

# Federal Register

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Friday  
January 26, 1996

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## Part IV

**Department of Defense  
General Services  
Administration**

**National Aeronautics and  
Space Administration**

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48 CFR Ch. I, et al.

**Federal Acquisition Regulations; Final  
and Interim Rules**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

**Federal Acquisition Circular 90-37 Introduction**

**AGENCY:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Summary presentation of final and interim rules with request for comment.

**SUMMARY:** This document summarizes the Federal Acquisition Regulation (FAR) rules which follow it in the order listed below. The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are issuing Federal Acquisition Circular (FAC) 90-37 to amend the FAR.

**DATES:** For effective dates and comment dates, see separate documents which follow. Please cite FAC 90-37 and the appropriate FAR case number(s) in all

correspondence related to the following documents.

**FOR FURTHER INFORMATION CONTACT:**

The analyst whose name appears (in the table below) in relation to each FAR case or subject area. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 90-37 and specific FAR case number(s).

**SUPPLEMENTARY INFORMATION:** Federal Acquisition Circular 90-37 amends the Federal Acquisition Regulation (FAR) as specified below:

Item	Subject	FAR case	Analyst
I .....	Inherently Governmental Functions .....	92-051	O'Such.
II .....	Javits-Wagner-O'Day Program .....	91-108	Klein.
III .....	Made in America Labels/Unfair Trade Practices .....	93-301/ 93-306	De Stefano.
IV .....	Debarment and Suspension Certificate .....	92-615	De Stefano.
V .....	Nonprofit Institutions Clause Prescription .....	92-010	Olson.
VI .....	Field Pricing Support Request .....	95-006	Olson.
VII .....	Subcontract Proposal Audits .....	92-002	Olson.
VIII .....	Overhead Should-Cost Reviews .....	92-017	Olson.
IX .....	SBA Responsibility, Certificate of Competency Requests .....	92-606	Klein.
X .....	Mentor Protégé Program (Interim) .....	93-308	Klein.
XI .....	Subcontracting Plans .....	92-019	Klein.
XII .....	Insurance—Liability to Third Persons (under Cost Reimbursement Contracts) .....	92-014	O'Such.
XIII .....	Availability of Accounting Guide .....	94-002	Olson.
XIV .....	Nonallowability of Excise Taxes on Nondeductible Contributions to Deferred Compensation Plans .....	92-604	Olson.
XV .....	Contractors' Purchasing Systems Reviews and Subcontractor Consent .....	92-040	Klein.

**Item I—Inherently Governmental Functions (FAR Case 92-051)**

This final rule amends FAR Parts 7, 11, and 37 to provide policy and procedures relating to inherently governmental functions. Subpart 7.5 is added to provide a definition of "inherently governmental functions" and to provide a list of examples of functions considered to be inherently governmental, or which shall be treated as such, and a list of certain services and actions that are not considered to be inherently governmental functions.

**Item II—Javits-Wagner-O'Day Program (JWOD) (FAR Case 91-108)**

This final rule amends FAR Parts 8, 51, and 52 to clarify that the Government's statutory obligation to purchase certain items from the Committee for Purchase from People Who Are Blind or Severely Disabled also applies when contractors purchase items for Government use.

**Item III—Made in America Labels/Unfair Trade Practices (FAR Cases 93-301 and 93-306)**

This final rule amends FAR 9.403, 9.406, and 9.407 to add language concerning suspension or debarment of

contractors who engage in unfair trade practices and/or intentionally affix a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States.

**Item IV—Debarment and Suspension Certificate (FAR Case 92-615)**

This final rule amends FAR 9.406-2, 9.407-2, and 52.209-5 to add "tax evasion" as a cause for debarment or suspension.

**Item V—Nonprofit Institutions Clause Prescription (FAR Case 92-010)**

This final rule amends the prescriptions for use of the clauses at 52.215-27, Termination of Defined Benefit Pension Plans, and 52.215-39, Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB), and also clarifies the language of the clauses.

**Item VI—Field Pricing Support Request (FAR Case 95-006)**

This final rule revises FAR 15.805-5(c)(1) to clarify that contracting officers may send audit requests directly to the cognizant audit office, if no other type of field pricing support is required.

**Item VII—Subcontract Proposal Audits (FAR Case 92-002)**

This final rule amends FAR 15.806-3, Field pricing reports, to add two additional examples of when field pricing support audits of subcontract proposals may be appropriate. The first example is when the contractor or higher tier subcontractor has been cited for having significant estimating system deficiencies in the area of subcontract pricing. The second example is when a lower tier subcontractor has been cited as having significant estimating system deficiencies.

**Item VIII—Overhead Should-Cost Reviews (FAR Case 92-017)**

This final rule amends FAR 15.810 to add guidance on overhead should-cost reviews.

**Item IX—SBA Responsibility, Certificate of Competency Requests (FAR Case 92-606)**

This final rule amends FAR 19.602-2 to reflect the approval of Small Business Administration regional offices to issue Certificate of Competency (COC) Determinations as provided in 13 CFR Part 125.

**Item X—Mentor Protégé Program (FAR Case 93-308)**

This interim rule amends FAR 19.702, Statutory requirements, to allow mentor firms participating in the Department of Defense (DOD) Mentor-Protégé Program to be granted credit toward subcontracting goals under small business subcontracting plans entered into with any executive agency. FAR 52.244-5, Competition in Subcontracting, is amended to permit DOD mentor firms to award subcontracts on a noncompetitive basis to protégé firms under DOD and other contracts.

**Item XI—Subcontracting Plans (FAR Case 92-019)**

This final rule amends FAR 19.705-2(d) to expand the circumstances when subcontracting plans may be required from and negotiated with more than the apparently successful offeror. The clause prescription at 19.708(b)(1) and Alternate II for the clause at 52.219-9 are added for use when subcontracting plans are required with initial proposals.

**Item XII—Insurance—Liability to Third Persons (under Cost Reimbursement Contracting) (FAR Case 92-014)**

This final rule deletes the provision at FAR 52.228-6 and makes related changes at 28.311, 52.228-7, 52.245-7, and 52.245-10 to remove obsolete language pertaining to liability insurance under cost-reimbursement contracts.

**Item XIII—Availability of Accounting Guide (FAR Case 94-002)**

This final rule amends FAR Part 31 to add a new section 31.001 advising contractors on how to obtain a copy of an informational guide entitled "Guidance for New Contractors."

**Item XIV—Nonallowability of Excise Taxes on Nondeductible Contributions to Deferred Compensation Plans (FAR Case 92-604)**

This final rule amends FAR 31.205-41 to designate excise taxes at subtitle D, chapter 43 of the Internal Revenue Code, as unallowable costs.

**Item XV—Contractors' Purchasing Systems Reviews and Subcontractor Consent (FAR Case 92-40)**

This final rule amends FAR Parts 44 and 52 to increase the thresholds for Contractors' Purchasing Systems Reviews (CPSR's) and subcontract consent. The threshold at 44.302(a) for performing CPSR's is raised from \$10 million to \$25 million. The threshold at 52.244-2(a) for consent to subcontract

under cost-reimbursement and letter prime contracts for fabrication, purchase, rental, installation, or other acquisition for special test equipment is raised from \$10,000 to \$25,000. The threshold at 52.244-2(b)(1) requiring additional information on certain subcontracts is raised from \$10,000 to \$25,000.

Dated: January 11, 1996.

Edward C. Loeb,  
*Acting Director, Office of Federal Acquisition Policy.*

**Federal Acquisition Circular  
Number 90-37**

Federal Acquisition Circular (FAC) 90-37 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 90-37 is effective March 26, 1996, except for Item X which is effective January 26, 1996.

Dated: January 4, 1996.

Eleanor R. Spector,  
*Director, Defense Procurement.*

Dated: January 17, 1996.

Ada M. Ustad,  
*Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.*

Dated: January 12, 1996.

Deidre A. Lee,  
*Associate Administrator for Procurement, National Aeronautics and Space Administration.*

[FR Doc. 96-1014 Filed 1-25-96; 8:45 am]

**BILLING CODE 6820-EP-M**

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Parts 7, 11, and 37**

[FAC 90-37; FAR Case 92-051 Item I]

**RIN 9000-AF56**

**Federal Acquisition Regulation;  
Inherently Governmental Functions**

**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 have agreed to revise the Federal Acquisition Regulation (FAR) to implement Office of Federal Procurement Policy (OFPP) Policy Letter 92-1, Inherently Governmental Functions. This rule provides a definition of, and internal Government responsibilities and procedures relating to, inherently governmental functions. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** March 26, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mr. Peter O'Such (202) 501-1759 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-37, FAR case 92-051.

**SUPPLEMENTARY INFORMATION:****A. Background**

This final rule implements the requirements of the Office of Federal Procurement Policy (OFPP) Policy Letter 92-1, Inherently Governmental Functions. The OFPP published its proposed policy letter for public comment in the Federal Register at 56 FR 65279, December 16, 1991. OFPP evaluated public comments and published the final policy letter in the Federal Register at 57 FR 45096, September 30, 1992.

A FAR proposed rule to implement the policy letter was published in the Federal Register at 59 FAR 29696, June 8, 1994. Thirteen sources submitted public comments. Minor revisions were made to the rule as a result of those comments.

**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 under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule pertains to internal Government responsibilities and procedures relating to inherently governmental functions.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors,

contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 7, 11, and 37

Government procurement.

Dated: January 11, 1996.

Edward C. Loeb,

Acting Director, Office of Federal Acquisition Policy.

Therefore, 49 CFR parts 7, 11, and 37 are amended as set forth below:

The authority citation for 48 CFR parts 7, 11, and 37 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 7—ACQUISITION PLANNING**

2. Section 7.000 is amended in paragraph (b) by removing the word "and"; in paragraph (c) by removing the period at the end of the sentence and inserting in its place "; and"; and by adding paragraph (d) to read as follows:

**§ 7.000 Scope of part.**

\* \* \* \* \*

(d) Determining whether functions are inherently governmental.

3. Section 7.103 is amended by adding paragraph (p) to read as follows:

**7.103 Agency-head responsibilities.**

\* \* \* \* \*

(p) Ensuring that no purchase request is initiated or contract entered into that would result in the performance of an inherently governmental function by a contractor and that all contracts are adequately managed so as to ensure effective official control over contract performance.

4. Section 7.105 is amended by redesignating paragraphs (b)(9) through (b)(19) as (b)(10) through (b)(20) and adding a new (b)(9) to read as follows:

**7.105 Contents of written acquisition plans.**

\* \* \* \* \*

(b) \* \* \*

(9) *Inherently governmental functions.* Address the consideration given to OFPP Policy Letter 92-1 (see subpart 7.5).

5. Subpart 7.5 is added to read as follows:

**Subpart 7.5—Inherently Governmental Functions**

- Sec.
- 7.500 Scope of subpart.
- 7.501 Definition.
- 7.502 Applicability.
- 7.503 Policy.

**Subpart 7.5—Inherently Governmental Functions**

**7.500 Scope of subpart.**

The purpose of this subpart is to prescribe policies and procedures to ensure that inherently governmental functions are not performed by contractors. It implements the policies of Office of Federal Procurement Policy (OFPP) Policy Letter 92-1, *Inherently Governmental Functions*.

**7.501 Definition.**

*Inherently governmental function* means, as a matter of policy, a function that is so intimately related to the public interest as to mandate performance by Government employees. This definition is a policy determination, not a legal determination. An inherently governmental function includes activities that require either the exercise of discretion in applying Government authority, or the making of value judgments in making decisions for the Government. Governmental functions normally fall into two categories: the act of governing, i.e., the discretionary exercise of Government authority, and monetary transactions and entitlements.

- (a) An inherently governmental function involves, among other things, the interpretation and execution of the laws of the United States so as to—
  - (1) Bind the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;
  - (2) Determine, protect, and advance United States economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;
  - (3) Significantly affect the life, liberty, or property of private persons;
  - (4) Commission, appoint, direct, or control officers or employees of the United States; or
  - (5) Exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the United States, including the collection, control, or disbursement of Federal funds.

(b) Inherently governmental functions do not normally include gathering information for or providing advice, opinions, recommendations, or ideas to Government officials. They also do not include functions that are primarily ministerial and internal in nature, such as building security, mail operations, operation of cafeterias, housekeeping, facilities operations and maintenance, warehouse operations, motor vehicle fleet management operations, or other routine electrical or mechanical

services. The list of commercial activities included in the attachment to Office of Management and Budget (OMB) Circular No. A-76 is an authoritative, nonexclusive list of functions which are not inherently governmental functions.

**7.502 Applicability.**

The requirements of this subpart apply to all contracts for services. This subpart does not apply to services obtained through either personnel appointments, advisory committees, or personal services contracts issued under statutory authority.

**7.503 Policy.**

(a) Contracts shall not be used for the performance of inherently governmental functions.

(b) Agency decisions which determine whether a function is or is not an inherently governmental function may be reviewed and modified by appropriate Office of Management and Budget officials.

(c) The following is a list of examples of functions considered to be inherently governmental functions or which shall be treated as such. This list is not all inclusive:

- (1) The direct conduct of criminal investigations.
- (2) The control of prosecutions and performance of adjudicatory functions other than those relating to arbitration or other methods of alternative dispute resolution.
- (3) The command of military forces, especially the leadership of military personnel who are members of the combat, combat support, or combat service support role.
- (4) The conduct of foreign relations and the determination of foreign policy.
- (5) The determination of agency policy, such as determining the content and application of regulations, among other things.
- (6) The determination of Federal program priorities for budget requests.
- (7) The direction and control of Federal employees.
- (8) The direction and control of intelligence and counter-intelligence operations.

(9) The selection or non-selection of individuals for Federal Government employment, including the interviewing of individuals for employment.

(10) The approval of position descriptions and performance standards for Federal employees.

(11) The determination of what Government property is to be disposed of and on what terms (although an agency may give contractors authority to dispose of property at prices within

specified ranges and subject to other reasonable conditions deemed appropriate by the agency).

(12) In Federal procurement activities with respect to prime contracts—

(i) Determining what supplies or services are to be acquired by the Government (although an agency may give contractors authority to acquire supplies at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the agency);

(ii) Participating as a voting member on any source selection boards;

(iii) Approving any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria;

(iv) Awarding contracts;

(v) Administering contracts (including ordering changes in contract performance or contract quantities, taking action based on evaluations of contractor performance, and accepting or rejecting contractor products or services);

(vi) Terminating contracts;

(vii) Determining whether contract costs are reasonable, allocable, and allowable; and

(viii) Participating as a voting member on performance evaluation boards.

(13) The approval of agency responses to Freedom of Information Act requests (other than routine responses that, because of statute, regulation, or agency policy, do not require the exercise of judgment in determining whether documents are to be released or withheld), and the approval of agency responses to the administrative appeals of denials of Freedom of Information Act requests.

(14) The conduct of Administrative hearings to determine the eligibility of any person for a security clearance, or involving actions that affect matters of personal reputation or eligibility to participate in Government programs.

(15) The approval of Federal licensing actions and inspections.

(16) The determination of budget policy, guidance, and strategy.

(17) The collection, control, and disbursement of fees, royalties, duties, fines, taxes, and other public funds, unless authorized by statute, such as 31 U.S.C. 952 (relating to private collection contractors) and 31 U.S.C. 3718 (relating to private attorney collection services), but not including—

(i) Collection of fees, fines, penalties, costs, or other charges from visitors to or patrons of mess halls, post or base exchange concessions, national parks, and similar entities or activities, or from other persons, where the amount to be collected is easily calculated or

predetermined and the funds collected can be easily controlled using standard case management techniques; and

(ii) Routine voucher and invoice examination.

(18) The control of the treasury accounts.

(19) The administration of public trusts.

(20) The drafting of Congressional testimony, responses to Congressional correspondence, or agency responses to audit reports from the Inspector General, the General Accounting Office, or other Federal audit entity.

(d) The following is a list of examples of functions generally not considered to be inherently governmental functions. However, certain services and actions that are not considered to be inherently governmental functions may approach being in that category because of the nature of the function, the manner in which the contractor performs the contract, or the manner in which the Government administers contractor performance. This list is not all inclusive:

(1) Services that involve or relate to budget preparation, including workload modeling, fact finding, efficiency studies, and should-cost analyses, etc.

(2) Services that involve or relate to reorganization and planning activities.

(3) Services that involve or relate to analysis, feasibility studies, and strategy options to be used by agency personnel in developing policy.

(4) Services that involve or relate to the development of regulations.

(5) Services that involve or relate to the evaluation of another contractor's performance.

(6) Services in support of acquisition planning.

(7) Contractors providing assistance in contract management (such as where the contractor might influence official evaluations of other contractors).

(8) Contractors providing technical evaluation of contract proposals.

(9) Contractors providing assistance in the development of statements of work.

(10) Contractors providing support in preparing responses to Freedom of Information Act requests.

(11) Contractors working in any situation that permits or might permit them to gain access to confidential business information and/or any other sensitive information (other than situations covered by the Defense Industrial Security Program described in 4.402(b)).

(12) Contractors providing information regarding agency policies or regulations, such as attending conferences on behalf of an agency, conducting community relations

campaigns, or conducting agency training courses.

(13) Contractors participating in any situation where it might be assumed that they are agency employees or representatives.

(14) Contractors participating as technical advisors to a source selection board or participating as voting or nonvoting members of a source evaluation board.

(15) Contractors serving as arbitrators or providing alternative methods of dispute resolution.

(16) Contractors constructing buildings or structures intended to be secure from electronic eavesdropping or other penetration by foreign governments.

(17) Contractors providing inspection services.

(18) Contractors providing legal advice and interpretations of regulations and statutes to Government officials.

(19) Contractors providing special non-law enforcement, security activities that do not directly involve criminal investigations, such as prisoner detention or transport and non-military national security details.

(e) Agency implementation shall include procedures requiring the agency head or designated requirements official to provide the contracting officer, concurrent with transmittal of the statement of work (or any modification thereof), a written determination that none of the functions to be performed are inherently governmental. This assessment should place emphasis on the degree to which conditions and facts restrict the discretionary authority, decision-making responsibility, or accountability of Government officials using contractor services or work products. Disagreements regarding the determination will be resolved in accordance with agency procedures before issuance of a solicitation.

## **PART 11—DESCRIBING AGENCY NEEDS**

6. Section 11.105 is added to read as follows:

### **11.105 Purchase descriptions for service contracts.**

In drafting purchase descriptions for service contracts, agency requiring activities shall ensure that inherently governmental functions (see subpart 7.5) are not assigned to a contractor. These purchase descriptions shall

(a) Reserve final determination for Government officials;

(b) Require proper identification of contractor personnel who attend meetings, answer Government telephones, or work in situations where

their actions could be construed as acts of Government officials unless, in the judgment of the agency, no harm can come from failing to identify themselves; and

(c) Require suitable marking of all documents or reports produced by contractors.

### PART 37—SERVICE CONTRACTING

7. Section 37.102 is revised to read as follows:

#### 37.102 Policy.

(a) Agencies shall generally rely on the private sector for commercial services (see OMB Circular No. A-76, Performance of Commercial Activities and subpart 7.3).

(b) Agencies shall not award a contract for the performance of an inherently governmental function (see subpart 7.5).

(c) Non-personal service contracts are proper under general contracting authority.

8. Section 37.114 is added to read as follows:

#### 37.114 Special acquisition requirements.

Contracts for services which require the contractor to provide advice, opinions, recommendations, ideas, reports, analyses, or other work products have the potential for influencing the authority, accountability, and responsibilities of Government officials. These contracts require special management attention to ensure that they do not result in performance of inherently governmental functions by the contractor and that Government officials properly exercise their authority. Agencies must ensure that—

(a) A sufficient number of qualified Government employees are assigned to oversee contractor activities, especially those that involve support of government policy or decision making. During performance of service contracts, the functions being performed shall not be changed or expanded to become inherently governmental.

(b) A greater scrutiny and an appropriate enhanced degree of management oversight is exercised when contracting for functions that are not inherently governmental but closely support the performance of inherently governmental functions (see 7.503(c)).

(c) All contractor personnel attending meetings, answering Government telephones, and working in other situations where their contractor status is not obvious to third parties are required to identify themselves as such to avoid creating an impression in the minds of members of the public or

Congress that they are Government officials, unless, in the judgment of the agency, no harm can come from failing to identify themselves. They must also ensure that all documents or reports produced by contractors are suitably marked as contractor products or that contractor participation is appropriately disclosed.

[FR Doc. 96-1015 Filed 1-25-96; 8:45 am]

BILLING CODE 6820-EP-M

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

#### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 8, 51, and 52

[FAC 90-37; FAR Case 91-108; Item II]

RIN 9000-AF71

#### Federal Acquisition Regulation; Javits-Wagner-O'Day Program (JWOD)

**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 have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify that the Government's obligation to purchase items from statutorily mandated sources of supply also applies when contractors purchase items for Government use. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** March 26, 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Klein at (202) 501-3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-37, FAR case 91-108.Q02

#### SUPPLEMENTARY INFORMATION:

##### A. Background

A proposed rule was published in the Federal Register at 59 FR 14454, March 28, 1994. The rule amended FAR Parts 8, 51, and 52 to clarify that the statutory obligation for Government agencies to purchase certain items from the Committee for Purchase from People Who are Blind or Severely Disabled also

applies when contractors purchase items for Government use.

Five substantive comments from three sources were received during the public comment period. Clarifying revisions have been made to §§ 51.101(c) and 52.208-9 of the rule as a result of the public comments.

##### 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 under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it merely clarifies that contractors must purchase certain items from the same statutorily mandated sources that Government agencies are required to use, when a contractor is performing an agency's supply function.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 8, 51, and 52

Government procurement.

Dated: January 11, 1996.

Edward C. Loeb,

*Acting Director, Office of Federal Acquisition Policy.*

Therefore, 48 CFR parts 8, 51, and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 8, 51, 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 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. Section 8.001 is amended by revising paragraphs (a)(2) (ii) and (iii) and adding paragraph (c) to read as follows:

#### 8.001 Priorities for use of Government supply sources.

(a) \* \* \*

(2) \* \* \*

(ii) Mandatory Federal Supply Schedules (see subpart 8.4);

(iii) Optional use Federal Supply Schedules (see subpart 8.4); and

\* \* \* \* \*

(c) The statutory obligation for Government agencies to satisfy their

requirements for supplies available from the Committee for Purchase From People Who Are Blind or Severely Disabled also applies when contractors purchase the supply items for Government use.

3. Section 8.003 is added to read as follows:

**8.003 Contract clause.**

The contracting officer shall insert the clause at 52.208-9, Contractor Use of Mandatory Sources of Supply, in solicitations and contracts which require a contractor to purchase supply items for Government use that are available from the Committee for Purchase from People Who Are Blind or Severely Disabled. The contracting officer shall identify in the contract schedule the items which must be purchased from a mandatory source and the specific source.

**PART 51—USE OF GOVERNMENT SOURCES BY CONTRACTORS**

4. Section 51.101 is amended by adding paragraph (c) to read as follows:

**51.101 Policy.**

(c) Contracting officers shall authorize contractors purchasing supply items for Government use that are available from the Committee for Purchase from People Who Are Blind or Severely Disabled (see subpart 8.7) to purchase such items from the Defense Logistics Agency (DLA), the General Services Administration (GSA), and the Department of Veterans Affairs (VA) if they are available from these agencies through their distribution facilities. Mandatory supplies that are not available from DLA/GSA/VA shall be ordered through the appropriate central nonprofit agency (see 52.208-9(c)).

5. Section 51.102 is amended in the first sentence of the introductory text of paragraph (a) by inserting after the word "sources" the phrase "in accordance with 51.101 (a) or (b),"; adding a new second sentence; and revising paragraph (c)(3) to read as follows:

**51.102 Authorization to use Government supply sources.**

(a) \* \* \* A written finding is not required when authorizing use of the Government supply sources in accordance with 51.101(c). \* \* \*

\* \* \* \* \*

(c) \* \* \*

(3) Approval for the contractor to use Department of Veterans Affairs (VA) supply sources from the Deputy Assistant Secretary for Acquisition and Materiel Management (Code 90), Office of Acquisition and Materiel

Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420;

\* \* \* \* \*

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

6. Section 52.208-9 is added to read as follows:

**52.208-9 Contractor Use of Mandatory Sources of Supply.**

As prescribed in 8.003, insert the following clause:

Contractor Use Of Mandatory Sources Of Supply (Mar 1996)

(a) Certain supplies to be provided under this contract for use by the Government are required by law to be obtained from the Committee for Purchase from People Who Are Blind or Severely Disabled (Javits-Wagner-O' Day Act (JWOD) (41 U.S.C. 48)). Additionally, certain of these supplies are available from the Defense Logistics Agency (DLA), the General Services Administration (GSA), or the Department of Veterans Affairs (VA). The Contractor shall obtain mandatory supplies to be provided for Government use under this contract from the specific sources indicated in the contract schedule.

(b) The Contractor shall immediately notify the Contracting Officer if a mandatory source is unable to provide the supplies by the time required, or if the quality of supplies provided by the mandatory source is unsatisfactory. The Contractor shall not purchase the supplies from other sources until the Contracting Officer has notified the Contractor that the mandatory source has authorized purchase from other sources.

(c) Price and delivery information for the mandatory supplies is available from the Contracting Officer for the supplies obtained through the DLA/GSA/VA distribution facilities. For mandatory supplies that are not available from DLA/GSA/VA, price and delivery information is available from the appropriate central nonprofit agency. Payments shall be made directly to the source making delivery. Points of contract for JWOD central nonprofit agencies are:

- (1) National Industries for the Blind (NIB)  
1901 North Beauregard Street, Suite 200  
Alexandria, VA 22311-1705 (703) 998-0770
- (2) NISH, 2235 Cedar Lane, Vienna, VA  
22182-5200 (703) 560-6800

(End of clause)

[FR Doc. 96-1016 Filed 1-25-96; 8:45 am]

**BILLING CODE 6820-EP-M**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 9**

[FAC 90-37; FAR Cases 93-301 and 93-306; Item III]

**RIN 9000-AF40**

**Federal Acquisition Regulation; Made in America Labels/Unfair Trade Practices**

**AGENCY:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Interim rule adopted as final.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to implement sections 201 and 202 of the Defense Production Act. Section 201 directs that the FAR be amended to address the responsibility of contractors who engage in unfair trade practices as defined in section 201. Section 202 directs that the FAR be amended to address the responsibility of persons that intentionally affix a label bearing a fraudulent "Made in America" inscription to a product sold in or shipped to the United States. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** January 26, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ralph De Stefano (202) 501-1758 in reference to these combined FAR cases. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-37, FAR cases 93-301 and 93-306.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This final rule implements the requirements of sections 201 and 202 of the Defense Production Act. Section 201 of the Defense Production Act (Public Law 102-558) provides that any contractor who has engaged in unfair trade practices may be found to lack such business integrity to affect the contractor's responsibility to perform a Government contract or subcontract. Section 201 defines "unfair trade

practices" as the commission by a contractor of any of the following acts: (1) A violation of Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), as determined by the International Trade Commission (2) A violation, as determined by the Secretary of Commerce, of any agreement of the group known as the "Coordination Committee" for purposes of the Export Administration Act of 1979 (50 U.S.C. App. 2401, *et seq.*) or any similar bilateral or multilateral export control agreement, or (3) A knowingly false statement regarding a material element of a certification concerning the foreign content of an item of supply, as determined by the Secretary of the Department or the head of the agency to which such certificate was furnished. Section 201 mandates that this statement of public contract law policy be implemented by amending FAR subpart 9.4, not later than 270 days after the date of enactment of the Defense Production Act (October 28, 1992).

Section 202 of the Defense Production Act (Public Law 102-558) provides that any person determined to have intentionally affixed a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States, when such product was not made in the United States, may be found to lack business integrity or business honesty to such a degree as to affect their responsibility to perform a Federal contract or subcontract. Section 202 mandates that this statement of policy be implemented by amending FAR Subpart 9.4 (Debarment, Suspension, and Ineligibility) not later than 270 days (July 28, 1993) after the date of enactment of the Defense Production Act (October 28, 1992).

A combined interim rule was published in the Federal Register at 59 FR 11368 on March 10, 1994. Two sources submitted public comments. No changes were made as a result of those comments.

#### 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 under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only applies to entities who engage in unfair trade practices or who intentionally affix fraudulent "Made in America" labels to products sold in or shipped to the United States.

#### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

#### List of Subjects in 48 CFR Part 9

Government procurement.

Dated: January 11, 1996.

Edward C. Loeb,  
*Acting Director, Office of Federal Acquisition Policy.*

#### Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR part 9, which was published at 59 FR 11371, March 10, 1994, (FAC 90-20, Item II) is adopted as a final rule without change.

The authority citation for 48 CFR part 9 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).

[FR Doc. 96-1017 Filed 1-25-96; 8:45 am]

BILLING CODE 6820-EP-M

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 9 and 52

[FAC 90-37; FAR Case 92-615; Item IV]

RIN 9000-AF57

#### Federal Acquisition Regulation; Debarment and Suspension Certificate

**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 have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to add tax evasion as a cause for consideration for suspension or debarment. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** March 26, 1996.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Ralph De Stefano at (202) 501-1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 90-37, FAR case 92-615.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

The Twentieth Report by the Committee on Government Operations entitled "Coins, Contracting, and Chicanery: Treasury and Justice Departments Fail to Coordinate" dated May 27, 1992, among other things, stated that there was a very real possibility that the U.S. Government did business with a man indicted as being one of the biggest tax evaders in history. In order to prevent this from happening in the future, a revision to the FAR was proposed to address tax evasion.

A proposed rule was published in the Federal Register at 58 FR 63494 on December 1, 1993. Four sources submitted public comments. No changes were made as a result of those comments.

##### 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 under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because offerors already must certify whether they have been convicted of or had a civil judgment rendered against them for a list of offenses. This rule will add "tax evasion" to the existing certification, as well as to the list of offenses for which contractors may be suspended or debarred from Federal contracts.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 9 and 52

Government procurement.



Dated: January 11, 1996.  
Edward C. Loeb,  
*Acting Director, Office of Federal Acquisition Policy.*

Therefore, 48 CFR Parts 9 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 9 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 9—CONTRACTOR QUALIFICATIONS**

### **9.406-2 [Amended]**

2. Section 9.406-2 is amended in paragraph (a)(3) by inserting "tax evasion," after "false statements,".

### **9.407-2 [Amended]**

3. Section 9.407-2 is amended in paragraph (a)(3) by inserting "tax evasion," after "false statements,".

## **PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

### **52.209-5 [Amended]**

4. Section 52.209-5 is amended by revising the clause date to read "(MAR 1996)"; and in paragraph (a)(1)(i)(B) by inserting "tax evasion," after "false statements".

### **52.212-3 [Amended]**

5. Section 52.212-3 is amended by revising the date of the provision to read "(MAR 1996)"; and in paragraph (h)(2) by adding "tax evasion," after "false statements,".

[FR Doc. 96-1018 Filed 1-25-96; 8:45 am]

BILLING CODE 6820-EP-M

## **DEPARTMENT OF DEFENSE**

### **GENERAL SERVICES ADMINISTRATION**

### **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

#### **48 CFR Parts 15 and 52**

[FAC 90-37; FAR Case 92-010; Item V]

RIN 9000-AF77

#### **Federal Acquisition Regulation; Nonprofit Institutions Clause Prescription**

**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 have agreed on a final rule to amend the Federal Acquisition Regulation (FAR). These changes revise the prescriptions for use of the clauses, Termination of Defined Benefit Pension Plans and Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB), and also clarifies the language of the clauses. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** March 26, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeremy Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-37, FAR case 92-010.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

The wording of the prescriptions at 15.804-8(e) and (f) currently implies that the clauses at 52.215-27, Termination of Defined Benefit Pension Plans, and 52.215-39, Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions, should also be used in solicitations and contracts with noncommercial organizations. The clauses refer to the cost principles applicable to commercial organizations in FAR subpart 31.2, whereas OMB Circulars A-21, A-87 and A-122 contain the cost principles governing contracts with noncommercial organizations. In addition, the prescriptions currently contain dissimilar criteria concerning the use of the clauses in preaward or postaward cost situations. The revisions to the prescriptions at 15.804-8(e) and (f) correct these inconsistencies and clarify when the clauses at 52.215-27 and 52.215-39 should be used. Additional revisions to the clauses clarify the requirements specified in them. A proposed rule was published in the Federal Register at 59 FR 16389, April 6, 1994. Three public comments were received. No changes were made as a result of those comments.

##### **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 under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded

to small businesses are awarded on a competitive, fixed-price basis and the cost principles do not apply. It is estimated that the number of contract actions awarded to small businesses which require the submission of cost or pricing data average less than 1 percent of the total number of small business actions.

##### **C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which 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 15 and 52

Government procurement.

Dated: January 11, 1996.

Edward C. Loeb,  
*Acting Director, Office of Federal Acquisition Policy.*

Therefore, 48 CFR Parts 15 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 15 and 52 continue 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 15—CONTRACTING BY NEGOTIATION**

2. Section 15.804-8 is amended by revising paragraphs (e) and (f); and in paragraph (g) by removing the word "certified". The revised text reads as follows:

#### **15.804-8 Contract clauses and solicitation provisions.**

\* \* \* \* \*

(e) *Termination of defined benefit pension plans.* The contracting officer shall insert the clause at 52.215-27, Termination of Defined Benefit Pension Plans, in solicitations and contracts for which it is anticipated that cost or pricing data will be required or for which any preaward or postaward cost determinations will be subject to part 31.

(f) *Postretirement benefit funds.* The contracting officer shall insert the clause at 52.215-39, Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB), in solicitations and contracts for which it is anticipated that cost or pricing data will be required or for which any preaward or postaward cost determination will be subject to part 31.

\* \* \* \* \*

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

3. Section 52.215-27 is amended by revising the clause to read as follows:

**52.215-27 Termination of Defined Benefit Pension Plans.**

\* \* \* \* \*

Termination of Defined Benefit Pension Plans (Mar 1996)

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined benefit pension plan or otherwise recapture such pension fund assets. If pension fund assets revert to the Contractor or are constructively received by it under a termination or otherwise, the Contractor shall make a refund or gift a credit to the Government for its equitable share of the gross amount withdrawn. The Government's equitable share shall reflect the Government's participation in pension costs through those contracts for which cost or pricing data (see 15.804 of the Federal Acquisition Regulation (FAR)) were submitted or which are subject to FAR Part 31. The Contractor shall include the substance of this clause in all subcontracts under this contract which meets the applicability requirements of FAR 15.804-8(e).  
(End of clause)

4. Section 52.215-39 is amended by revising the clause to read as follows:

**52.215-39 Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB).**

\* \* \* \* \*

Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB) (Mar 1996)

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate or reduce a PRB plan. If PRB fund assets revert, or inure, to the Contractor or are constructively received by it under a plan termination, reduction, or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share of any amount of previously funded PRB costs which revert or inure to the Contractor. Such equitable share shall reflect the Government's previous participation in PRB costs through those contracts for which cost or pricing data (see 15.804 of the Federal Acquisition Regulation (FAR)) were submitted or which are subject to FAR Part 31. The Contractor shall include the substance of this clause in all subcontracts under this contract which meet the applicability requirements of FAR 15.804-8(f).  
(End of clause)

[FR Doc. 96-1019 Filed 1-25-96; 8:45 am]  
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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 15**

[FAC 90-37; FAR Case 95-006; Item VI]

**RIN 9000-AG69**

**Federal Acquisition Regulation; Field Pricing Support Request**

**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 have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to clarify internal Government procedures for requesting field pricing support. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** March 26, 1996.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Jeremy Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-37, FAR case 95-006.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This final rule implements a recommendation of the Department of Defense Procurement Process Reform Process Action Team. The rule clarifies that contracting officers may send audit requests directly to the cognizant audit office, if no other type of field pricing support is required.

**B. Regulatory Flexibility Act**

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90-37, FAR case 95-006), in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 15**

Government procurement.

Dated: January 11, 1996.

Edward C. Loeb,

*Acting Director, Office of Federal Acquisition Policy.*

Therefore, 48 CFR Part 15 is amended as set forth below:

**PART 15—CONTRACTING BY NEGOTIATION**

1. The authority citation for 48 CFR Part 15 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).

2. Section 15.805-5 is amended in paragraph (c)(1) by revising the second sentence to read as follows:

**15.805-5 Field pricing support.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \* If an audit is all that is needed, the contracting officer may initiate an audit by sending the request directly to the cognizant audit office.

\* \* \*

\* \* \* \* \*

[FR Doc. 96-1020 Filed 1-25-96; 8:45 am]

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 15**

[FAC 90-37; FAR Case 92-002; Item VII]

**RIN 9000-AF74**

**Federal Acquisition Regulation; Subcontract Proposal Audits**

**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 have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to add two additional examples of when field pricing support audits of subcontract proposals may be appropriate. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** March 26, 1996.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Jeremy Olson, at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-37, FAR case 92-002.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

An amendment to the FAR was published in the Federal Register at 59 FR 14457, March 28, 1994, as a proposed rule with a request for comments. Three responses were received. Each supported the proposed rule.

**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 under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities are awarded on a competitive, fixed-price basis and certified cost or pricing data and field pricing support are not required.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 15**

Government procurement.

Dated: January 11, 1996.

Edward C. Loeb,

*Acting Director, Office of Federal Acquisition Policy.*

Therefore, 48 CFR Part 15 is amended as set forth below:

**PART 15—CONTRACTING BY NEGOTIATION**

1. The authority citation for 48 CFR Part 15 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).

2. Section 15.806-3 is amended in paragraph (a)(3) by removing "or"; in paragraph (a)(4) by removing the period and inserting a semicolon; and by adding paragraphs (a) (5) and (6) to read as follows:

**15.806-3 Field pricing reports.**

(a) \* \* \*

(5) The contractor or higher tier subcontractor has been cited for having significant estimating system deficiencies in the area of subcontract pricing, especially the failure to perform adequate cost analyses of proposed subcontract costs or to perform subcontract analyses prior to negotiation of the prime contract with the Government; or

(6) A lower tier subcontractor has been cited as having significant estimating system deficiencies.

\* \* \* \* \*

[FR Doc. 96-1021 Filed 1-25-96; 8:45 am]

BILLING CODE 6820-EP-M

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 15**

[FAC 90-37; FAR Case 92-017; Item VIII]

RIN 9000-AF79

**Federal Acquisition Regulation; Overhead Should-Cost Reviews**

**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 have agreed to amend the Federal Acquisition Regulation (FAR) to add guidance on overhead should-cost reviews. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** March 26, 1996.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Jeremy Olson at (202) 501-3221 in reference to this FAR case. For general

information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 90-37, FAR case 92-017.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

An amendment to FAR 15.810 was published in the Federal Register at 59 FR 16388, April 6, 1994, as a proposed rule with a request for comments. Six responses were received. The Councils' analysis of those comments did not result in any revisions to the proposed rule previously published.

**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 under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because contracts awarded to small entities rarely are subject to program or overhead should-cost reviews.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 15**

Government procurement.

Dated: January 11, 1996.

Edward C. Loeb,

*Acting Director, Office of Federal Acquisition Policy.*

Therefore, 48 CFR Part 15 is amended as set forth below:

**PART 15—CONTRACTING BY NEGOTIATION**

1. The authority citation for 48 CFR Part 15 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).

2. Section 15.810 is revised to read as follows:

**15.810 Should-cost review.**

**15.810-1 General.**

(a) Should-cost reviews are a specialized form of cost analysis. Should-cost reviews differ from traditional evaluation methods. During traditional reviews, local contract audit

and contract administration personnel primarily base their evaluation of forecasted costs on an analysis of historical costs and trends. In contrast, should-cost reviews do not assume that a contractor's historical costs reflect efficient and economical operation. Instead, these reviews evaluate the economy and efficiency of the contractor's existing work force, methods, materials, facilities, operating systems, and management. These reviews are accomplished by a multi-functional team of Government contracting, contract administration, pricing, audit, and engineering representatives. The objective of should-cost reviews is to promote both short and long-range improvements in the contractor's economy and efficiency in order to reduce the cost of performance of Government contracts. In addition, by providing rationale for any recommendations and quantifying their impact on cost, the Government will be better able to develop realistic objectives for negotiation.

(b) There are two types of should-cost reviews—program should-cost review (see 15.810-2) and overhead should-cost review (see 15.810-3). These should-cost reviews may be performed together or independently. The scope of a should-cost review can range from a large-scale review examining the contractor's entire operation (including plant-wide overhead and selected major subcontractors) to a small-scale tailored review examining specific portions of a contractor's operation.

#### 15.810-2 Program should-cost review.

(a) Program should-cost review is used to evaluate significant elements of direct costs, such as material and labor, and associated indirect costs, usually incurred in the production of major systems. When a program should-cost review is conducted relative to a contractor proposal, a separate audit report on the proposal is required.

(b) A program should-cost review should be considered, particularly in the case of a major system acquisition (see part 34), when—

- (1) Some initial production has already taken place;
- (2) The contract will be awarded on a sole-source basis;
- (3) There are future year production requirements for substantial quantities of like items;
- (4) The items being acquired have a history of increasing costs;
- (5) The work is sufficiently defined to permit an effective analysis and major changes are unlikely;

(6) Sufficient time is available to plan and conduct the should-cost review adequately; and

(7) Personnel with the required skills are available or can be assigned for the duration of the should-cost review.

(c) The contracting officer should decide which elements of the contractor's operation have the greatest potential for cost savings and assign the available personnel resources accordingly. While the particular elements to be analyzed are a function of the contract work task, elements such as manufacturing, pricing and accounting, management and organization, and subcontract and vendor management are normally reviewed in a should-cost review.

(d) In acquisitions for which a program should-cost review is conducted, a separate program should-cost review team report, prepared in accordance with agency procedures, is required. Field pricing reports are required only to the extent that they contribute to the combined team position. The contracting officer shall consider the findings and recommendations contained in the program should-cost review team report when negotiating the contract price. After completing the negotiation, the contracting officer shall provide the administrative contracting officer (ACO) a report of any identified uneconomical or inefficient practices, together with a report of correction or disposition agreements reached with the contractor. The contracting officer shall establish a follow-up plan to monitor the correction of the uneconomical or inefficient practices.

(e) When a program should-cost review is planned, the contracting officer should state this fact in the acquisition plan (see subpart 7.1) and in the solicitation.

#### 15.810-3 Overhead should-cost review.

(a) An overhead should-cost review is used to evaluate indirect costs, such as fringe benefits, shipping and receiving, facilities and equipment, depreciation, plant maintenance and security, taxes, and general and administrative activities. It is normally used to evaluate and negotiate a forward pricing rate agreement (FPRA) with the contractor. When an overhead should-cost review is conducted, a separate audit report is required.

(b) The following factors should be considered when selecting contractor sites for overhead should-cost reviews:

- (1) Dollar amount of Government business.
- (2) Level of Government participation.

(3) Level of noncompetitive Government contracts.

(4) Volume of proposal activity.

(5) Major system or program.

(6) Mergers, acquisitions, takeovers.

(7) Other conditions, e.g., changes in accounting systems, management, or business activity.

(c) The objective of the overhead should-cost review is to evaluate significant indirect cost elements in-depth, identify inefficient and uneconomical practices, and recommend corrective action. If it is conducted in conjunction with a program should-cost review, a separate overhead should-cost review report is not required. However, the findings and recommendations of the overhead should-cost team, or any separate overhead should-cost review report, shall be provided to the ACO. The ACO should use this information to form the basis for the Government position in negotiating a FPRA with the contractor. The ACO shall establish a follow-up plan to monitor the correction of the uneconomical or inefficient practices.

[FR Doc. 96-1022 Filed 1-25-96; 8:45 am]

BILLING CODE 6820-EP-M

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 19

[FAC 90-37; FAR Case 92-606; Item IX]

RIN 9000-AG78

#### Federal Acquisition Regulation; SBA Responsibility, Certificate of Competency Requests

**AGENCY:** 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 have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to reflect approval authority of the Small Business Administration (SBA) regional offices to issue Certificate of Competency (COC) Determinations as provided in 13 CFR Part 125. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** March 26, 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Klein at (202) 501-3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 90-37, FAR case 92-606.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

FAR 19.602-2(b)(3) currently requires that all COC requests over \$500,000 be forwarded to the SBA Central Office for a decision on issuance. The issuance of COC's by the SBA is governed by 13 CFR Part 125, which authorizes regional SBA offices to issue COC's within their delegated authority. This rule merely reflects existing internal SBA procedures.

**B. Regulatory Flexibility Act**

This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite FAC 90-37, FAR case 92-606, in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 19**

Government procurement.

Dated: January 11, 1996.

Edward C. Loeb,

*Acting Director, Office of Federal Acquisition Policy.*

Therefore, 48 CFR Part 19 is amended as set forth below:

**PART 19—SMALL BUSINESS PROGRAMS**

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).

2. Section 19.602-2 is amended as follows:

(a) The paragraph designation "(a)" is removed;

(b) Paragraph (b) is removed;  
(c) Paragraph (c) is redesignated as (d) and revised; and  
(d) Paragraphs (a)(1) through (a)(3) are redesignated as (a), (b), and (c), respectively.

**19.602-2 Issuing or denying a certificate of competency (COC).**

\* \* \* \* \*

(d) Notify the concern and the contracting officer that the COC is denied or is being issued.

[FR Doc. 96-1023 Filed 1-25-96; 8:45 am]

**BILLING CODE 6820-EP-M**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 19 and 52**

[FAC 90-37; FAR Case 93-308; Item X]

**RIN 9000-AG70**

**Federal Acquisition Regulation; Mentor Protégé Program**

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

**ACTION:** Interim rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule to allow mentor firms under the Department of Defense Pilot Mentor-Protégé Program to be granted credit toward subcontracting goals under small business subcontracting plans entered into with any executive agency. The rule also will permit mentor firms to award subcontracts on a noncompetitive basis to protégé firms under Department of Defense or other contracts. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**DATES:** *Effective Date:* January 26, 1996.

*Comment Due Date:* To be considered in the formulation of a final rule, comments should be submitted to the address given below on or before March 26, 1996.

**ADDRESSES:** Comments should be submitted to: General Services Administration, FAR Secretariat, 18th & F Streets NW., Room 4037, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:**

Ms. Linda Klein at (202) 501-3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 37, FAR case 93-308.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This rule implements Section 814(c) of Public Law 102-190, which amended the Small Business Act at 15 U.S.C. 637(d)(11) to authorize certain costs incurred by a mentor firm under the Department of Defense Mentor-Protégé Program to be credited toward subcontracting goals for awards to small disadvantaged businesses. This rule also further implements Section 831(f)(2) of Public Law 101-510 which permits mentor firms to award subcontracts on a noncompetitive basis to its protégés under Department of Defense or other contracts.

**B. Regulatory Flexibility Act**

The interim rule is not expected to have 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 revisions apply to mentor firms under the DOD Pilot Mentor-Protégé Program, and these firms generally are not small entities. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR parts will also be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90-37, FAR case 93-308) in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the rule does not impose any reporting or recordkeeping requirements which 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 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, pursuant to 41 U.S.C. 418b, urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. However, public comments received in response

to this interim rule will be considered in formulating the final rule. The rule is necessary to further implement Section 814(c) of Public Law 102-190, which amended the Small Business Act at 15 U.S.C. 637(d)(11) to authorize certain costs incurred by a Department of Defense Mentor-Protégé Program firm to be credited toward subcontracting goals for awards to small disadvantaged businesses, and Section 831(f)(2) of Public Law 101-510 which permits mentor firms to award subcontracts on a noncompetitive basis to its protégés under Department of Defense or other contracts.

List of Subjects in 48 CFR Parts 19 and 52

Government procurement.

Dated: January 11, 1996.

Edward C. Loeb,

*Acting Director, Office of Federal Acquisition Policy.*

Therefore, 48 CFR Parts 19 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 19 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 19—SMALL BUSINESS PROGRAMS**

2. Section 19.702 is amended by adding paragraph (d) to read as follows:

##### **19.702 Statutory requirements.**

\* \* \* \* \*

(d) As authorized by 15 U.S.C. 637(d)(11), certain costs incurred by a mentor firm in providing developmental assistance to a Protégé firm under the Department of Defense Pilot Mentor-Protégé Program, may be credited as subcontract awards to a small disadvantaged business for the purpose of determining whether the mentor firm attains a small disadvantaged business goal under any subcontracting plan entered into with any executive agency. However, the mentor firms must have been approved by the Office of Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense for Acquisition and Technology, OUSD (A&T)SADBU, Room 2A340, The Pentagon, Washington, DC 20301-3061, (703) 697-1688, before developmental assistance costs may be credited against subcontract goals.

#### **PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

3. 52.244-5 is amended by revising the clause to read as follows:

#### **52.244-5 Competition in Subcontracting.**

\* \* \* \* \*

Competition in Subcontracting (Jan 1996)

(a) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

(b) If the Contractor is an approved mentor under the Department of Defense Pilot Mentor-Protégé Program (Pub. L. 101-510, section 831 as amended), the Contractor may award subcontracts under this contract on a noncompetitive basis to its protégés.

(End of clause)

[FR Doc. 96-1024 Filed 1-25-96; 8:45 am]

BILLING CODE 6820-EP-M

### **DEPARTMENT OF DEFENSE**

#### **GENERAL SERVICES ADMINISTRATION**

#### **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

#### **48 CFR Parts 19 and 52**

[FAC 90-37; FAR Case 92-019; Item XI]

RIN 9000-AF45

#### **Federal Acquisition Regulation; Subcontracting Plans**

**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 have agreed to amend the Federal Acquisition Regulation (FAR) to expand the circumstances when subcontracting plans may be required from and negotiated with more than the apparently successful offeror and to add a clause alternate for use when subcontracting plans are required with initial proposals. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** March 26, 1996.

#### **FOR FURTHER INFORMATION CONTACT:**

Ms. Linda Klein at (202) 501-3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-37, FAR case 92-019.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

An amendment to FAR 19.705-2, 19.708, and 52.219-9 was published in the Federal Register at 59 FR 16390, April 6, 1994, as a proposed rule with a request for comments. Two responses were received. The Councils' analysis of those comments did not result in any revisions to the proposed rule.

##### **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 under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because subcontracting plans are not required from small business concerns.

##### **C. Paperwork Reduction Act**

The Paperwork Reduction Act (Public Law 96-511) is deemed to apply because the final rule contains information collection requirements. Accordingly, a request for approval of a revised information collection requirement concerning 9000-0006 was submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*, and approved through March 31, 1998.

List of Subjects in 48 CFR Parts 19 and 52

Government procurement.

Dated: January 11, 1996.

Edward C. Loeb,

*Acting Director, Office of Federal Acquisition Policy.*

Therefore, 48 CFR Parts 19 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 19 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 19—SMALL BUSINESS PROGRAMS**

2. Section 19.705-2 is amended by revising paragraph (d) to read as follows:

##### **19.705-2 Determining the need for a subcontracting plan.**

\* \* \* \* \*

(d) In solicitations for negotiated acquisitions, the contracting officer may require the submission of subcontracting plans with initial offers, or at any other time prior to award. In determining when subcontracting plans should be required, as well as when and

with whom plans should be negotiated, the contracting officer shall consider the integrity of the competitive process, the goal of affording maximum practicable opportunity for small, small disadvantaged and women-owned small business concerns to participate, and the burden placed on offerors.

3. Section 19.708 is amended in paragraph (b)(1)(iii) by revising "has been" to read "is" and by adding a sentence at the end of the paragraph to read as follows:

**19.708 Solicitation provisions and contract clauses.**

\* \* \* \* \*

(b)(1) \* \* \*

(iii) \* \* \* When contracting by negotiation, and subcontracting plans are required with initial proposals as provided for in 19.705-2(d), the contracting officer shall use the clause with its Alternate II.

\* \* \* \* \*

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

4. Section 52.219-9 is amended by adding Alternate II at the end of the section to read as follows:

**52.219-9 Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan.**

\* \* \* \* \*

*Alternate II* (MAR 1996). As prescribed in 19.708(b)(1), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) Proposals submitted in response to this solicitation shall include a subcontracting plan, which separately addresses subcontracting with small business concerns, small disadvantaged business concerns and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business concerns, small disadvantaged business concerns and women-owned small business concerns with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate a subcontracting plan shall make the offeror ineligible for award of a contract.

[FR Doc. 96-1025 Filed 1-25-96; 8:45 am]

BILLING CODE 6820-EP-M

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 28 and 52**

[FAC 90-37; FAR Case 92-014; Item XII]

RIN 9000-AF78

**Federal Acquisition Regulation; Insurance—Liability to Third Persons**

**AGENCY:** 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 have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to delete a solicitation provision and prescriptive language pertaining to liability insurance under cost-reimbursement contracts. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** March 26, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mr. Peter O'Such at (202) 501-1759 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-37, FAR case 92-014.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The deleted FAR language applied only to cost-reimbursement contracts for research and development awarded to state agencies or charitable institutions that claim partial or total immunity from tort liability. For these entities, Alternates I and II of 52.228-7, Insurance—Liability to Third Persons, limit the contract's insurance requirements and the Government's obligation to indemnify for third party liability. A proposed rule was published in the Federal Register at 59 FR 16392, April 6, 1994. No substantive comments were received in response to the proposed rule.

**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 under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the FAR language being deleted applies only to cost-reimbursement contracts for research and development that are awarded to entities which, by virtue of their status as either an agency of the state or as a charitable institution, claim partial or total immunity from tort liability under such contracts. These entities are believed to be few in number.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which 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 28 and 52

Government procurement.

Dated: January 11, 1996.

Edward C. Loeb,

*Acting Director, Office of Federal Acquisition Policy.*

Therefore, 48 CFR Parts 28 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 28 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 28—BONDS AND INSURANCE**

**28.311-1 [Removed]**

**28.311-2 and 28.311-3 [28.311-2, 28.311-3 Redesignated as 28.311-1, 28.311-2]**

2. Section 28.311-1 is removed and sections 28.311-2 and 28.311-3 are redesignated as 28.311-1 and 28.311-2, respectively.

**28.311-1 [Amended]**

3. The newly designated 28.311-1 is amended by removing the last two sentences.

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**52.228-6 [Removed and reserved]**

4. Section 52.228-6 is removed and reserved.

5. Section 52.228-7 is amended in the introductory paragraph by removing the citation "28.311-2" and inserting "28.311-1"; by revising the date of the clause heading; by revising paragraphs

(a)(1) and (c) introductory text; and by removing Alternates I and II. The revised text reads as follows:

**52.228-7 Insurance—Liability to Third Persons.**

\* \* \* \* \*

Insurance—Liability to Third Persons (Marcg 1996)

(a)(1) Except as provided in subparagraph (a)(2) of this clause, the Contractor shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the Contracting Officer may require under this contract.

\* \* \* \* \*

(c) The Contractor shall be reimbursed—

\* \* \* \* \*

6. Section 52.245-7 is amended by revising the date of the clause and the first sentence of paragraph (j) to read as follows:

**52.245-7 Government Property (Consolidated Facilities).**

\* \* \* \* \*

Government Property (Consolidated Facilities March 1996)

\* \* \* \* \*

(j) *Indemnification of the Government.* The Contractor shall indemnify the Government and hold it harmless against claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the facilities, except as specified in the clause at FAR 52.228-7, Insurance—Liability to Third Persons.\* \* \*

\* \* \* \* \*

7. Section 52.245-10 is amended by revising the date of the clause and the first sentence of paragraph (f) to read as follows:

**52.245-10 Government Property (Facilities Acquisition).**

\* \* \* \* \*

Government Property (Facilities Acquisition March 1996)

\* \* \* \* \*

(f) *Indemnification of the Government.* The Contractor shall indemnify the Government and hold it harmless against claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the facilities, except as specified in the clause at FAR 52.228-7, Insurance—Liability to Third Persons.\* \* \*

\* \* \* \* \*

[FR Doc. 96-1026 Filed 1-25-96; 8:45 am]

BILLING CODE 6820-EP-M

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 31**

[FAC 90-37; FAR Case 94-002; Item XIII]

RIN 9000-AG79

**Federal Acquisition Regulation; Availability of Accounting Guide**

**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 have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to advise contractors on how to obtain an informational accounting guide entitled "Guidance for New Contractors." This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** March 26, 1996.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Jeremy Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-37, FAR case 94-002.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The final rule is the result of a recommendation by the Office of Federal Procurement Policy SWAT Team that the FAR be revised to include information on how contractors may obtain an accounting guide, published by the Defense Contract Audit Agency, to assist in developing contractors' accounting systems.

**B. Regulatory Flexibility Act**

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C.

601, *et seq.* (FAC 90-37, FAR case 94-002), in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 31**

Government procurement.

Dated: January 11, 1996.

Edward C. Loeb,

*Acting Director, Office of Federal Acquisition Policy.*

Therefore, 48 CFR Part 31 is amended as set forth below:

**PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES**

1. The authority citation for 48 CFR Part 31 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).

2. Section 31.002 is added to read as follows:

**31.002 Availability of accounting guide.**

Contractors needing assistance in developing or improving their accounting systems and procedures may request a copy of the guide entitled "Guidance for New Contractors" (DCAAP 7641.90). The guide is available from: Headquarters, Defense Contract Audit Agency, Operating Administrative Office, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, Virginia 22060-6219; Telephone No. (703) 767-1066; Telefax No. (703) 767-1061.

[FR Doc. 96-1027 Filed 1-25-96; 8:45 am]

BILLING CODE 6820-EP-M



**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Part 31**

[FAC 90-37; FAR Case 92-604; Item XIV]

RIN 9000-AF85

**Federal Acquisition Regulation;  
Nonallowability of Excise Taxes on  
Nondeductible Contributions to  
Deferred Compensation Plans**

**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 have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) by revising the cost principle concerning taxes. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** March 26, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeremy F. Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-37, FAR case 92-604.

**SUPPLEMENTARY INFORMATION:****A. Background**

Under the current FAR 31.205-41(b)(6), excise taxes on accumulated funding deficiencies or prohibited transactions involving employee deferred compensation plans pursuant to sections 4971 and 4975 of the Internal Revenue Code of 1954, as amended, are unallowable. This reflects a long-standing Government policy that punitive-type excise taxes are not reimbursable costs on Government contracts. Over the years, subsequent legislation has added several new excise taxes to subtitle D, chapter 43 of the Internal Revenue Service Code such that the Code currently lists 13 such taxes. The Councils have agreed that it is appropriate to revise FAR 31.205-41(b)(6) to insert a general prohibition on all excise taxes found at subtitle D, chapter 43 of the Internal Revenue Service Code. Such a general

prohibition will ensure that future legislative changes to subtitle D, chapter 43 of the Internal Revenue Code will be automatically reflected in the cost principle.

A proposed rule was published in the Federal Register at 59 FR 16393, April 6, 1994, with a request for comments. Three responses were received. The Councils' analysis of those comments did not result in any revisions to the proposed rule.

**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 under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities are awarded on a competitive, fixed-price basis and the cost principles do not apply.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 55 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 31**

Government procurement.

Dated: January 11, 1996.

Edward C. Loeb,

*Acting Director, Office of Federal Acquisition Policy.*

Therefore, 48 CFR Part 31 is amended as set forth below:

**PART 31—CONTRACT COST  
PRINCIPLES AND PROCEDURES**

1. The authority citation for 48 CFR Part 31 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).

2. Section 31.205-41 is amended by revising paragraph (b)(6) to read as follows:

**31.205-41 Taxes.**

\* \* \* \* \*

(b) \* \* \*

(6) Any excise tax in subtitle D, chapter 43 of the Internal Revenue Code of 1986, as amended. That chapter includes excise taxes imposed in connection with qualified pension plans, welfare plans, deferred

compensation plans, or other similar types of plans.

\* \* \* \* \*

[FR Doc. 96-1028 Filed 1-25-96; 8:45 am]

BILLING CODE 6820-EP-M

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Parts 44 and 52**

[FAC 90-37; FAR Case 92-040; Item XV]

RIN 9000-AF82

**Federal Acquisition Regulation;  
Contractors' Purchasing Systems  
Reviews and Subcontractor Consent**

**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 have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to increase the dollar thresholds for the performance of Contractors' Purchasing Systems Reviews (CPSR's) and the thresholds for subcontract consent. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** March 26, 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Klein at (202) 501-3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-37, FAR case 92-040.

**SUPPLEMENTARY INFORMATION:****A. Background**

A proposed rule was published in the Federal Register at 59 FR 16393, April 6, 1994. The rule proposed to raise (1) the threshold for performing CPSR's from \$10 million to \$25 million, and (2) in the clause, Subcontracts (Cost-Reimbursement and Letter Contracts), (i) the \$10,000 threshold for notification to the contracting officer to \$25,000, and (ii) the \$10,000 threshold requiring additional information on certain subcontracts to \$25,000. After evaluation of public comments, the Councils agreed to a final rule without

change. As a result of internal review, it was determined that FAR 44.201-2(a)(1) should also be revised to reflect the higher threshold.

#### 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 under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the threshold increase will reduce the number of contractors meeting the criteria for CPSR's and the number of small businesses requesting consent to subcontract as a result of the increased threshold will be minimal.

#### C. Paperwork Reduction Act

The Paperwork Reduction Act (Public Law 96-511) is deemed to apply because the final rule contains

information collection requirements. Accordingly, a request for approval of a new information collection requirement concerning 9000-0132 has been approved by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*, through June 30, 1997.

List of Subjects in 48 CFR Parts 44 and 52

Government procurement.

Dated: January 11, 1996.

Edward C. Loeb,

*Acting Director, Office of Federal Acquisition Policy.*

Therefore, 48 CFR parts 44 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 44 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 44—SUBCONTRACTING POLICIES AND PROCEDURES

#### 44.201-2 [Amended]

2. Section 44.201-2 is amended in paragraph (a)(1) by removing "\$10,000" and inserting "\$25,000" in its place.

#### 44.302 [Amended]

3. Section 44.302 is amended in paragraph (a) by removing "\$10 million" each time (twice) it appears and inserting "\$25 million".

### PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

#### 52.244-2 [Amended]

4. Section 52.244-2 is amended by revising the date of the clause heading to read "(MAR 1996)"; and by removing from paragraphs (a)(4) and (b)(1)(i) "\$10,000" and inserting "\$25,000".

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