new wage

determination shall be multiplied by the actual number of hours expended for each craft involved in accomplishing the unit-priced work item. The product of this computation will then be divided by the actual number of units ordered in the preceding contract period. The total of these

computations for each craft will be added to the current contract unit price to obtain the new contract unit price. The extended amount for the contract line item will be obtained by multiplying the new unit price by the estimated quantity. If actual hours are not available from the preceding contract

period for computation of the adjustment for a specific contract unit of work, the Contractor, in agreement with the Contracting Officer, shall estimate the total hours per craft per contract unit of work.

EXAMPLE: ASPHALT PAVING—CURRENT PRICE \$3.38 PER SQUARE YARD

DBA craft	New WD	Hourly rate paid	Diff.	Actual hrs.	Actual units (sq. yard)	Increase/sq. yard
Equip. Opr.	\$18.50	—	\$18.00 =	\$.50 × 600 hrs./	3,000 sq. yrd.	= \$.10
Truck Driver	\$19.00	—	\$18.25 =	\$.75 × 525 hrs./	3,000 sq. yrd.	= \$.13
Laborer	\$11.50	—	\$11.25 =	\$.25 × 750 hrs./	3,000 sq. yrd.	= \$.06
Total increase per square yard						* \$.29
* Note: Adjustment for labor rate increases or decreases may be accompanied by social security and unemployment taxes and workers' compensation insurance.						
Current unit price (per square yard)	\$3.38					
Add DBA price adj.	+ .29					
New unit price (per square yard)	\$3.67					

(End of clause)

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 12, 46, and 52

[FAC 2001-01; FAR Case 2000-303; Item II]

RIN 9000-A188

Federal Acquisition Regulation; Acquisition of Commercial Items

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement two statutory changes to the definition and application of "Commercial Items": Section 803(a)(2)(D) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 to revise the definition of "commercial item" to provide specific guidance on the meaning and appropriate application of the terms "purposes other than government purposes" at 41 U.S.C. 403(12)(A); and Section 805 of the National Defense Authorization Act for

Fiscal Year 2000 to clarify the definition of "commercial item" with respect to associated services.

The final rule also makes changes related to the acquisition of commercial items, including conforming the coverage regarding contractor liability for property loss or damage to commercial practice.

DATES: *Effective Date:* December 21, 2001.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501-4764. Please cite FAC 2001-01, FAR case 2000-303.

SUPPLEMENTARY INFORMATION:

A. Background

Federal Acquisition Regulation Part 12, Acquisition of Commercial Items, was developed to implement Title VIII of the Federal Acquisition Streamlining Act of 1994 (FASA) (Pub. L. 103-355). The regulations became effective on October 1, 1995.

The final rule revises—

- Paragraph (a) of the "commercial item" definition at FAR 2.101 and the corresponding definition in the clause at FAR 52.202-1, and FAR 12.102 to implement Section 803(a)(2)(D) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261). Section 803(a)(2)(D) requires that the FAR be revised to provide specific guidance on the meaning and appropriate application of the term "purposes other than government purposes" in the definition

of "commercial item" at 41 U.S.C. 403(12)(A);

- Paragraph (e) of the "commercial item" definition at FAR 2.101 to implement Section 805 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106-65) (Clarification of Definition of Commercial Items with Respect to Associated Services). Section 805 clarifies that services ancillary to a commercial item, such as installation, maintenance, repair, training, and other support services, are considered a commercial service, regardless of whether the service is provided by the same vendor or at the same time as the item, if the service is provided contemporaneously to the general public under similar terms and conditions. The FAR clause at 52.202-1, Definitions, is similarly revised to make the new definition available to contractors and subcontractors;

- Paragraph (f) of the "commercial item" definition at FAR 2.101 to add definitions of "catalog price" and "market price" which provide guidance for identifying services that may be acquired under FAR Part 12;

- FAR 12.209 to add guidance concerning customary commercial terms and conditions related to the determination of price reasonableness when pricing commercial items;
- Subpart 46.8 to reconcile it with the coverage regarding contractor liability for property loss or damage with paragraph (p) in the clause at 52.212-4; and

- Paragraph (p) in the clause at 52.212-4 to conform to commercial practice (*i.e.*, deleting the phrase "or implied" permits industry to take advantage of the latitude provided by the Uniform Commercial Code which

allows sellers to exclude the application of an implied warranty through the terms of an express warranty).

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 52284, August 28, 2000. Six sources submitted comments in response to the proposed rule. The FAR Council considered all comments in the development of the final rule.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because changes made by the rule will primarily affect large businesses that are more likely than small businesses to have separate workforces for Federal contracts and to be ultimately liable for consequential damages. It clarifies the definition of commercial item to more closely parallel the statutory language and provide guidance for identifying services that may be acquired under FAR Part 12. The rule further conforms language regarding contractor liability to commercial practice.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR parts 2, 12, 46, and 52

Government procurement.

Dated: October 12, 2001.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 12, 46, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 12, 46, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. In section 2.101, amend the definition “Commercial item” by revising the introductory text of paragraph (1), and paragraphs (5) and (6) to read as follows:

2.101 Definitions.

* * * * *

Commercial item means—

(1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and—

* * * * *

(5) Installation services, maintenance services, repair services, training services, and other services if—

(i) Such services are procured for support of an item referred to in paragraph (1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and

(ii) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed. For purposes of these services—

(i) *Catalog price* means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

(ii) *Market prices* means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

3. Amend section 12.102 by redesignating paragraph (d) as

paragraph (e) and by adding a new paragraph (d) to read as follows:

12.102 Applicability.

* * * * *

(d) The definition of commercial item in section 2.101 uses the phrase “purposes other than governmental purposes.” These purposes are those that are not unique to a government.

* * * * *

4. Revise section 12.209 to read as follows:

12.209 Determination of price reasonableness.

While the contracting officer must establish price reasonableness in accordance with 13.106–3, 14.408–2, or subpart 15.4, as applicable, the contracting officer should be aware of customary commercial terms and conditions when pricing commercial items. Commercial item prices are affected by factors that include, but are not limited to, speed of delivery, length and extent of warranty, limitations of seller’s liability, quantities ordered, length of the performance period, and specific performance requirements. The contracting officer must ensure that contract terms, conditions, and prices are commensurate with the Government’s need.

PART 46—QUALITY ASSURANCE

5. In section 46.801, revise the last sentence of paragraph (a) to read as follows:

46.801 Applicability.

(a) * * * This subpart does not apply to commercial items.

* * * * *

46.804 [Removed and Reserved]

6. Remove and reserve section 46.804.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. In section 52.202–1, revise the date of the clause and paragraphs (c)(1), (c)(5), and (c)(6) to read as follows:

52.202–1 Definitions.

* * * * *

Definitions (Dec 2001)

* * * * *

(c) * * *

(1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and that—

(i) Has been sold, leased, or licensed to the general public; or

(ii) Has been offered for sale, lease, or license to the general public;

* * * * *

(5) Installation services, maintenance services, repair services, training services, and other services if—

(i) Such services are procured for support of an item referred to in paragraph (c)(1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and

(ii) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed. For purposes of these services—

(i) *Catalog price* means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

(ii) *Market prices* means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

* * * * *

52.212-4 [Amended]

8. Amend section 52.212-4 by revising the date in the clause heading to read "(Dec 2001)"; and by removing "or implied" from paragraph (p).

[FR Doc. 01-26297 Filed 10-19-01; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 32 and 52

[FAC 2001-01; FAR Case 2000-308; Item III]

RIN 9000-AJ17

Federal Acquisition Regulation; Prompt Payment Under Cost-Reimbursement Contracts for Services

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to require agencies to pay an interest penalty whenever they make an interim payment under a cost-reimbursement contract for services more than 30 days after the agency receives a proper invoice from the contractor.

DATES: *Effective Date:* October 22, 2001.

Applicability Date: This amendment is applicable to solicitations issued and contracts awarded on or after October 22, 2001. Any cost reimbursement solicitations issued or contracts awarded for services on or after December 15, 2000, but prior to October 22, 2001 must be amended/modified to incorporate the new Alternate I to 52.232-25. In no event may agencies pay late payment penalty interest for any delay in payment that occurred prior to December 15, 2000.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before December 21, 2001 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405. Submit electronic comments via the Internet to: farcase.2000-308@gsa.gov

Please submit comments only and cite FAC 2001-01, FAR case 2000-308, in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson at (202) 501-3221. Please cite FAC 2001-01, FAR case 2000-308.

SUPPLEMENTARY INFORMATION:

A. Background

This FAR amendment implements changes in the Office of Management and Budget's (OMB) Prompt Payment Act regulations at 5 CFR part 1315 that implemented Section 1010 of the National Defense Authorization Act for Fiscal Year 2001. Those changes were published by OMB as an interim final rule and became effective on December 15, 2000 (65 FR 78403). Section 1010 requires agencies to pay an interest penalty, in accordance with regulations

issued, whenever an interim payment under a cost-reimbursement contract for services is paid more than 30 days after the agency receives a proper invoice from a contractor. The Act does not permit payment of late payment interest penalty for any period prior to December 15, 2000.

This FAR amendment eliminates the prior policy and contract clause prohibitions on payment of late payment penalty interest for late interim finance payments under cost reimbursement contracts for services. It adds new policy and a contract clause, Alternate I to 52.232-25, to provide for those penalty payments. The policy and clause apply to all covered contracts awarded on or after December 15, 2000. OMB's regulation states that agencies, at their discretion, may apply the revisions made by Section 1010 to interim payment requests received under cost-reimbursement contracts for services awarded prior to December 15, 2000. Accordingly, agencies may apply the FAR changes made by this rule to contracts awarded prior to December 15, 2000, at their discretion provided no late payment interest penalty is paid for any period prior to December 15, 2000.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the number of small entities receiving awards of cost-reimbursement contracts for services is very low compared to the number of fixed-price-type contracts awarded. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2001-01, FAR case 2000-308), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the amendments to the controlling regulation issued by OMB (5 CFR part 1315, 65 FR 78403) became effective on December 15, 2000. (Section 1010 of the National Defense Authorization Act for Fiscal Year 2001, which required OMB to issue the regulation, was effective December 15, 2000.) This amendment to the FAR is necessary to enable agencies to comply with OMB's interim final rule in the most effective and consistent manner possible.

Pursuant to Public Law 98-577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule. In addition, this interim rule will be revised, as necessary, to reflect any changes OMB may make to its regulations in promulgating a final rule.

List of Subjects in 48 CFR Parts 2, 32 and 52

Government procurement.

Dated: October 12, 2001.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 32 and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 32 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2.101 [Amended]

2. In section 2.101, amend the definition "Proper invoice" by removing "32.905(e)" and adding "32.905(f)" in its place.

PART 32—CONTRACT FINANCING

3. Amend section 32.902 in the definition "Contract financing payment" by revising the second sentence; revising the definition "Invoice payment"; and in the definition "Receiving report" by removing "32.905(f)" and adding

"32.905(g)" in its place. The revised text reads as follows:

32.902 Definitions.

* * * Contract financing payments include advance payments, progress payments based on cost under the clause at 52.232-16, Progress Payments, progress payments based on a percentage or stage of completion (see 32.102(e)(1)) other than those made under the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, or the clause at 52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts, and interim payments on cost-type contracts other than contracts for services. * * *

Invoice payment means a Government disbursement of monies to a contractor under a contract or other authorization for supplies or services accepted by the Government.

(1) This includes payments for partial deliveries that have been accepted by the Government and final cost or fee payments where amounts owed have been settled between the Government and the contractor.

(2) For purposes of this subpart, invoice payments also include all payments made under the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, the clause at 52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts, or the clause at 52.232-25, Prompt Payment, when Alternate I is used for interim payments on cost-reimbursement contracts for services.

(3) Invoice payments do not include contract financing payments.

4. Amend section 32.905 by—
a. Removing from the introductory text of paragraph (a) "paragraphs (b), (c), and (d)" and adding "paragraphs (b) through (e)" in its place;

b. Redesignating paragraphs (e) through (j) as (f) through (k), respectively, and adding a new paragraph (e);

c. Revising the introductory text of newly designated paragraph (f); and

d. Revising the first sentence of the introductory text of newly designated paragraph (g) to read as follows:

32.905 Invoice payments.

(e) *Cost-reimbursement contracts for services.* For purposes of computing late payment interest penalties that may apply, the due date for making interim payments on cost-reimbursement contracts for services is 30 days after the date of receipt of a proper invoice.

(f) *Content of invoices.* A proper invoice must include the items listed in paragraphs (f)(1) through (f)(8) of this section, except for interim payments on cost-reimbursement contracts for services. An interim payment request under a cost-reimbursement contract for services constitutes a proper invoice for purposes of this subpart if it includes all the information required by the contract. If the invoice does not comply with these requirements, it will be returned within 7 days after the date the designated billing office received the invoice (3 days on contracts for meat, meat food products, or fish; 5 days on contracts for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils), with a statement of the reasons why it is not a proper invoice. If such notice is not timely, then an adjusted due date for the purpose of determining an interest penalty, if any, will be established in accordance with 32.907-1(b):

(g) *Authorization to pay.* All invoice payments, with the exception of interim payments on cost-reimbursement contracts for services, must be supported by a receiving report or any other Government documentation authorizing payment. * * *

5. Amend section 32.907-1 by adding paragraph (a)(5); and in paragraphs (b)(1) and (b)(2) by removing "32.905(e)" and adding "32.905(f)" in its place. The added text reads as follows:

32.907-1 Late invoice payment.

(a) * * *

(5) In the case of interim payments on cost-reimbursement contracts for services, when payment is made more than 30 days after the designated billing office receives a proper invoice.

6. Amend section 32.908 by adding paragraph (c)(4) to read as follows:

32.908 Contract clauses.

(c) * * *

(4) If the contract is a cost-reimbursement contract for services, use the clause with its Alternate I.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Amend section 52.232-25 by adding Alternate I to read as follows:

52.232-25 Prompt Payment.

Alternate I (Oct 2001). As prescribed in 32.908(c)(4), add the following paragraph (d) to the basic clause:

(d) *Invoices for interim payments.* For interim payments under this cost-reimbursement contract for services—

(1) Paragraphs (a)(2), (a)(3), (a)(4)(ii), (a)(4)(iii), and (a)(5)(i) do not apply;

(2) For purposes of computing late payment interest penalties that may apply, the due date for payment is the 30th day after the designated billing office receives a proper invoice; and

(3) The Contractor shall submit invoices for interim payments in accordance with paragraph (a) of FAR 52.216-7, Allowable Cost and Payment. If the invoice does not comply with contract requirements, it will be returned within 7 days after the date the designated billing office received the invoice.

[FR Doc. 01-26298 Filed 10-19-01; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 12, 13, 22, and 52

[FAC 2001-01; FAR Case 1998-614; Item IV]

RIN 9000-AI46

Federal Acquisition Regulation; Veterans' Employment

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Sections 7 and 8 of the Veterans Employment Opportunities Act of 1998. Section 7 expands and improves veterans' employment emphasis under Federal contracts. Section 8 amends the veterans' employment reporting requirements. The rule also implements the Department of Labor's (DoL) Office of Federal Contract Compliance Programs (OFCCP) final rule amending regulations on Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Special Disabled Veterans and Veterans of the Vietnam Era, which clarifies DoL implementation of the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1972, as amended.

DATES: *Effective Date:* December 21, 2001.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 2001-01, FAR case 1998-614.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR 12.503, 13.005, 22.13, and the associated clauses and provisions at FAR Part 52 to implement recent statutory and regulatory changes relating to veterans' employment opportunities and reporting. Paragraph (a) of Section 7 of the Veterans' Employment Opportunities Act of 1998 (Pub. L. 105-339) amends 38 U.S.C. 4212 in paragraph (a) to increase the threshold for covered contracts from \$10,000 to \$25,000, and expands applicability beyond "special disabled veterans and veterans of the Vietnam era" to include other eligible veterans (*i.e.*, any other veterans who served on active duty during a war or in a campaign or an expedition for which a campaign badge has been authorized).

Paragraph (b) of Section 7 amends 31 U.S.C. 1354 to specifically prohibit contracting officers from obligating or expending appropriated funds to enter into covered contracts with a contractor that does not meet veterans' employment reporting requirements (VETS-100 Report). In accordance with 41 U.S.C. 429 and 41 U.S.C. 430, the Councils have listed this law as inapplicable to acquisitions not greater than the simplified acquisition threshold and acquisitions of commercial items.

Paragraph (b) also requires the DoL to maintain a database on those contractors that have submitted the required VETS-100 Reports for the current reporting period. However, the database will not contain data on whether those contractors that did not submit reports were required to do so. The Councils have added a new provision by which the offeror represents that, if subject to the reporting requirements of 38 U.S.C. 4212(d), it has not failed to submit the most recent required VETS-100 Reports.

This rule lists 31 U.S.C. 1354(a) as not applicable to commercial item contracts and acquisitions not greater than the simplified acquisition threshold of \$100,000 pursuant to FASA at 41 U.S.C. 429 and 41 U.S.C. 430. Accordingly, the representation in the provision at

52.222-38, Compliance with Veterans' Employment Reporting Requirements, is not applicable to commercial item acquisitions and acquisitions not greater than the simplified acquisition threshold of \$100,000.

Section 8 of Public Law 105-339 amends 38 U.S.C. 4212(d)(1) to require reporting of the maximum number and the minimum number of employees during the period covered by the report. This requirement has been included in the clause at 52.222-37, which summarizes the DoL reporting requirements.

In conformance with the Veterans Employment Opportunities Act of 1998 and the OFCCP final rule, this final rule revises the clause at 52.222-35, adding definitions of "special disabled veterans," "qualified special disabled veteran," "other eligible veteran," and "executive and top management," and changes the definition of "veteran of the Vietnam Era." The clause requires contractors to list all employment openings, except executive and top management, with the local employment service office. Contractors may fulfill the listing requirement by listing jobs electronically with America's Job Bank. The requirements for posting employment notices have also changed.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 64 FR 67992, December 3, 1999. Four respondents submitted comments on the proposed rule. The comments were considered in the development of the final rule.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule implements the Contracting Restrictions of the Veterans Employment Opportunities Act of 1998 (Pub. L. 105-339) which will only affect offerors who were required to submit reports but did not do so; and also implements the OFCCP final rule (63 FR 59630), which DoL has certified will not have a significant economic impact on

a substantial number of small businesses.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements beyond those imposed by the DoL, for which DoL obtained the required approval from the Office of Management and Budget (OMB Control Numbers 1215-0072, 1215-0163, and 1293-0005) under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 12, 13, 22, and 52

Government procurement.

Dated: October 12, 2001.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 12, 13, 22, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 12, 13, 22, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. In section 2.101, amend the definition “United States” by redesignating paragraphs (3) and (4) as (4) and (5), respectively, and by adding a new paragraph (3) to read as follows:

2.101 Definitions.

* * * * *
 United States * * *
 * * * * *

(3) For use in subpart 22.13, see the definition at 22.1301.

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

3. Amend section 12.503 in the introductory text of paragraph (a) by removing “executive” and adding “Executive” in its place; and by revising the section heading and adding paragraph (a)(5) to read as follows:

12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial items.

(a) * * *

(5) 31 U.S.C. 1354(a), Limitation on use of appropriated funds for contracts with entities not meeting veterans employment reporting requirements (see 22.1302).

* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

4. Amend section 13.005 by adding paragraph (a)(10) to read as follows:

13.005 Federal Acquisition Streamlining Act of 1994 list of inapplicable laws.

(a) * * *

(10) 31 U.S.C. 1354(a) (Limitation on use of appropriated funds for contracts with entities not meeting veterans employment reporting requirements).

* * * * *

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

5. Revise Subpart 22.13 to read as follows:

Subpart 22.13—Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans

Sec.

- 22.1300 Scope of subpart.
- 22.1301 Definition.
- 22.1302 Policy.
- 22.1303 Applicability.
- 22.1304 Procedures.
- 22.1305 Waivers.
- 22.1306 Department of Labor notices and reports.
- 22.1307 Collective bargaining agreements.
- 22.1308 Complaint procedures.
- 22.1309 Actions because of noncompliance.
- 22.1310 Solicitation provision and contract clauses.

22.1300 Scope of subpart.

This subpart prescribes policies and procedures for implementing the Vietnam Era Veterans’ Readjustment Assistance Act of 1972 (38 U.S.C. 4211 and 4212) (the Act); Executive Order 11701, January 24, 1973 (3 CFR 1971-1975 Comp., p. 752); the regulations of the Secretary of Labor (41 CFR Part 60-250 and Part 61-250); and the Veterans Employment Opportunities Act of 1998, Public Law 105-339.

22.1301 Definition.

United States, as used in this subpart, means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands of the United States, and Wake Island.

22.1302 Policy.

- (a) Contractors and subcontractors, when entering into contracts or subcontracts subject to the Act, must—
 - (1) List all employment openings, with the appropriate local employment service office except for—
 - (i) Executive and top management positions;

- (ii) Positions to be filled from within the contractor’s organization; and
- (iii) Positions lasting three days or less.

(2) Take affirmative action to employ, and advance in employment, qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based on their disability or veteran’s status.

(b) Except for contracts for commercial items or contracts that do not exceed the simplified acquisition threshold, contracting officers must not obligate or expend funds appropriated for the agency for a fiscal year to enter into a contract for the procurement of personal property and nonpersonal services (including construction) with a contractor that has not submitted a required annual Form VETS-100, Federal Contractor Veterans’ Employment Report (VETS-100 Report), with respect to the preceding fiscal year if the contractor was subject to the reporting requirements of 38 U.S.C. 4212(d) for that fiscal year.

22.1303 Applicability.

(a) The Act applies to all contracts and subcontracts for personal property and nonpersonal services (including construction) of \$25,000 or more except as waived by the Secretary of Labor.

(b) The requirements of the clause at 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans, in any contract with a State or local government (or any agency, instrumentality, or subdivision) do not apply to any agency, instrumentality, or subdivision of that government that does not participate in work on or under the contract.

(c) The Act requires submission of the VETS-100 Report in all cases where the contractor or subcontractor has received an award of \$25,000 or more, except for awards to State and local governments, and foreign organizations where the workers are recruited outside of the United States.

22.1304 Procedures.

To verify if a proposed contractor is current with its submission of the VETS-100 Report, the contracting officer may—

- (a) Query the Department of Labor’s VETS-100 Database via the Internet at <http://www.vets100.cudenver.edu/vets100search.htm> using the validation code “vets” to proceed with the search in the database; or
- (b) Contact the VETS-100 Reporting Systems via e-mail at verify@vets100.com for confirmation, if the proposed contractor represents that

it has submitted the VETS-100 Report and is not listed in the database.

22.1305 Waivers.

(a) The Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary of Labor), may waive any or all of the terms of the clause at 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans for—

(1) Any contract if a waiver is in the national interest; or

(2) Groups or categories of contracts if a waiver is in the national interest and it is—

(i) Impracticable to act on each request individually; and

(ii) Determined that the waiver will substantially contribute to convenience in administering the Act.

(b) The head of the agency may waive any requirement in this subpart when it is determined that the contract is essential to the national security, and that its award without complying with such requirements is necessary to the national security. Upon making such a determination, the head of the agency must notify the Deputy Assistant Secretary of Labor in writing within 30 days.

(c) The contracting officer must submit requests for waivers in accordance with agency procedures.

(d) The Deputy Assistant Secretary of Labor may withdraw an approved waiver for a specific contract or group of contracts to be awarded, when in the Deputy's judgment such action is necessary to achieve the purposes of the Act. The withdrawal does not apply to awarded contracts. For procurements entered into by sealed bidding, such withdrawal does not apply unless the withdrawal is made more than 10 calendar days before the date set for the opening of bids.

22.1306 Department of Labor notices and reports.

(a) The contracting officer must furnish to the contractor appropriate notices for posting when they are prescribed by the Deputy Assistant Secretary of Labor (*see* http://www2.dol.gov/dol/esa/public/ofcp_org.htm).

(b) The Act requires contractors and subcontractors to submit a report at least annually to the Secretary of Labor regarding employment of special disabled veterans, veterans of the Vietnam era, and other eligible veterans unless all of the terms of the clause at 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of

the Vietnam Era, and Other Eligible Veterans, have been waived (*see* 22.1305). The contractor and subcontractor must use Form VETS-100, Federal Contractor Veterans' Employment Report, to submit the required reports.

22.1307 Collective bargaining agreements.

If performance under the clause at 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans, may necessitate a revision of a collective bargaining agreement, the contracting officer must advise the affected labor unions that the Department of Labor will give them appropriate opportunity to present their views. However, neither the contracting officer nor any representative of the contracting officer may discuss with the contractor or any labor representative any aspect of the collective bargaining agreement.

22.1308 Complaint procedures.

Following agency procedures, the contracting office must forward any complaints received about the administration of the Act to the Veterans' Employment and Training Service of the Department of Labor, or through the local Veterans' Employment Representative or designee, at the local State employment office. The Deputy Assistant Secretary of Labor is responsible for investigating complaints.

22.1309 Actions because of noncompliance.

The contracting officer must take necessary action as soon as possible upon notification by the appropriate agency official to implement any sanctions imposed on a contractor by the Department of Labor for violations of the clause at 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans. These sanctions (*see* 41 CFR 60-250.66) may include—

(a) Withholding payments;

(b) Termination or suspension of the contract; or

(c) Debarment of the contractor.

22.1310 Solicitation provision and contract clauses.

(a)(1) Insert the clause at 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans, in solicitations and contracts if the expected value is \$25,000 or more, except when—

(i) Work is performed outside the United States by employees recruited outside the United States; or

(ii) The Deputy Assistant Secretary of Labor has waived, in accordance with 22.1305(a) or the head of the agency has waived, in accordance with 22.1305(b) all of the terms of the clause.

(2) If the Deputy Assistant Secretary of Labor or the head of the agency waives one or more (but not all) of the terms of the clause, use the basic clause with its Alternate I.

(b) Insert the clause at 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans, in solicitations and contracts containing the clause at 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.

(c) Insert the provision at 52.222-38, Compliance with Veterans' Employment Reporting Requirements, in solicitations when it is anticipated the contract award will exceed the simplified acquisition threshold and the contract is not for acquisition of commercial items.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Amend section 52.212-5 by revising the date of the clause; and revising paragraphs (b)(13), (b)(15), and (e)(2) to read as follows:

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (DEC 2001)

* * * * *

(b) * * *

_____ (13) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C. 4212).

* * * * *

_____ (15) 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C. 4212).

* * * * *

(e) * * *

(2) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C. 4212);

7. Amend section 52.213-4 by revising the date of the clause; by redesignating (b)(1)(ii) through (b)(1)(xii) as (b)(1)(iii) through (b)(1)(xiii), and adding a new (b)(1)(ii); and by revising newly redesignated paragraphs (b)(1)(iv) and (b)(1)(vi) to read as follows:

52.213-4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL ITEMS) (DEC 2001)

* * * * *

(b) * * *

(1) * * *

(ii) 52.222-21, Prohibition of Segregated Facilities (FEB 1999) (E.O. 11246) (Applies to contracts over \$10,000).

* * * * *

(iv) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212) (Applies to contracts of \$25,000 or more).

* * * * *

(vi) 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212) (Applies to contracts of \$25,000 or more).

8. Revise the section heading and text of 52.222-35 to read as follows:

52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.

As prescribed in 22.1310(a)(1), insert the following clause:

EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001)

(a) *Definitions.* As used in this clause—

All employment openings means all positions except executive and top management, those positions that will be filled from within the Contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days duration, and part-time employment.

Executive and top management means any employee—

(1) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;

(2) Who customarily and regularly directs the work of two or more other employees;

(3) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight;

(4) Who customarily and regularly exercises discretionary powers; and

(5) Who does not devote more than 20 percent or, in the case of an employee of a retail or service establishment, who does not devote more than 40 percent of total hours of work in the work week to activities that are not directly and closely related to the performance of the work described in paragraphs (1) through (4) of this definition.

This paragraph (5) does not apply in the case of an employee who is in sole charge of an establishment or a physically separated branch establishment, or who owns at least a 20 percent interest in the enterprise in which the individual is employed.

Other eligible veteran means any other veteran who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

Positions that will be filled from within the Contractor's organization means employment openings for which the Contractor will give no consideration to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings the Contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

Qualified special disabled veteran means a special disabled veteran who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such veteran holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

Special disabled veteran means—

(1) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability—

(i) Rated at 30 percent or more; or

(ii) Rated at 10 or 20 percent in the case of a veteran who has been determined under 38 U.S.C. 3106 to have a serious employment handicap (*i.e.*, a significant impairment of the veteran's ability to prepare for, obtain, or retain employment consistent with the veteran's abilities, aptitudes, and interests); or

(2) A person who was discharged or released from active duty because of a service-connected disability.

Veteran of the Vietnam era means a person who—

(1) Served on active duty for a period of more than 180 days and was discharged or released from active duty with other than a dishonorable discharge, if any part of such active duty occurred—

(i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(ii) Between August 5, 1964, and May 7, 1975, in all other cases; or

(2) Was discharged or released from active duty for a service-connected disability if any part of the active duty was performed—

(i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(ii) Between August 5, 1964, and May 7, 1975, in all other cases.

(b) *General.* (1) The Contractor shall not discriminate against the individual because the individual is a special disabled veteran, a veteran of the Vietnam era, or other eligible veteran, regarding any position for which the employee or applicant for employment is qualified. The Contractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified

special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based upon their disability or veterans' status in all employment practices such as—

(i) Recruitment, advertising, and job application procedures;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

(iii) Rate of pay or any other form of compensation and changes in compensation;

(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(v) Leaves of absence, sick leave, or any other leave;

(vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;

(vii) Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(viii) Activities sponsored by the Contractor including social or recreational programs; and

(ix) Any other term, condition, or privilege of employment.

(2) The Contractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C. 4211 and 4212).

(c) *Listing openings.* (1) The Contractor shall immediately list all employment openings that exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract, and including those occurring at an establishment of the Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local public employment service office of the State wherein the opening occurs. Listing employment openings with the U.S. Department of Labor's America's Job Bank shall satisfy the requirement to list jobs with the local employment service office.

(2) The Contractor shall make the listing of employment openings with the local employment service office at least concurrently with using any other recruitment source or effort and shall involve the normal obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing of employment openings does not require hiring any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(3) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State public employment agency in each State where it

has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State agency, it need not advise the State agency of subsequent contracts. The Contractor may advise the State agency when it is no longer bound by this contract clause.

(d) *Applicability.* This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands of the United States, and Wake Island.

(e) *Postings.* (1) The Contractor shall post employment notices in conspicuous places that are available to employees and applicants for employment.

(2) The employment notices shall—

(i) State the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are special disabled veterans, veterans of the Vietnam era, and other eligible veterans; and

(ii) Be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary of Labor), and provided by or through the Contracting Officer.

(3) The Contractor shall ensure that applicants or employees who are special disabled veterans are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled veteran, or may lower the posted notice so that it can be read by a person in a wheelchair).

(4) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement, or other contract understanding, that the Contractor is bound by the terms of the Act and is committed to take affirmative action to employ, and advance in employment, qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans.

(f) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, the Government may take appropriate actions under the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(g) *Subcontracts.* The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$25,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Deputy Assistant Secretary of Labor to enforce the terms, including action for noncompliance.

(End of clause)

Alternate I (Dec 2001). As prescribed in 22.1310(a)(2), add the following as a preamble to the clause:

Notice: The following term(s) of this clause are waived for this contract: _____ [List term(s)].

9. Revise the section heading and text of 52.222-37 to read as follows:

52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.

As prescribed in 22.1310(b), insert the following clause:

EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001)

(a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on—

(1) The number of special disabled veterans, the number of veterans of the Vietnam era, and other eligible veterans in the workforce of the Contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of special disabled veterans, the number of veterans of the Vietnam era, and the number of other eligible veterans; and

(3) The maximum number and the minimum number of employees of the Contractor during the period covered by the report.

(b) The Contractor shall report the above items by completing the Form VETS-100, entitled "Federal Contractor Veterans" Employment Report (VETS-100 Report)".

(c) The Contractor shall submit VETS-100 Reports no later than September 30 of each year beginning September 30, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date—

(1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or

(2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The Contractor shall base the count of veterans reported according to paragraph (a) of this clause on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all special disabled veterans, veterans of the Vietnam era, and other eligible veterans who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that—

(1) The information is voluntarily provided;

(2) The information will be kept confidential;

(3) Disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and

(4) The information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

(f) The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$25,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

(End of clause)

10. Add section 52.222-38 to read as follows:

52.222-38 Compliance with Veterans' Employment Reporting Requirements.

As prescribed in 22.1310(c), insert the following provision:

COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS (DEC 2001)

By submission of its offer, the offeror represents that, if it is subject to the reporting requirements of 38 U.S.C. 4212(d) (i.e., if it has any contract containing Federal Acquisition Regulation clause 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans), it has submitted the most recent VETS-100 Report required by that clause.

(End of provision)

11. Amend section 52.244-6 by revising the date of the clause, the introductory text of paragraph (c)(1), and paragraph(c)(1)(iii) to read as follows:

52.244-6 Subcontracts for Commercial Items.

* * * * *

SUBCONTRACTS FOR COMMERCIAL ITEMS (DEC 2001)

* * * * *

(c)(1) The Contractor shall insert the following clauses in subcontracts for commercial items:

* * * * *

(iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212(a));

* * * * *

[FR Doc. 01-26299 Filed 10-19-01; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 19, 52, and 53**

[FAC 2001-01; FAR Case 2000-302; Item V]

RIN 9000-A193

**Federal Acquisition Regulation;
Veterans Entrepreneurship and Small
Business Development Act of 1999****AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and the National Aeronautics and Space Administration (NASA).**ACTION:** Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule to amend the Federal Acquisition Regulation (FAR) to implement section 803 of the Small Business Reauthorization Act of 2000, part of the Consolidated Appropriations Act, 2001. Section 803 amended section 8(d) of the Small Business Act by adding an additional subcontracting plan goal requirement for service-disabled veteran-owned small business concerns.

DATES: *Effective Date:* October 22, 2001.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before December 21, 2001 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: farcase.2000-302@gsa.gov

Please submit comments only and cite FAC 2001-01, FAR case 2000-302, in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Rhonda Cundiff at (202) 501-0044. Please cite FAR case 2000-302.

SUPPLEMENTARY INFORMATION:**A. Background**

This interim rule amends the FAR to implement section 803 of the Small

Business Reauthorization Act of 2000, part of the Consolidated Appropriations Act, 2001 (Pub. L. 106-554).

The Veterans Entrepreneurship and Small Business Development Act of 1999 (Pub. L. 106-50) established new assistance programs for veterans and service-disabled veterans who own and operate small businesses. Specifically, the Act—

- Defines the terms “small business concern owned and controlled by veterans” and “small business concern owned and controlled by service-disabled veterans”;
- Establishes that veteran-owned and service-disabled veteran-owned small businesses be afforded maximum practical opportunity to participate in the performance of contracts and subcontracts awarded by any Federal agency;
- Establishes a requirement to include a goal for veteran-owned small businesses in subcontracting plans under FAR 52.219-9;
- Establishes a 3 percent Governmentwide goal (based on the total value of all prime contract and subcontract awards) for participation by service-disabled veteran-owned small businesses; and
- Adds data collection requirements for prime and subcontract awards to veteran-owned small businesses and service disabled veteran-owned small business concerns.

DoD, GSA, and NASA published an interim FAR rule in the **Federal Register** at 65 FR 60542, October 11, 2000, to implement this statute. Twenty-nine respondents submitted comments in response to the interim rule. The Councils considered all comments and made no changes as a result. Two public comments merit noting. The first recommended that the FAR specifically reference the statutory 3 percent goal for service-disabled veteran-owned small business. The Councils have not adopted this recommendation. The FAR does not specify the statutory Governmentwide goals for any small business category because they have no regulatory purpose for agencies. Statutory goals for small businesses are established on a Governmentwide basis. Within these Governmentwide goals, SBA negotiates separate annual goals for each small business category with each agency. The individual agency goals attempt to reflect the agency mission and its contracting requirements, and these individual agency goals may be higher or lower than the Governmentwide goal. SBA then tracks cumulative agency achievements against the Governmentwide goal. Accordingly, specifying the 3 percent service-

disabled veteran-owned small business goals in the FAR is inappropriate in that only the goal negotiated with SBA is relevant to that agency. The second public comment recommended that the FAR establish a requirement for a separate subcontracting plan goal for service-disabled veteran-owned small business. The Councils concur in this recommendation, but could not make this change in the first interim rule. That rule was based solely on the Veterans Entrepreneurship and Small Business Development Act of 1999. Section 501(c) of the Act established a subcontracting plan goal requirement for veteran-owned small businesses, but not for service-disabled veteran-owned small businesses. The interim rule accurately reflected this statutory change.

However, section 803 of the Small Business Reauthorization Act of 2000, part of the Consolidated Appropriations Act, 2001 (Pub. L. 106-554) was subsequently enacted on December 21, 2000. Section 803 amended section 8(d) of the Small Business Act (15 U.S.C. 637(d)) by adding an additional subcontracting plan goal requirement for service-disabled veteran-owned small business concerns. This interim rule adds the new statutory subcontracting plan goal requirement for service-disabled veteran-owned small business concerns.

Public comments are specifically sought on the service-disabled veteran-owned small business subcontracting plan goal changes. Since public comments received in response to the first interim rule have already been addressed, only comments on the issue unique to the second interim rule need to be submitted.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule adds a new statutory subcontracting plan goal requirement for service-disabled veteran-owned small business concerns. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and is summarized as follows:

This interim rule amends the Federal Acquisition Regulation to implement section 803 of the Small Business Reauthorization Act of 2000, part of the Consolidated Appropriations Act, 2001 (Pub. L. 106-554).

Section 803 supplements the Veterans Entrepreneurship and Small Business Development Act of 1999 (Pub. L. 106-50) by adding a separate subcontracting plan goal requirement for service-disabled veteran-owned small business concerns. There are approximately 4 to 5.5 million small businesses owned and controlled by veterans and 100,000 to 300,000 small businesses owned and controlled by service-disabled veterans. This rule does not duplicate, overlap, or conflict with other relevant Federal regulations. There are no alternatives to the interim rule that would accomplish the stated objectives.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR Parts 19, 52, and 53 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 2001-01, FAR case 2000-302), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104-13) applies; however, this interim rule only requires contractors to report, as a separate item, information already collected and reported under OMB Control Numbers 9000-0006 and 9000-0007. The impact on the information collection hours of these OMB clearances is so small as to be within the estimating parameters of these clearances. Therefore, the clearances have not been changed.

D. Determination to Issue an Interim Rule

A determination has been made under authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary in order to implement section 803 of the Small Business Reauthorization Act of 2000, part of the Consolidated Appropriations Act, 2001 (Pub. L. 106-554). However, pursuant to Pub. L. 98-577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in formulating the final rule.

List of Subjects in 48 CFR parts 19, 52, and 53

Government procurement.

Dated: October 12, 2001.

Al Matera,
Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 19, 52, and 53 as set forth below:

1. The authority citation for 48 CFR parts 19, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 19—SMALL BUSINESS PROGRAMS

19.704 and 19.705 [Amended]

2. Amend sections 19.704 and 19.705 as follows:

a. Add “service-disabled veteran-owned small business,” after the phrase “veteran-owned small business,” in the following sections:

19.704(a)(1), (a)(2), (a)(3), (a)(6), (a)(8), and (a)(11)

19.705-4(c) (twice)

19.705-4(d)(1) and (d)(5);

and

b. Remove “(including service-disabled veteran-owned small business)” and add “, service-disabled veteran-owned small business” in the following sections:

19.705-2(d)

19.705-7(a)

19.705-7(d) (twice)

19.706(b)

19.706(c)

19.708(c)(1), (c)(2), and (c)(3).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend section 52.219-9 as follows:

a. Revise the date of the clause;

b. Add “service-disabled veteran-owned small business,” after the phrase “veteran-owned small business,” in the following sections:

52.219-9(c) (twice)

52.219-9(d)(1), (d)(8), (d)(11),

(d)(11)(i), and (d)(11)(ii)

52.219-9(e)(1) (twice), (e)(2) and (e)(3)

Alternate I(c) (twice)

Alternate II(c) (twice);

and

c. Redesignate paragraphs (d)(2)(iv) through (d)(2)(vi) as (d)(2)(v) through (d)(2)(vii), respectively; and add a new paragraph (d)(2)(iv);

d. Redesignate paragraphs (d)(3)(iii) through (d)(3)(v) as (d)(3)(iv) through (d)(3)(vi), respectively; and add a new paragraph (d)(3)(iii);

e. In the second sentence of paragraph (d)(5), add “service-disabled veteran-owned small,” after the phrase “veteran-owned small,”;

f. Redesignate paragraphs (d)(6)(iii) through (d)(6)(v) as (d)(6)(iv) through (d)(6)(vi), respectively; and add a new paragraph (d)(6)(iii);

g. In the second sentence of paragraph (d)(10)(iii), add “HUBZone small business concerns,” after the phrase “service-disabled veteran-owned small business concerns,”;

h. Redesignate paragraphs (d)(11)(iii)(C) through (d)(11)(iii)(F) as (d)(11)(iii)(D) through (d)(11)(iii)(G), respectively; and add a new paragraph (d)(11)(iii)(C); and

i. In Alternates I and II of the clause, remove “(Oct 2000)” and add “(Oct 2001)” in their places.

The revised and added text reads as follows:

52.219-9 Small Business Subcontracting Plan.

* * * * *

SMALL BUSINESS SUBCONTRACTING PLAN (OCT 2001)

* * * * *

(d) * * *

(2) * * *

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

* * * * *

(3) * * *

(iii) Service-disabled veteran-owned small business concerns;

* * * * *

(6) * * *

(iii) Service-disabled veteran-owned small business concerns;

* * * * *

(11) * * *

(iii) * * *

(C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;

* * * * *

4. In section 52.219-10, revise the date of the clause; and in paragraph (a) and the first sentence of paragraph (b) of the clause, remove “(including service-disabled veteran-owned small business)” and add “, service-disabled veteran-owned small business” in their places. The revised text reads as follows:

52.219-10 Incentive Subcontracting Program.

* * * * *

INCENTIVE SUBCONTRACTING PROGRAM (OCT 2001)

* * * * *

PART 53—FORMS

53.219 [Amended]

5. Amend section 53.219 in paragraphs (a) and (b) by removing

“(Rev. 10/00)” and adding “(Rev. 10/01)” in their places.

6. Revise sections 53.301–294 and 53.301–295 to read as follows:

BILLING CODE 6820-EP-P

53.301-294 Subcontracting Report for Individual Contracts.

SUBCONTRACTING REPORT FOR INDIVIDUAL CONTRACTS
(See instructions on reverse)

OMB No.: 9000-0006
Expires: 04/30/2004

Public reporting burden for this collection of information is estimated to average 9 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVP), Acquisition Policy Division, GSA, Washington, DC 20405.

1. CORPORATION, COMPANY OR SUBDIVISION COVERED			3. DATE SUBMITTED	
a. COMPANY NAME			4. REPORTING PERIOD FROM INCEPTION OF CONTRACT THRU: YEAR <input type="checkbox"/> MAR 31 <input type="checkbox"/> SEPT 30	
b. STREET ADDRESS				
c. CITY	d. STATE	e. ZIP CODE	5. TYPE OF REPORT	
2. CONTRACTOR IDENTIFICATION NUMBER			<input type="checkbox"/> REGULAR <input type="checkbox"/> FINAL <input type="checkbox"/> REVISED	

6. ADMINISTERING ACTIVITY *(Please check applicable box)*

- | | | |
|------------------------------------|---|--|
| <input type="checkbox"/> ARMY | <input type="checkbox"/> GSA | <input type="checkbox"/> NASA |
| <input type="checkbox"/> NAVY | <input type="checkbox"/> DOE | <input type="checkbox"/> OTHER FEDERAL AGENCY <i>(Specify)</i> |
| <input type="checkbox"/> AIR FORCE | <input type="checkbox"/> DEFENSE CONTRACT MANAGEMENT AGENCY | |

7. REPORT SUBMITTED AS <i>(Check one and provide appropriate number)</i>		8. AGENCY OR CONTRACTOR AWARDING CONTRACT		
<input type="checkbox"/> PRIME CONTRACTOR	PRIME CONTRACT NUMBER	a. AGENCY'S OR CONTRACTOR'S NAME		
	SUBCONTRACT NUMBER	b. STREET ADDRESS		
<input type="checkbox"/> SUBCONTRACTOR		c. CITY	d. STATE	e. ZIP CODE
9. DOLLARS AND PERCENTAGES IN THE FOLLOWING BLOCKS: <input type="checkbox"/> DO INCLUDE INDIRECT COSTS <input type="checkbox"/> DO NOT INCLUDE INDIRECT COSTS				

SUBCONTRACT AWARDS

TYPE	CURRENT GOAL		ACTUAL CUMULATIVE	
	WHOLE DOLLARS	PERCENT	WHOLE DOLLARS	PERCENT
10a. SMALL BUSINESS CONCERNS <i>(Include SDB, WOSB, HBCU/MI, HUBZone SB, and VOSB (Including Service-Disabled VOSB)) (Dollar Amount and Percent of 10c)</i>				
10b. LARGE BUSINESS CONCERNS <i>(Dollar Amount and Percent of 10c.)</i>				
10c. TOTAL <i>(Sum of 10a and 10b.)</i>		100.0%		100.0%
11. SMALL DISADVANTAGED BUSINESS (SDB) CONCERNS <i>(Include HBCU/MI) (Dollar Amount and Percent of 10c.)</i>				
12. WOMEN-OWNED SMALL BUSINESS (WOSB) CONCERNS <i>(Dollar Amount and Percent of 10c.)</i>				
13. HISTORICALLY BLACK COLLEGES AND UNIVERSITIES (HBCU) AND MINORITY INSTITUTIONS (MI) <i>(If applicable) (Dollar Amount and Percent of 10c.)</i>				
14. HUBZone SMALL BUSINESS (HUBZone SB) CONCERNS <i>(Dollar Amount and Percent of 10c.)</i>				
15. VETERAN-OWNED SMALL BUSINESS CONCERNS <i>(Including Service-Disabled Veteran-Owned SB Concerns) (Dollar Amount and Percent of 10c.)</i>				
16. SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS CONCERNS <i>(Dollar Amount and Percent of 10c.)</i>				

17. REMARKS

18a. NAME OF INDIVIDUAL ADMINISTERING SUBCONTRACTING PLAN	18b. TELEPHONE NUMBER	
	AREA CODE	NUMBER

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is not usable

STANDARD FORM 294 (REV. 10/2001)
Prescribed by GSA-FAR (48 CFR) 53.219(a)

GENERAL INSTRUCTIONS

1. This report is not required from small businesses.
2. This report is not required for commercial items for which a commercial plan has been approved, nor from large businesses in the Department of Defense (DOD) Test Program for Negotiation of Comprehensive Subcontracting Plans. The Summary Subcontract Report (SF 295) is required for contractors operating under one of these two conditions and should be submitted to the Government in accordance with the instructions on that form.
3. This form collects subcontract award data from prime contractors/subcontractors that: (a) hold one or more contracts over \$500,000 (over \$1,000,000 for construction of a public facility); and (b) are required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), Women-Owned Small Business (WOSB), HUBZone Small Business (HUBZone SB), Veteran-Owned Small Business (VOSB) and Service-Disabled Veteran-Owned Small Business concerns under a subcontracting plan. For the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, this form also collects subcontract award data for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).
4. This report is required for each contract containing a subcontracting plan and must be submitted to the administrative contracting officer (ACO) or contracting officer if no ACO is assigned, semi-annually during contract performance for the periods ended March 31st and September 30th. A separate report is required for each contract at contract completion. Reports are due 30 days after the close of each reporting period unless otherwise directed by the contracting officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or since the previous report.
5. Only subcontracts involving performance in the U.S. or its outlying areas should be included in this report.
6. Purchases from a corporation, company, or subdivision that is an affiliate of the prime/subcontractor are not included in this report.
7. Subcontract award data reported on this form by prime contractors/subcontractors shall be limited to awards made to their immediate subcontractors. Credit cannot be taken for awards made to lower tier subcontractors.

SPECIFIC INSTRUCTIONS

BLOCK 2: For the Contractor Identification Number, enter the nine-digit Data Universal Numbering System (DUNS) number that identifies the specific contractor establishment. If there is no DUNS number available that identifies the exact name and address entered in Block 1, contact Dun and Bradstreet Information Services at 1-800-333-0505 to get one free of charge over the telephone. Be prepared to provide the following information: (1) Company name; (2) Company address; (3) Company telephone number; (4) Line of business; (5) Chief executive officer/key manager; (6) Date the company was started; (7) Number of people employed by the company; and; (8) Company affiliation.

BLOCK 4: Check only one. Note that all subcontract award data reported on this form represents activity since the inception of the contract through the date indicated in this block.

BLOCK 5: Check whether this report is a "Regular," "Final," and/or "Revised" report. A "Final" report should be checked only if the contractor has completed the contract or subcontract reported in Block 7. A "Revised" report is a change to a report previously submitted for the same period.

BLOCK 6: Identify the department or agency administering the majority of subcontracting plans.

BLOCK 7: Indicate whether the reporting contractor is submitting this report as a prime contractor or subcontractor and the prime contract or subcontract number.

BLOCK 8: Enter the name and address of the Federal department or agency awarding the contract or the prime contractor awarding the subcontract.

BLOCK 9: Check the appropriate block to indicate whether indirect costs are included in the dollar amounts in blocks 10a through 14. To ensure comparability between the goal and actual columns, the contractor may include indirect costs in the actual column only if the subcontracting plan included indirect costs in the goal.

BLOCKS 10a through 16: Under "Current Goal," enter the dollar and percent goals in each category (SB, SDB, WOSB, VOSB, service-disabled VOSBs, and HUBZone SB) from the subcontracting plan approved for this contract. (If the original goals agreed upon at contract award have been revised as a result of contract modifications, enter the original goals in Block 16. The amounts entered in Blocks 10a through 15 should reflect the revised goals.) Under "Actual Cumulative," enter actual subcontract achievements (dollar and percent) from the inception of the contract through the date of the report shown in Block 4. In cases where indirect costs are included, the amounts should include both direct awards and an appropriate prorated portion of indirect awards.

BLOCK 10a: Report all subcontracts awarded to SBs including subcontracts to SDBs, WOSBs, VOSBs, service-disabled VOSBs, and HUBZone SBs. For DOD, NASA, and Coast Guard contracts, include subcontracting awards to HBCUs and MIs.

BLOCK 10b: Report all subcontracts awarded to large businesses (LBs).

BLOCK 10c: Report on this line the total of all subcontracts awarded under this contract (the sum of lines 10a and 10b).

BLOCKS 11 through 16: Each of these items is a subcategory of Block 10a. Note that in some cases the same dollars may be reported in more than one block (e. g., SDBs owned by women or veterans).

BLOCK 11: Report all subcontracts awarded to SDBs (including women-owned, veteran-owned, service-disabled VOSBs, and HUBZone SB SDBs). For DOD, NASA, and Coast Guard contracts, include subcontract awards to HBCUs and MIs.

BLOCK 12: Report all subcontracts awarded to Women-Owned firms (including SDBs, VOSB's, service-disabled VOSBs, and HUBZone SBs owned by women).

BLOCK 13 (For contracts with DoD, NASA, and Coast Guard): Report all subcontracts with HBCUs/MIs. Complete the column under "Current Goal" only when the subcontracting plan establishes a goal.

BLOCK 14: Report all subcontracts awarded to HUBZone SBs (including women-owned, veteran-owned, service-disabled VOSBs, and SDB HUBZone SBs).

BLOCK 15: Report all subcontracts awarded to VOSBs including service-disabled VOSBs (include VOSBs that are also SDBs, WOSBs and HUBZone SBs).

BLOCK 16: Report all subcontracts awarded to service-disabled veteran-owned SB concerns that are also SDBs, WOSBs, and HUBZone SBs.

BLOCK 17: Enter a short narrative explanation if (a) SB, SDB, WOSB, VOSBs, Service-Disabled VOSBs, or HUBZone SB accomplishments fall below that which would be expected using a straight-line projection of goals through the period of contract performance; or (b) if this is a final report, any one of the three goals was not met.

DEFINITIONS

1. Direct Subcontract Awards are those that are identified with the performance of one or more specific Government contract(s).

2. Indirect costs are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

DISTRIBUTION OF THIS REPORT**For the Awarding Agency or Contractor:**

The original copy of this report should be provided to the contracting officer at the agency or contractor identified in Block 8. For contracts with DOD, a copy should also be provided to the Defense Contract Management Agency (DCMA) at the cognizant Defense Contract Management Area Operations (DCMAO) office.

For the Small Business Administration (SBA):

A copy of this report must be provided to the cognizant Commercial Market Representative (CMR) at the time of a compliance review. It is NOT necessary to mail the SF 294 to SBA unless specifically requested by the CMR.

53.301-295 Summary Subcontract Report.

SUMMARY SUBCONTRACT REPORT <i>(See instructions on reverse)</i>				OMB No.: 9000-0007 Expires: 09/30/2003	
Public reporting burden for this collection of information is estimated to average 15.9 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVP), Acquisition Policy Division, GSA, Washington, DC 20405.					
1. CORPORATION, COMPANY OR SUBDIVISION COVERED			3. DATE SUBMITTED		
a. COMPANY NAME			4. REPORTING PERIOD: YEAR <input type="checkbox"/> OCT 1 - MAR 31 <input type="checkbox"/> OCT 1 - SEPT 30		
b. STREET ADDRESS					
c. CITY		d. STATE			
2. CONTRACTOR IDENTIFICATION NUMBER			5. TYPE OF REPORT <input type="checkbox"/> REGULAR <input type="checkbox"/> FINAL <input type="checkbox"/> REVISED		
6. ADMINISTERING ACTIVITY <i>(Please check applicable box)</i>					
ARMY		DEFENSE CONTRACT MANAGEMENT AGENCY		DOE	
NAVY		NASA		OTHER FEDERAL AGENCY <i>(Specify)</i>	
AIR FORCE		GSA			
7. REPORT SUBMITTED AS <i>(Check one)</i>			8. TYPE OF PLAN		
PRIME CONTRACTOR			IF PLAN IS A COMMERCIAL PLAN, SPECIFY THE PERCENTAGE OF THE DOLLARS ON THIS REPORT ATTRIBUTABLE TO THIS AGENCY.		
SUBCONTRACTOR					
BOTH					
			INDIVIDUAL		
			COMMERCIAL PRODUCTS		
9. CONTRACTOR'S MAJOR PRODUCTS OR SERVICE LINES					
a			b		
CUMULATIVE FISCAL YEAR SUBCONTRACT AWARDS <i>(Report cumulative figures for reporting period in Block 4)</i>					
TYPE				WHOLE DOLLARS	PERCENT (To nearest tenth of a %)
10a. SMALL BUSINESS CONCERNS <i>(Include SDB, WOSB, HBCU/MI, HUBZone SB, and VOSB (including Service-Disabled VOSB)) (Dollar Amount and Percent of 10c.)</i>					
10b. LARGE BUSINESS CONCERNS <i>(Dollar Amount and Percent of 10c.)</i>					
10c. TOTAL <i>(Sum of 10a and 10b.)</i>					100.0%
11. SMALL DISADVANTAGED BUSINESS (SDB) CONCERNS <i>(Include HBCU/MI) (Dollar Amount and Percent of 10c.)</i>					
12. WOMEN-OWNED SMALL BUSINESS (WOSB) CONCERNS <i>(Dollar Amount and Percent of 10c.)</i>					
13. HISTORICALLY BLACK COLLEGES AND UNIVERSITIES (HBCU) AND MINORITY INSTITUTIONS (MI) <i>(If applicable) (Dollar Amount and Percent of 10c.)</i>					
14. HUBZONE SMALL BUSINESS (HUBZone SB) CONCERNS <i>(Dollar Amount and Percent of 10c.)</i>					
15. VETERAN-OWNED SMALL BUSINESS (VOSB) CONCERNS <i>(Including Service-Disabled VOSB Concerns) (Dollar Amount and Percent of 10c.)</i>					
16. SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS CONCERNS <i>(Dollar Amount and Percent of 10c.)</i>					
17. REMARKS					
18. CONTRACTOR'S OFFICIAL WHO ADMINISTERS SUBCONTRACTING PROGRAM					
a. NAME		b. TITLE		c. TELEPHONE NUMBER	
				AREA CODE	NUMBER
19. CHIEF EXECUTIVE OFFICER					
a. NAME			c. SIGNATURE		
b. TITLE			d. DATE		

GENERAL INSTRUCTIONS

1. This report is not required from small businesses.
2. This form collects subcontract award data from prime contractors/subcontractors that: (a) hold one or more contracts over \$500,000 (over \$1,000,000 for construction of a public facility); and (b) are required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), Women-Owned Small Business (WOSB), Veteran-Owned Small Business (VOSB), Service-Disabled Veteran-Owned Small Business, and HUBZone Small Business (HUBZone SB) concerns under a subcontracting plan. For the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, this form also collects subcontract award data for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).
3. This report must be submitted semi-annually (for the six months ended March 31st and the twelve months ended September 30th) for contracts with the Department of Defense (DOD) and annually (for the twelve months ended September 30th) for contracts with civilian agencies, except for contracts covered by an approved Commercial Plan (see special instructions in right-hand column). Reports are due 30 days after the close of each reporting period.
4. This report may be submitted on a corporate, company, or subdivision (e.g., plant or division operating on a separate profit center) basis, unless otherwise directed by the agency awarding the contract.
5. If a prime contractor/subcontractor is performing work for more than one Federal agency, a separate report shall be submitted to each agency covering only that agency's contracts, provided at least one of that agency's contracts is over \$500,000 (over \$1,000,000 for construction of a public facility) and contains a subcontracting plan. (Note that DOD is considered to be a single agency; see next instruction.)
6. For DOD, a consolidated report should be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DOD prime contractors. However, DOD contractors involved in construction and related maintenance and repair must submit a separate report for each DOD component.
7. Only subcontracts involving performance in the U.S. or its outlying areas should be included in this report.
8. Purchases from a corporation, company, or subdivision that is an affiliate of the prime/subcontractor are not included in this report.
9. Subcontract award data reported on this form by prime contractors/subcontractors shall be limited to awards made to their immediate subcontractors. Credit cannot be taken for awards made to lower tier subcontractors.
10. See special instructions in right-hand column for Commercial Plans.

SPECIFIC INSTRUCTIONS

BLOCK 2: For the Contractor Identification Number, enter the nine-digit Data Universal Numbering System (DUNS) number that identifies the specific contractor establishment. If there is no DUNS number available that identifies the exact name and address entered in Block 1, contact Dun and Bradstreet Information Services at 1-800-333-0506 to get one free of charge over the telephone. Be prepared to provide the following information: (1) Company name; (2) Company address; (3) Company telephone number; (4) Line of business; (5) Chief executive officer/key manager; (6) Date the company was started; (7) Number of people employed by the company; and (8) Company affiliation.

BLOCK 4: Check only one. Note that March 31 represents the six months from October 1st and that September 30th represents the twelve months from October 1st. Enter the year of the reporting period.

BLOCK 5: Check whether this report is a "Regular," "Final," and/or "Revised" report. A "Final" report should be checked only if the contractor has completed all the contracts containing subcontracting plans awarded by the agency to which it is reporting. A "Revised" report is a change to a report previously submitted for the same period.

BLOCK 6: Identify the department or agency administering the majority of subcontracting plans.

BLOCK 7: This report encompasses all contracts with the Federal Government for the agency to which it is submitted, including subcontracts received from other large businesses that have contracts with the same agency. Indicate in this block whether the contractor is a prime contractor, subcontractor, or both (check only one).

BLOCK 8: Check only one. Check "Commercial Plan" only if this report is under an approved Commercial Plan. For a Commercial Plan, the contractor must specify the percentage of dollars in Blocks 10a through 15b attributable to the agency to which this report is being submitted.

BLOCK 9: Identify the major product or service lines of the reporting organization.

BLOCKS 10a through 16: These entries must include all subcontract awards resulting from contracts or subcontracts, regardless of dollar amount, received from the agency to which this report is submitted. If reporting as a subcontractor, report all subcontracts awarded under prime contracts. Amounts must include both direct awards and an appropriate prorated portion of indirect awards. (The indirect portion is based on the percentage of work being performed

for the organization to which thereport is being submitted in relation to other work being performed by the prime contractor/subcontractor.) Do not include awards made in support of commercial business unless "Commercial" is checked in Block 8 (see Special Instructions for Commercial Plans in right hand column). Report only those dollars subcontracted this fiscal year for the period indicated in Block 4.

BLOCK 10a: Report all subcontracts awarded to SBs including subcontracts to SDBs, WOSBs, VOSBs, Service-Disabled VOSBs, and HUBZone SBs. For DOD, NASA, and Coast Guard contracts, include subcontracting awards to HBCUs and MIs.

BLOCK 10b: Report all subcontracts awarded to large businesses (LBs).

BLOCK 10c: Report on this line the grand total of all subcontracts (the sum of lines 10a and 10b).

BLOCKS 11 through 16: Each of these items is a subcategory of Block 10a. Note that in some cases the same dollars may be reported in more than one block (e.g., SDBs owned by women); likewise subcontracts to HBCUs or MIs should be reported on both Block 11 and 13.

BLOCK 11: Report all subcontracts awarded to SDBs (including women-owned, veteran-owned, service-disabled VOSBs, and HUBZone SB SDBs). For DOD, NASA, and Coast Guard contracts, include subcontract awards to HBCUs and MIs.

BLOCK 12: Report all subcontracts awarded to WOSB firms (including SDBs, VOSBs, service-disabled VOSBs, and HUBZone SBs owned by women).

BLOCK 13: (For contracts with DOD, NASA, and Coast Guard): Enter the dollar value of all subcontracts with HBCUs/MIs.

BLOCK 14: Report all subcontracts awarded to HUBZone SBs (including women-owned, veteran-owned, service-disabled VOSBs, and SDB HUBZone SBs).

BLOCK 15: Report all subcontracts awarded to VOSBs (including women-owned, SDB, and HUBZone SB VOSBs).

BLOCK 16: Report all subcontracts awarded to service disabled VOSBs (including Service-Disabled Veteran Owned Small Business Concerns that are SDBs, WOSBs, and HUBZone SBs). These subcontracts should also be reported in Block 15.

SPECIAL INSTRUCTIONS FOR COMMERCIAL PLANS

1. This report is due on October 30th each year for the previous fiscal year ended September 30th.

2. The annual report submitted by reporting organizations that have an approved company-wide annual subcontracting plan for commercial items shall include all subcontracting activity under commercial plans in effect during the year and shall be submitted in addition to the required reports for other-than-commercial items, if any.

3. Enter in Blocks 10a through 15b the total of all subcontract awards under the contractor's Commercial Plan. Show in Block 8 the percentage of this total that is attributable to the agency to which this report is being submitted. This report must be submitted to each agency from which contracts for commercial items covered by an approved Commercial Plan were received.

DEFINITIONS

1. Direct Subcontract Awards are those that are identified with the performance of one or more specific Government contract(s).

2. Indirect Subcontract Awards are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

SUBMITTAL ADDRESSES FOR ORIGINAL REPORT

For DOD Contractors, send reports to the cognizant contract administration office as stated in the contract.

For Civilian Agency Contractors, send reports to awarding agency:

1. NASA: Forward reports to NASA, Office of Procurement (HS), Washington, DC 20546

2. OTHER FEDERAL DEPARTMENTS OR AGENCIES: Forward report to the OSD/BU Director unless otherwise provided for in instructions by the Department or Agency.

FOR ALL CONTRACTORS:

SMALL BUSINESS ADMINISTRATION (SBA): Send "info copy" to the cognizant Commercial Market Representative (CMR) at the address provided by SBA. Call SBA Headquarters in Washington, DC at (202) 205-6475 for correct address if unknown.

[FR Doc. 01-26300 Filed 10-19-01; 8:45 am]
 BILLING CODE 6820-EP-C

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
 ADMINISTRATION**

**NATIONAL AERONAUTICS AND
 SPACE ADMINISTRATION**

48 CFR Part 19

[FAC 2001-01, FAR Case 2001-001; Item VI]

RIN 9000-AJ16

Federal Acquisition Regulation; Very Small Business Pilot Program

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) by extending, for three additional years, the Very Small Business Pilot Program until September 30, 2003. This rule implements section 503(c) of the Small Business Reauthorization Act of 2000 (part of Public Law 106-554).

DATES: *Effective Date:* December 21, 2001.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501-0044. Please cite FAC 2001-01, FAR case 2001-001

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends paragraph (c) of section 19.901 to implement section 503(c) of the Small Business

Reauthorization Act of 2000 (part of Public Law 106-554). Section 503(c) amends Section 304 of Public Law 103-403 (15 U.S.C. 644 **note**) to extend the pilot program through September 30, 2003. The purpose of the program is to improve access to Government contract opportunities for concerns that are substantially below SBA's size standards by reserving certain acquisitions for competition among such concerns. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comment is not required. However, the Councils will consider comments from small entities concerning the affected FAR Part in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2001-01, FAR case 2001-001), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any new information collection requirements that require Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 19

Government Procurement.

Dated: October 12, 2001.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA and NASA amend 48 CFR part 19 as set forth below:

PART 19—VERY SMALL BUSINESS PILOT PROGRAM

1. The authority citation for 48 CFR part 19 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

LIST OF RULES IN FAC 2001-01

Item	Subject	FAR case	Analyst
I	*Application of the Davis-Bacon Act to Construction Contracts With Options to Extend the Term of the Contract.	1997-613	Nelson.
II	Acquisition of Commercial Items	2000-303	Moss.
III	Prompt Payment Under Cost-Reimbursement Contracts for Services (Interim).	2000-308	Olson.
IV	Veterans' Employment	1998-614	Nelson.
V	*Veterans Entrepreneurship and Small Business Development Act of 1999 (Interim).	2000-302	Cundiff.

19.901 [Amended]

2. Amend section 19.901 in the first sentence of paragraph (c) by removing "2000" and adding "2003" in its place.

[FR Doc. 01-26301 Filed 10-19-01; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
 ADMINISTRATION**

**NATIONAL AERONAUTICS AND
 SPACE ADMINISTRATION**

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2001-01 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 2001-01 which precedes this document. These documents are also available via the Internet at <http://www.arnet.gov/far>.

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