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Friday  
October 30, 1998

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**Part V**

**Department of  
Defense  
General Services  
Administration  
National Aeronautics  
and Space  
Administration**

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48 CFR Chapter 1, et al.  
Federal Acquisition Regulations; Final  
Rules

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES  
ADMINISTRATION**

**NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

**48 CFR Chapter 1**

**Federal Acquisition Circular 97-09;  
Introduction**

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

**ACTION:** Summary presentation of final and interim rules, and technical amendments and corrections.

**SUMMARY:** This document summarizes the Federal Acquisition Regulation (FAR) rules issued by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 97-09. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, may be located on the Internet at <http://www.arnet.gov/far>.

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

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 97-09 and specific FAR case number(s). Interested parties may also visit our website at <http://www.arnet.gov/far>.

Item	Subject	FAR case	Analyst
I .....	Taxpayer Identification Numbers (Interim) .....	97-003	Olson.
II .....	Electronic Commerce in Federal Procurement (Interim) .....	97-304	Nelson.
III .....	Alternate Dispute Resolution—1996 .....	97-015	O'Neill.
IV .....	Pay-As-You-Go Pension Costs .....	89-012	Olson.
V .....	Rehabilitation Act, Workers With Disabilities .....	96-610	O'Neill.
VI .....	Civil Defense Costs .....	97-036	Nelson.
VII .....	Costs Related to Legal/Other Proceedings .....	95-020	Nelson.
VIII .....	Service Contracts .....	97-302	Olson.
IX .....	Payment Due Dates .....	97-609	Olson.
X .....	Technical Amendments.		

**SUPPLEMENTARY INFORMATION:**

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

Federal Acquisition Circular 97-09 amends the Federal Acquisition Regulation (FAR) as specified below:

**Item I—Taxpayer Identification Numbers (FAR Case 97-003)**

This interim rule amends FAR Parts 1, 4, 13, 14, 15, and 52 to implement Subsection (i) of the Debt Collection Improvement Act of 1996 (Pub. L. 104-134) and Section 1022 of the Taxpayer Relief Act of 1997 (Pub. L. 105-32). The rule clarifies requirements for obtaining Taxpayer Identification Number (TIN) information from contractors and forwarding the information to payment offices; specifies that TIN information may be used by the Government to collect and report on any delinquent amounts arising out of the contractor's relationship with the Government; and clarifies and updates requirements for reporting contract information and payment information to the Internal Revenue Service.

*(Orders under Federal Supply Schedule (FSS) contracts.* Ordering officials are required to provide the FSS contractor's TIN (and other information) to the payment office for each order under an FSS contract. The General

Services Administration is planning to establish an Internet based system by early 1999 that can be used by ordering officials to obtain this information. In the meantime, the information can be obtained from most FSS contract price lists or by requesting it directly from the FSS contractor prior to placing an order.)

**Item II—Electronic Commerce in Federal Procurement (FAR Case 97-304)**

This interim rule revises FAR Subpart 4.5 and makes associated changes to FAR Parts 2, 5, 13, and 14, to implement Section 850 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85) to eliminate the preference for electronic commerce within Federal agencies to be conducted on the Federal Acquisition Computer Network (FACNET) Architecture. In addition, this interim rule promotes the use of cost-effective procedures and processes that employ electronic commerce in the conduct and administration of Federal procurement systems. In order to facilitate access to Federal procurements, Section 850 mandates that a single Governmentwide point of entry be used. Once the Administrator of the Office of Federal Procurement Policy (OFPP) designates the single Governmentwide point of entry, the FAR will be changed accordingly. FACNET qualifies as the single, Governmentwide point of entry

until the Administrator of OFPP designates the single, Governmentwide point of entry. Federal procurement systems that employ electronic commerce shall apply nationally and internationally recognized standards that broaden interoperability and ease the electronic interchange of information.

**Item III—Alternative Dispute Resolution—1996 (FAR Case 97-015)**

This final rule amends FAR 6.302-3, 24.202, 33.2, and the clause at 52.233-1 to implement the Administrative Dispute Resolution Act of 1996 (Pub. L. 104-320) and Section 4321(a)(7) of the Clinger-Cohen Act of 1996 (Pub. L. 104-106). The rule makes clear the authority to contract with a neutral person as an exception to requirements for full and open competition; revises requirements for certification of a claim under the Administrative Dispute Resolution Act to conform to the requirements under the Contract Disputes Act; and specifies that certain dispute resolution communications are exempt from disclosure under the Freedom of Information Act.

**Item IV—Pay-As-You-Go Pension Costs (FAR Case 89-012)**

The interim rule published as Item I of FAC 84-44 is converted to a final rule with amendments at FAR 15.408, 31.001, 31.205-6, and the clause at 52.215-15. The rule amends the FAR for

consistency with 48 CFR 9904.412, Cost accounting standard for composition and measurement of pension cost (CAS 412), and 48 CFR 9904.413, Adjustment and allocation of pension cost (CAS 413). CAS 412 and CAS 413 relate to accounting for pension costs under negotiated Government contracts.

**Item V—Rehabilitation Act, Workers With Disabilities (FAR Case 96-610)**

The interim rule published as Item V of FAC 97-05 is converted to a final rule without change. The rule implements Department of Labor regulations at 41 CFR 60-741 regarding affirmative action to employ, and advance in employment, qualified individuals with disabilities.

**Item VI—Civil Defense Costs (FAR Case 97-036)**

This final rule deletes the civil defense cost principle at FAR 31.205-5, as this guidance is no longer deemed necessary. The acceptability of civil defense costs will remain governed by the allocability, allowability, and reasonableness criteria discussed in FAR Part 31.

**Item VII—Costs Related to Legal/Other Proceedings (FAR Case 95-020)**

This final rule amends FAR 31.205-47, Costs related to legal and other proceedings, to clarify the allowability of costs incurred for *qui tam* suits in which the Government does not intervene. This rule is consistent with audit guidance issued by the Defense Contract Audit Agency on August 24, 1995. Certain Government contracting personnel and contractors may have had common misinterpretations of the language at FAR 31.205-47 prior to August 24, 1995. For *qui tam* legal fees incurred prior to August 24, 1995, if the Government contracting personnel and the contractor shared a common misinterpretation of the language at FAR 31.205-47, the contracting officer, in consultation with his or her legal advisors, should determine the appropriate treatment of those costs on a case-by-case basis.

**Item VIII—Service Contracts (FAR Case 97-302)**

This final rule revises FAR 32.703-3 and amends 37.106 to implement Section 801 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85). Section 801 provides that the Secretary of Defense, the Secretary of a military department, or the Secretary of Transportation with respect to the Coast Guard, when it is not operating as a service in the Navy, may enter into a contract for procurement of severable services for a

period that begins in one fiscal year and ends in the next fiscal year. This authority remains the same for civilian agencies other than NASA.

**Item IX—Payment Due Dates (FAR Case 97-609)**

This final rule amends FAR Subpart 32.9 to clarify that agencies may amend the clauses at FAR 52.232-25, Prompt Payment, and 52.232-26, Prompt Payment for Fixed-Price Architect-Engineer Contracts, to specify a period shorter than 30 days (but not less than 7 days) for making contract invoice payments.

**Item X—Technical Amendments**

Amendments are being made at sections 1.106, 6.302-3, 14.205-1, 14.407-4, 15.404-1, 19.102, 19.1004, 32.705-1, 33.104, 36.601-4, 41.103, 52.212-5, 52.244-6, and 53.228 in order to update references and make editorial changes.

Dated: October 22, 1998.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

FAC 97-09

Federal Acquisition Circular (FAC) 97-09 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 97-09 are effective December 29, 1998, except for Items I, II, V, and X which are effective October 30, 1998.

Dated: October 23, 1998.

**Eleanor R. Spector,**

*Director, Defense Procurement.*

**Ida M. Ustad,**

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

Dated: October 16, 1998.

**Tom Luedtke,**

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

[FR Doc. 98-28954 Filed 10-29-98; 8:45 am]

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 1, 4, 13, 14, 15, and 52**

[FAC 97-09; FAR Case 97-003; Item I]

RIN 9000-A114

**Federal Acquisition Regulation; Taxpayer Identification Numbers**

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

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Subsection (i) of the Debt Collection Improvement Act of 1996 and Section 1022 of the Taxpayer Relief Act of 1997, and to clarify the Government requirements for reporting of contract information and payment information to the Internal Revenue Service (IRS). This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

**EFFECTIVE DATE:** October 30, 1998.

*Comment Date:* Comments should be submitted to the FAR Secretariat at the address shown below on or before December 29, 1998, to be considered in the formulation of a final rule.

**ADDRESSES:** Interested parties should submit written comments to: General Services Administration FAR Secretariat (MVR), 800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

E-Mail comments submitted over the Internet should be addressed to: farcase.97-003@gsa.gov

Please cite FAC 97-09, FAR case 97-003 in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson at (202) 501-0692. Please cite FAC 97-09, FAR case 97-003.

**SUPPLEMENTARY INFORMATION:**

## A. Background

Subsection (i) of the Debt Collection Improvement Act of 1996 (Pub. L. 104-134) amends 31 U.S.C. 7701 by requiring that the head of each Federal agency require each contractor doing business with the Government to furnish its Taxpayer Identification Number (TIN) and by requiring the Government to disclose its intent to use such number for purposes of collecting and reporting on any delinquent amounts. Section 1022 of the Taxpayer Relief Act of 1997 (Pub. L. 105-32) amends 26 U.S.C. 6041A(d) to add payments for services provided by corporations to the types of payments that the Government is required to report to the IRS using Form 1099.

This interim rule expands the scope of FAR Subpart 4.9 to require the contractor to provide a TIN for debt collection purposes. Prior to this revision, FAR Subpart 4.9 required the contractor to provide a TIN only to facilitate Government reporting of certain contract information and payment information to the IRS. The rule also deletes the provisions at FAR 52.214-2, Type of Business Organization—Sealed Bidding, and 52.215-4, Type of Business Organization, since the information requested in these provisions is duplicative of the information requested in the provisions at FAR 52.204-3, Taxpayer Identification, and 52.212-3, Offeror Representations and Certifications—Commercial Items, as amended by this rule. In addition, this rule clarifies and updates the requirement for Government agencies to obtain contract information and payment information to facilitate issuance of Form 1099 and other reports to the IRS.

## B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely clarifies existing requirements for contractors to submit TINs, requires the Government to advise contractors of the potential debt collection usage of the TIN, and clarifies and updates requirements for Government reporting of contract information and payment information to the IRS. 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 subparts also will be considered in accordance

with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR Case 97-003), in correspondence.

## C. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) is deemed to apply because the interim rule contains information collection requirements. The interim rule decreases the collection requirements currently approved under Office of Management and Budget (OMB) Control Number 9000-0046, since the rule deletes the provisions at FAR 52.214-2 and 52.215-4.

OMB Control Numbers 9000-0097 and 9000-0136 approved the information collection requirements that existed in the FAR at 52.204-3 and 52.212-3, respectively, prior to implementation of this interim rule. Revisions to these provisions required by the interim rule have no net impact on the collection requirements currently approved.

## D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This rule implements Subsection (i) of the Debt Collection Improvement Act of 1996 (Pub. L. 104-134), which was effective upon enactment on April 25, 1996; and Section 1022 of the Taxpayer Relief Act of 1997 (Pub. L. 105-32), which applies to payments made after December 31, 1997. An interim rule is necessary to ensure that changes are made to the FAR to address the statutory requirements to notify contractors that the TIN may be used for debt collection purposes, and to add payments for services provided by corporations to the types of payments subject to IRS Form 1099 reporting requirements. However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

## List of Subjects in 48 CFR Parts 1, 4, 13, 14, 15, and 52

Government procurement.

Dated: October 22, 1998.

**Edward C. Loeb,**

*Director, Federal Acquisition, Policy Division.*

Therefore, 48 CFR Parts 1, 4, 13, 14, 15, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 4, 13, 14, 15, and 52 continues to read as follows:

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

## PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

### 1.106 [Amended]

2. Section 1.106 is amended in the table following the introductory paragraph by removing the FAR segments at 52.214-2 and 52.215-4 and their corresponding OMB Control Numbers.

## PART 4—ADMINISTRATIVE MATTERS

3. Section 4.203 is revised to read as follows:

### 4.203 Taxpayer identification information.

(a) If the contractor has furnished a Taxpayer Identification Number (TIN) when completing the solicitation provision at 52.204-3, Taxpayer Identification, or paragraph (b) of the solicitation provision at 52.212-3, Offeror Representations and Certifications—Commercial Items, the contracting officer shall, unless otherwise provided in agency procedures, attach a copy of the completed solicitation provision as the last page of the copy of the contract sent to the payment office.

(b) If the TIN or type of organization is derived from a source other than the provision at 52.204-3 or 52.212-3(b), the contracting officer shall annotate the last page of the contract or order forwarded to the payment office to state the contractor's TIN and type of organization, unless this information is otherwise provided to the payment office in accordance with agency procedures.

(c) If the contractor provides its TIN or type of organization to the contracting officer after award, the contracting officer shall forward the information to the payment office within 7 days of its receipt.

(d) *Federal Supply Schedule contracts.* Each contracting officer that places an order under a Federal Supply Schedule contract (see Subpart 8.4) shall provide the TIN and type of organization information to the payment office in accordance with paragraph (b) of this section.

(e) *Basic ordering agreements and indefinite-delivery contracts (other than Federal Supply Schedule contracts).*

(1) Each contracting officer that issues a basic ordering agreement or indefinite-delivery contract (other than a Federal Supply Schedule contract) shall provide to contracting officers placing orders under the agreement or contract—

(i) A copy of the agreement or contract with a copy of the completed solicitation provision at 52.204-3 or 52.212-3(b) as the last page of the agreement or contract; or

(ii) The contractor's TIN and type of organization information.

(2) Each contracting officer that places an order under a basic ordering agreement or indefinite-delivery contract (other than a Federal Supply Schedule contract) shall provide the TIN and type of organization information to the payment office in accordance with paragraph (a) or (b) of this section.

4. Subpart 4.9 is revised to read as follows:

#### Subpart 4.9—Taxpayer Identification Number Information

Sec.

4.900 Scope of subpart.

4.901 Definitions.

4.902 General.

4.903 Reporting contract information to the IRS.

4.904 Reporting payment information to the IRS.

4.905 Solicitation provision.

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

#### Subpart 4.9—Taxpayer Identification Number Information

##### 4.900 Scope of subpart.

This subpart provides policies and procedures for obtaining—

(a) Taxpayer Identification Number (TIN) information that may be used for debt collection purposes; and

(b) Contract information and payment information for submittal to the payment office for Internal Revenue Service (IRS) reporting purposes.

##### 4.901 Definitions.

*Common parent*, as used in this subpart, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

*Taxpayer Identification Number (TIN)*, as used in this subpart, means the number required by the IRS to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

##### 4.902 General.

(a) *Debt collection.* 31 U.S.C. 7701(c) requires each contractor doing business with a Government agency to furnish its TIN to that agency. 31 U.S.C. 3325(d) requires the Government to include, with each certified voucher prepared by the Government payment office and submitted to a disbursing official, the TIN of the contractor receiving payment under the voucher. The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the contractor's relationship with the Government.

(b) *Information reporting to the IRS.* The TIN is also required for Government reporting of certain contract information (see 4.903) and payment information (see 4.904) to the IRS.

##### 4.903 Reporting contract information to the IRS.

(a) 26 U.S.C. 6050M, as implemented in 26 CFR, requires heads of Federal executive agencies to report certain information to the IRS.

(b)(1) The required information applies to contract modifications—

(i) Increasing the amount of a contract awarded before January 1, 1989, by \$50,000 or more; and

(ii) Entered into on or after April 1, 1990.

(2) The reporting requirement also applies to certain contracts and modifications thereto in excess of \$25,000 entered into on or after January 1, 1989.

(c) The information to report is—

(1) Name, address, and TIN of the contractor;

(2) Name and TIN of the common parent (if any);

(3) Date of the contract action;

(4) Amount obligated on the contract action; and

(5) Estimated contract completion date.

(d) Transmit the information to the IRS through the Federal Procurement Data System (see Subpart 4.6 and implementing instructions).

##### 4.904 Reporting payment information to the IRS.

26 U.S.C. 6041 and 6041A, as implemented in 26 CFR, in part, require payors, including Government agencies, to report to the IRS, on Form 1099, payments made to certain contractors. 26 U.S.C. 6109 requires a contractor to provide its TIN if a Form 1099 is required. The payment office is responsible for submitting reports to the IRS.

##### 4.905 Solicitation provision.

The contracting officer shall insert the provision at 52.204-3, Taxpayer

Identification, in solicitations that are not conducted under the procedures of Part 12, unless the TIN, type of organization, and common parent information for each offeror will be obtained from some other source (e.g., centralized database) in accordance with agency procedures.

#### PART 13—SIMPLIFIED ACQUISITION PROCEDURES

5. Section 13.106-3 is amended by adding paragraph (e) to read as follows:

##### 13.106-3 Award and documentation.

\* \* \* \* \*

(e) *Taxpayer Identification Number.* If an oral solicitation is used, the contracting officer shall ensure that the copy of the award document sent to the payment office is annotated with the contractor's Taxpayer Identification Number (TIN) and type of organization (see 4.203), unless this information will be obtained from some other source (e.g., centralized database). The contracting officer shall disclose to the contractor that the TIN may be used by the Government to collect and report on any delinquent amounts arising out of the contractor's relationship with the Government (31 U.S.C. 7701(c)(3)).

#### PART 14—SEALED BIDDING

##### 14.201-6 [Amended]

6. Section 14.201-6 is amended by removing and reserving paragraph (b)(2).

#### PART 15—CONTRACTING BY NEGOTIATION

##### 15.209 [Amended]

7. Section 15.209 is amended by removing and reserving paragraph (d).

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

8. Section 52.204-3 is revised to read as follows:

##### 52.204-3 Taxpayer identification.

As prescribed in 4.905, insert the following provision:

##### **Taxpayer Identification (Oct 1998)**

(a) *Definitions.*

*Common parent*, as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

*Taxpayer Identification Number (TIN)*, as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

(b) All offerors must submit the information required in paragraphs (d) through (f) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS. If the resulting contract is subject to the payment reporting requirements described in Federal Acquisition Regulation (FAR) 4.904, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

(c) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(d) Taxpayer Identification Number (TIN).
 TIN: \_\_\_\_\_
 TIN has been applied for.
 TIN is not required because:
 Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;
 Offeror is an agency or instrumentality of a foreign government;
 Offeror is an agency or instrumentality of the Federal Government.

(e) Type of organization.
 Sole proprietorship;
 Partnership;
 Corporate entity (not tax-exempt);
 Corporate entity (tax-exempt);
 Government entity (Federal, State, or local);
 Foreign government;
 International organization per 26 CFR 1.6049-4;
 Other \_\_\_\_\_

(f) Common parent.
 Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this provision.

Name and TIN of common parent:
Name \_\_\_\_\_
TIN \_\_\_\_\_

(End of provision)

9. Section 52.212-3 is amended by revising the date of the provision and paragraph (b) to read as follows:

52.212-3 Offeror representations and certifications—Commercial items.

\* \* \* \* \*

Offeror Representations and Certifications—Commercial Items (Oct 1998)

\* \* \* \* \*

(b) Taxpayer Identification Number (TIN) (26 U.S.C. 6109, 31 U.S.C. 7701). (Not applicable if the offeror is required to provide this information to a central contractor registration database to be eligible for award.)

(1) All offerors must submit the information required in paragraphs (b)(3)

through (b)(5) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the Internal Revenue Service (IRS).

(2) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(3) Taxpayer Identification Number (TIN).
 TIN: \_\_\_\_\_
 TIN has been applied for.
 TIN is not required because:
 Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;
 Offeror is an agency or instrumentality of a foreign government;
 Offeror is an agency or instrumentality of the Federal Government.

(4) Type of organization.
 Sole proprietorship;
 Partnership;
 Corporate entity (not tax-exempt);
 Corporate entity (tax-exempt);
 Government entity (Federal, State, or local);
 Foreign government;
 International organization per 26 CFR 1.6049-4;
 Other \_\_\_\_\_

(5) Common parent.
 Offeror is not owned or controlled by a common parent;

Name and TIN of common parent:
Name \_\_\_\_\_
TIN \_\_\_\_\_

\* \* \* \* \*

52.214-2 [Reserved]

10. Section 52.214-2 is removed and reserved.

52.215-4 [Reserved]

11. Section 52.215-4 is removed and reserved.

[FR Doc. 98-28955 Filed 10-29-98; 8:45 am]

BILLING CODE 6820-EP-U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 5, 13, 14, and 32

[FAC 97-09; FAR Case 97-304; Item II]

RIN 9000-A110

Federal Acquisition Regulation; Electronic Commerce in Federal Procurement

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

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 850 of the National Defense Authorization Act for Fiscal Year 1998 by removing Federal Acquisition Computer Network (FACNET) specific terms and requirements and replacing them with more flexible electronic commerce policies. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: October 30, 1998.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before December 29, 1998, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

E-Mail comments submitted over the Internet should be addressed to: farcase.97-304@gsa.gov

Please cite FAC 97-09, FAR case 97-304, in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda K. Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 97-09, FAR case 97-304.

SUPPLEMENTARY INFORMATION:

## A. Background

This interim rule revises FAR Subpart 4.5 and makes associated changes to FAR Parts 2, 5, 13, 14, and 32 to implement Section 850 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85). Section 850 amends Titles 10, 15, 40, and 41 of the United States Code to eliminate the preference for electronic commerce within Federal agencies to be conducted on the Federal Acquisition Computer Network (FACNET) Architecture. Additionally, Section 850 provides a more flexible electronic commerce policy by promoting the use of cost-effective procedures and processes that employ electronic commerce in the conduct and administration of Federal procurement systems and the use of nationally and internationally recognized standards that broaden interoperability and ease the electronic interchange of information. In order to facilitate access to Federal procurement opportunities, Section 850 mandates that a single, Governmentwide point of entry be used that will provide universal public access to procurement opportunities Governmentwide. In the report submitted to Congress by the President's Management Council Electronic Processes Initiatives Committee entitled "Electronic Commerce For Buyers and Sellers," the Committee endorsed a World Wide Web-based electronic system that would provide the private sector direct access to Federal procurement opportunities at a single location.

In an effort to distribute acquisition-related information to industry more quickly and economically, an electronic posting system is now being tested by several Federal agencies. This system will permit buyers to post solicitations and other pertinent information, in addition to notices, directly to the Internet, thus giving sellers access to this information through a single, Governmentwide point of entry. If testing demonstrates that this electronic posting system is capable of providing effective access to notices and solicitations through a single point of entry, consideration will be given by the Administrator of OFPP to designating it as the "single, Governmentwide point of entry," and the FAR will be changed accordingly.

In the meantime, FACNET is the Governmentwide system that provides universal user access, employs nationally and internationally recognized data formats, and allows the electronic data interchange of acquisition information between the private sector and the Federal

Government. FACNET qualifies as the single, Governmentwide point of entry until the Administrator of the Office of Federal Procurement Policy designates the single, Governmentwide point of entry.

## B. Regulatory Flexibility Act

This interim rule is not expected to have a significant negative impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule is more flexible than the current FAR policy regarding the Federal electronic commerce architecture. It may be easier for some small entities to conduct business with the Federal Government over the World Wide Web, for instance, than using a value-added network to conduct business over FACNET. Since this may result in a positive impact on small entities, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

The objectives of the rule are (1) to promote the use of cost-effective procedures and processes that employ electronic commerce in the conduct and administration of Federal procurement systems, and (2) to apply nationally and internationally recognized standards that broaden interoperability and ease the electronic interchange of information. These objectives are stated in Section 850 of Public Law 105-85. The legal authority to use electronic commerce for Government contracting actions was confirmed in General Accounting Office (GAO) Advisory Opinion B-238449. The opinion concluded that electronic transactions can create legally binding contractual obligations in accordance with 31 U.S.C. 1501. The interim rule applies to all large and small entities that do business or are planning to do business with the Government. The ability to use electronic architectures other than FACNET, such as the World Wide Web, to conduct electronic commerce will increase competition by improving access to Federal contracting opportunities for the more than 72,995 vendors currently doing business with the Government, particularly small businesses, as well as many other vendors that find access to bidding opportunities difficult under the current system.

A copy of the IRFA has been submitted to the Chief Counsel for Advocacy of the Small Business Administration and may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subparts also will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97-09, FAR Case 97-304), in correspondence.

## C. Paperwork Reduction Act

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

## D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to implement Section 850 of Public Law 105-85, which eliminates the preference for electronic commerce within Federal agencies to be conducted on the Federal Acquisition Computer Network (FACNET) Architecture. Section 850 became effective on May 17, 1998. However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

## List of Subjects in 48 CFR Parts 2, 4, 5, 13, 14, and 32

Government procurement.

Dated: October 22, 1998.

### Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 2, 4, 5, 13, 14, and 32 are amended as set forth below:

1. The authority citation for 48 CFR Parts 2, 4, 5, 13, 14, and 32 continues to read as follows:

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

## PART 2—DEFINITIONS OF WORDS AND TERMS

2. Section 2.101 is amended by adding, in alphabetical order, the definition "Electronic commerce"; revising the definition "Federal Acquisition Computer Network (FACNET) Architecture"; and removing the definitions "Full FACNET", "Governmentwide FACNET", and "Interim FACNET" to read as follows:

### 2.101 Definitions.

\* \* \* \* \*

*Electronic commerce* means electronic techniques for accomplishing business transactions including electronic mail or

messaging, World Wide Web technology, electronic bulletin boards, purchase cards, electronic funds transfer, and electronic data interchange.

\* \* \* \* \*

*Federal Acquisition Computer Network (FACNET) Architecture* is a Governmentwide system that provides universal user access, employs nationally and internationally recognized data formats, and allows the electronic data interchange of acquisition information between the private sector and the Federal Government. FACNET qualifies as the single, Governmentwide point of entry pending designation by the Administrator of the Office of Federal Procurement Policy (OFPP).

\* \* \* \* \*

**PART 4—ADMINISTRATIVE MATTERS**

3. Subpart 4.5, consisting of sections 4.500 through 4.502, is revised to read as follows:

**Subpart 4.5—Electronic Commerce in Contracting**

Sec.

4.500 Scope of subpart.

4.501 Definitions.

4.502 Policy.

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

**4.500 Scope of subpart.**

This subpart provides policy and procedures for the establishment and use of electronic commerce in Federal acquisition as required by Section 30 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 426).

**4.501 Definitions.**

*Electronic data interchange (EDI)*, as used in this subpart, means a technique for electronically transferring and storing formatted information between computers utilizing established and published formats and codes, as authorized by the applicable Federal Information Processing Standards.

*Single, Governmentwide point of entry*, as used in this subpart, means the one point of entry to be designated by the Administrator of OFPP that will allow the private sector to electronically access procurement opportunities Governmentwide.

**4.502 Policy.**

(a) The Federal Government shall use electronic commerce whenever practicable or cost-effective. The use of terms commonly associated with paper transactions (e.g., "copy," "document," "page," "printed," "sealed envelope," and "stamped") shall not be interpreted

to restrict the use of electronic commerce. Contracting officers may supplement electronic transactions by using other media to meet the requirements of any contract action governed by the FAR (e.g., transmit hard copy of drawings).

(b) Agencies may exercise broad discretion in selecting the hardware and software that will be used in conducting electronic commerce. However, as required by Section 30 of the OFPP Act (41 U.S.C. 426), the head of each agency, after consulting with the Administrator of OFPP, shall ensure that systems, technologies, procedures, and processes used by the agency to conduct electronic commerce—

(1) Are implemented uniformly throughout the agency, to the maximum extent practicable;

(2) Are implemented only after considering the full or partial use of existing infrastructures, (e.g., the Federal Acquisition Computer Network (FACNET));

(3) Facilitate access to Government acquisition opportunities by small business concerns, small disadvantaged business concerns, and women-owned small business concerns;

(4) Include a means of providing widespread public notice of acquisition opportunities through the single, Governmentwide point of entry and a means of responding to notices or solicitations electronically; and

(5) Comply with nationally and internationally recognized standards that broaden interoperability and ease the electronic interchange of information, such as standards established by the National Institute of Standards and Technology.

(c) Before using electronic commerce, the agency head shall ensure that the agency systems are capable of ensuring authentication and confidentiality commensurate with the risk and magnitude of the harm from loss, misuse, or unauthorized access to or modification of the information.

**PART 5—PUBLICIZING CONTRACT ACTIONS**

4. Section 5.101 is amended by revising paragraph (a)(2)(ii) and the last sentence of (a)(2)(iv) to read as follows:

**5.101 Methods of disseminating information.**

\* \* \* \* \*

(a) \* \* \*

(2) \* \* \*

(ii) The contracting officer need not comply with the display requirements of this section when the exemptions at 5.202(a)(1), (a)(4) through (a)(9), or (a)(11) apply, when oral or FACNET

solicitations are used, or when providing access to a notice of proposed contract action through the single, Governmentwide point of entry and the notice permits the public to respond to the solicitation electronically.

\* \* \* \* \*

(iv) \* \* \* Contracting offices using electronic systems for public posting that are not accessible outside the installation shall periodically publicize the methods for accessing such information.

\* \* \* \* \*

5. Section 5.102 is amended by revising paragraphs (a)(2) and (a)(7) to read as follows:

**5.102 Availability of solicitations.**

(a) \* \* \*

(2) Provide copies of a solicitation issued under other than full and open competition to firms requesting copies that were not initially solicited, but only after advising the requester of the determination to limit the solicitation to a specified firm or firms as authorized under Part 6 of the FAR;

\* \* \* \* \*

(7) If electronic commerce is employed in the solicitation process, availability of the solicitation may be limited to the electronic medium.

\* \* \* \* \*

6. Section 5.202 is amended by revising paragraph (a)(13), by removing (a)(14), and by redesignating (a)(15) as (a)(14). The revised text reads as follows:

**5.202 Exceptions.**

\* \* \* \* \*

(a) \* \* \*

(13) The proposed contract action—  
(i) Is for an amount not expected to exceed the simplified acquisition threshold;

(ii) Will be made through FACNET or another means that provides access to the notice of proposed contract action through the single, Governmentwide point of entry; and

(iii) Permits the public to respond to the solicitation electronically; or

\* \* \* \* \*

7. Section 5.203 is amended by revising paragraph (b) to read as follows:

**5.203 Publicizing and response time.**

\* \* \* \* \*

(b) The contracting officer shall establish a solicitation response time that will afford potential offerors a reasonable opportunity to respond to each proposed contract action (including actions via FACNET or for which the notice of proposed contract action is accessible through the single,



Governmentwide point of entry), in an amount estimated to be greater than \$25,000, but not greater than the simplified acquisition threshold; or each contract action for the acquisition of commercial items in an amount estimated to be greater than \$25,000. The contracting officer should consider the circumstances of the individual acquisition, such as the complexity, commerciality, availability, and urgency, when establishing the solicitation response time.

\* \* \* \* \*

**5.202, 5.203, 5.205, 5.207 [Amended]**

8. In addition to the amendments set forth above, in Subpart 5.2, remove the term "contract action" or "contract actions" and add "proposed contract action" or "proposed contract actions", respectively, in the following places:

a. Section 5.202(a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), (a)(8) (twice), (a)(9), (a)(10), (a)(11) (twice), (a)(12) (4 times), and (a)(14);

b. Section 5.203 introductory paragraph, (a) introductory text, (c), (d), (e) (twice), and (g);

c. Section 5.205(d)(2);

d. Section 5.207(c)(2)(xi), (e)(3) (twice), and (h).

9. Section 5.301 is amended by revising paragraph (b)(7) to read as follows:

**5.301 General.**

\* \* \* \* \*

(b) \* \* \*

(7) The contract action—

(i) Is for an amount not greater than the simplified acquisition threshold;

(ii) Was conducted by using FACNET, or access to the notice of proposed contract action was provided through the single, Governmentwide point of entry; and

(iii) Permitted the public to respond to the solicitation electronically; or

\* \* \* \* \*

10. Section 5.503 is amended by revising paragraph (a)(2) to read as follows:

**5.503 Procedures.**

(a) \* \* \*

(2) The contracting officer shall use the SF 1449 for paper solicitations. The SF 1449 shall be used to make awards or place orders unless the award/order is made by using electronic commerce or by using the Governmentwide commercial purchase card for micropurchases.

\* \* \* \* \*

**PART 13—SIMPLIFIED ACQUISITION PROCEDURES**

11. Section 13.003 is amended by removing paragraph (c); redesignating paragraphs (d) through (i) as (c) through (h), respectively; and revising newly redesignated paragraphs (f) and (h)(3) to read as follows:

**13.003 Policy.**

\* \* \* \* \*

(f) Agencies shall maximize the use of electronic commerce when practicable and cost-effective (see Subpart 4.5). Drawings and lengthy specifications can be provided off-line in hard copy or through other appropriate means.

\* \* \* \* \*

(h) \* \* \*

(3) Consider all quotations or offers that are timely received. For evaluation of quotations or offers received electronically, see 13.106-2(b)(3); and

\* \* \* \* \*

12. Section 13.102 is amended by revising the introductory text of paragraph (a) to read as follows:

**13.102 Source list.**

(a) Each contracting office should maintain a source list (or lists, if more convenient). A list of new supply sources may be obtained from the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration. The list should identify the status of each source (when the status is made known to the contracting office) in the following categories:

\* \* \* \* \*

13. Section 13.104 is amended by revising the first sentence of paragraph (b) to read as follows:

**13.104 Promoting competition.**

\* \* \* \* \*

(b) If using simplified acquisition procedures and not using either FACNET or providing access to the notice of proposed contract action through the single, Governmentwide point of entry, maximum practicable competition ordinarily can be obtained by soliciting quotations or offers from sources within the local trade area.

\* \* \*

14. Section 13.105 is amended by revising paragraph (a)(1) to read as follows:

**13.105 Synopsis and posting requirements.**

(a) \* \* \*

(1)(i) FACNET is used for an acquisition at or below the simplified acquisition threshold; or

(ii) The single, Governmentwide point of entry is used at or below the

simplified acquisition threshold for providing widespread public notice of acquisition opportunities and offerors are provided a means of responding to the solicitation electronically; or

\* \* \* \* \*

15. Section 13.106-1 is amended by revising paragraphs (c)(1)(ii) and (f) to read as follows:

**13.106-1 Soliciting competition.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(ii) Oral solicitation is more efficient than soliciting through available electronic commerce alternatives; and

\* \* \* \* \*

(f) *Inquiries.* An agency should respond to inquiries received through any medium (including FACNET) if doing so would not interfere with the efficient conduct of the acquisition. For an acquisition conducted through FACNET, an agency must respond to telephonic or facsimile inquiries only if it is unable to receive inquiries through FACNET.

16. Section 13.106-2 is amended by revising the introductory text of paragraph (b)(3) to read as follows:

**13.106-2 Evaluation of quotations or offers.**

\* \* \* \* \*

(b) \* \* \*

(3) For acquisitions conducted using FACNET or a method that permits electronic response to the solicitation, the contracting officer may—

\* \* \* \* \*

17. Section 13.106-3 is amended by revising paragraph (c) to read as follows:

**13.106-3 Award and documentation.**

\* \* \* \* \*

(c) *Notification.* For acquisitions that do not exceed the simplified acquisition threshold and for which automatic notification is not provided through FACNET or an electronic commerce method that employs widespread electronic public notice, notification to unsuccessful suppliers shall be given only if requested or required by 5.301.

\* \* \* \* \*

**13.307 [Amended]**

18. Section 13.307 is amended in paragraph (b)(1) by removing "other electronic means," and inserting "electronically,".

**PART 14—SEALED BIDDING**

19. Section 14.205-1 is amended by revising the second sentence of paragraph (a) to read as follows:

14.205-1 Establishment of lists.

(a) \* \* \* This rule need not be followed, however, when the requirements of the contracting office can be obtained through use of simplified acquisition procedures (see part 13); the requirements are nonrecurring; or electronic commerce methods are used that transmit solicitations or notices of procurement opportunities automatically to all interested sources. \* \* \*

\* \* \* \* \*

14.400 [Amended]

20. Section 14.400 is amended by removing "contract" and inserting "contracts".

PART 32—CONTRACT FINANCING

32.1103 [Amended]

21. Section 32.1103 is amended in paragraph (a) by removing "13.003(f)" and inserting "13.003(e)".

[FR Doc. 98-28956 Filed 10-29-98; 8:45 am]

BILLING CODE 6820-EP-U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 6, 24, 33, and 52

[FAC 97-09; FAR Case 97-015; Item III]

RIN 9000-AH72

Federal Acquisition Regulation; Alternative Dispute Resolution—1996

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 implement the Administrative Dispute Resolution Act of 1996 (Pub. L. 104-320) and Section 4321(a)(7) of the Clinger-Cohen Act of 1996 (Pub. L. 104-106). This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: December 29, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202)

501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jack O'Neill, Procurement Analyst, at (202) 501-3856. Please cite FAC 97-09, FAR case 97-015.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Parts 6, 24, 33, and 52 to implement the Administrative Dispute Resolution Act of 1996 (Pub. L. 104-320) and Section 4321(a)(7) of the Clinger-Cohen Act of 1996 (Pub. L. 104-106). The rule makes clear the authority to contract with a neutral person as an exception to requirements for full and open competition, revises requirements for certification of a claim under the Administrative Dispute Resolution Act to conform to the requirements under the Contract Disputes Act, and specifies that certain dispute resolution communications are exempt from disclosure under the Freedom of Information Act.

A proposed rule was published in the Federal Register at 62 FR 55678, October 27, 1997. Comments were received from eight sources. All comments were considered in the development of the final 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 within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule adds guidance pertaining to, but does not significantly alter the procedures for, alternative dispute resolution. Alternative dispute resolution procedures allow voluntary resolution of issues in controversy.

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. However, it does reduce the information collection requirements relating to Certification of Claims, OMB Control No. 9000-0035. Accordingly, a request to reduce the total burden hours has been submitted to OMB.

List of Subjects in 48 CFR Parts 6, 24, 33, and 52

Government procurement.

Dated: October 22, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 6, 24, 33, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 6, 24, 33, 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 6—COMPETITION REQUIREMENTS

2. Section 6.302-3 is amended by revising paragraph (a)(2)(iii) to read as follows:

6.302-3 Industrial mobilization; engineering, developmental, or research capability; or expert services.

(a) \* \* \*

(2) \* \* \*

(iii) To acquire the services of an expert or neutral person (see 33.201) for any current or anticipated litigation or dispute.

\* \* \* \* \*

PART 24—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

3. Section 24.202 is amended by adding paragraph (c) read as follows:

24.202 Prohibitions.

\* \* \* \* \*

(c) A dispute resolution communication that is between a neutral person and a party to alternative dispute resolution proceedings, and that may not be disclosed under 5 U.S.C. 574, is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552(b)(3)).

PART 33—PROTESTS, DISPUTES, AND APPEALS

4. Section 33.201 is amended by revising the definition "Alternative dispute resolution (ADR)" to read as follows:

33.201 Definitions.

\* \* \* \* \*

Alternative dispute resolution (ADR) means any type of procedure or combination of procedures voluntarily used to resolve issues in controversy. These procedures may include, but are not limited to, conciliation, facilitation, mediation, fact-finding, minitrials, arbitration, and use of ombudsmen.

\* \* \* \* \*

**33.204 [Amended]**

5. Section 33.204 is amended in the first sentence by removing "Public Law 100-522" and inserting "(5 U.S.C. 571, *et seq.*)".

6. Section 33.207 is amended by revising paragraph (a) to read as follows:

**33.207 Contractor certification.**

(a) Contractors shall provide the certification specified in paragraph (c) of this section when submitting any claim exceeding \$100,000.

7. Section 33.214 is amended at the end of paragraph (a)(3) by inserting "and"; at the end of paragraph (a)(4) by removing "; and" and inserting a period; by removing paragraph (a)(5); by revising paragraph (b); and by adding paragraphs (f) and (g) to read as follows:

**33.214 Alternative dispute resolution (ADR).**

(b) If the contracting officer rejects a contractor's request for ADR proceedings, the contracting officer shall provide the contractor a written explanation citing one or more of the conditions in 5 U.S.C. 572(b) or such other specific reasons that ADR procedures are inappropriate for the resolution of the dispute. In any case where a contractor rejects a request of an agency for ADR proceedings, the contractor shall inform the agency in writing of the contractor's specific reasons for rejecting the request.

(f)(1) A solicitation shall not require arbitration as a condition of award, unless arbitration is otherwise required by law. Contracting officers should have flexibility to select the appropriate ADR procedure to resolve the issues in controversy as they arise.

(2) An agreement to use arbitration shall be in writing and shall specify a maximum award that may be issued by the arbitrator, as well as any other conditions limiting the range of possible outcomes.

(g) Binding arbitration, as an ADR procedure, may be agreed to only as specified in agency guidelines. Such guidelines shall provide advice on the appropriate use of binding arbitration and when an agency has authority to settle an issue in controversy through binding arbitration.

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

8. Section 52.233-1 is amended by revising the date of the clause and paragraphs (d)(2)(i) and (g) to read as follows:

**52.233-1 Disputes.**

\* \* \* \* \*

**Disputes (Dec 1998)**

\* \* \* \* \*

(d)(2)(i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.

\* \* \* \* \*

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

\* \* \* \* \*

[FR Doc. 98-28957 Filed 10-29-98; 8:45 am]  
BILLING CODE 6820-EP-U

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 15, 31 and 52**

[FAC 97-09; FAR Case 89-012; Item IV]  
RIN 9000-AC90

**Federal Acquisition Regulation; Pay-As-You-Go Pension Costs**

**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) for consistency with the cost accounting standards for composition and measurement of pension cost and adjustment and allocation of pension cost. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

**EFFECTIVE DATE:** December 29, 1998.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy F. Olson at (202) 501-0692. Please cite FAC 97-09, FAR case 89-012.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

An interim rule was published in the **Federal Register** at 54 FR 13022, March 29, 1989. The issuance of an interim rule was necessary because the United States Court of Appeals had ruled that FAR 31.205-6(j)(5) was inconsistent with 48 CFR 9904.412, Cost accounting standard for composition and measurement of pension cost (CAS 412), and that the controlling regulation was CAS 412.

Since the 1989 interim FAR rule was published, the Office of Federal Procurement Policy, Cost Accounting Standards Board, made substantial changes to CAS 412 and 48 CFR 9904.413, Adjustment and allocation of pension cost (CAS 413), relating to accounting for pension costs under negotiated Government contracts. These proposed changes were published and made available for public comment on November 5, 1993 (58 FR 58999). Public comments were received and considered in the development of the final CAS rule which was published in the **Federal Register** at 60 FR 16534, March 30, 1995. The changes in the final CAS rule addressed pension cost recognition for qualified pension plans subject to the tax-deductibility limits of the Federal Tax Code, problems associated with pension plans that are not qualified plans under the Federal Tax Code, and problems associated with overfunded pension plans.

A proposed FAR rule was published in the **Federal Register** at 62 FR 49900, September 23, 1997, to provide consistency with the revised CAS 412 and CAS 413. The rule proposed to (1) revise the definitions at FAR 31.001 to conform with the CAS Board's definitions; (2) delete references to "unfunded pension plans" since CAS 412 and CAS 413 no longer refer to unfunded pension plans; (3) add new language to FAR 31.205-6(j) to address transfer of assets to another account within the same fund, to address the allowability of costs for nonqualified pension plans using the pay-as-you-go cost method, and to address both CAS requirements and all other situations not covered by CAS; (4) add new language at FAR 31.205-6(j)(6), which was previously reserved, to refer to CAS 412 and CAS 413 for treatment of pension plans using the pay-as-you-go cost method; (5) provide other editorial changes to make FAR 31.001 and 31.205-6 consistent with the language of CAS 412 and CAS 413; and (6) revise the clause at FAR 52.215-27, Termination of Defined Benefit Pension Plans, to conform the clause with the

proposed FAR Part 31 changes. Six sources submitted comments in response to the proposed FAR rule. All comments were considered in the development of this final rule.

This final rule amends FAR 15.408, Solicitation provisions and contract clauses; FAR 31.001, Definitions; FAR 31.205-6, Compensation for personal services; and FAR 52.215-15, Pension Adjustments and Asset Reversions. The final rule differs from the proposed rule by—(1) revising FAR 31.205-6(j)(3)(i)(A) to address the deferral of pension costs pursuant to a waiver under the Employee's Retirement Income Security Act of 1974 (ERISA); (2) revising FAR 31.205-6(j)(3)(v) to clarify that the provisions of FAR 31.205-6(j)(4) apply if the withdrawal of assets is a pension plan termination under ERISA; (3) revising FAR 31.205-6(j)(4)(i) and 52.215-15(b) to clarify the calculation of the adjustment amounts for both CAS and non-CAS-covered contracts; and (4) making a number of editorial revisions, including changes (e.g., renumbering FAR 52.215-27 as FAR 52.215-15) resulting from publication of Federal Acquisition Circular 97-02 on September 30, 1997 (62 FR 51224).

**B. Regulatory Flexibility Act**

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule.

**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, 31, and 52**

Government procurement.

Dated: October 22, 1998.

**Edward C. Loeb,**

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 15, 31, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 15, 31, 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 15—CONTRACTING BY NEGOTIATION**

2. Section 15.408 is amended by revising paragraph (g) to read as follows:

**15.408 Solicitation provisions and contract clauses.**

\* \* \* \* \*

(g) *Pension Adjustments and Asset Reversions.* The contracting officer shall insert the clause at 52.215-15, Pension Adjustments and Asset Reversions, 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 of the FAR.

\* \* \* \* \*

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

3. Section 31.001 is amended by removing the definitions "Actuarial liability", "Termination of gain or loss" and "Unfunded pension plan"; by adding, in alphabetical order, the definitions "Actuarial accrued liability", "Nonqualified pension plan", "Qualified pension plan" and "Termination of employment gain or loss"; and by revising the definitions of "Accrued benefit cost method", "Actuarial assumption", "Actuarial cost method", "Actuarial valuation", "Funded pension cost", "Normal cost", "Pension plan", and "Projected benefit cost method", to read as follows:

**31.001 Definitions.**

*Accrued benefit cost method* means an actuarial cost method under which units of benefits are assigned to each cost accounting period and are valued as they accrue; i.e., based on the services performed by each employee in the period involved. The measure of normal cost under this method for each cost accounting period is the present value of the units of benefit deemed to be credited to employees for service in that period. The measure of the actuarial accrued liability at a plan's inception date is the present value of the units of benefit credited to employees for service prior to that date. (This method is also known as the unit credit cost method without salary projection.)

\* \* \* \* \*

*Actuarial accrued liability* means pension cost attributable, under the actuarial cost method in use, to years

prior to the current period considered by a particular actuarial valuation. As of such date, the actuarial accrued liability represents the excess of the present value of future benefits and administrative expenses over the present value of future normal costs for all plan participants and beneficiaries. The excess of the actuarial accrued liability over the actuarial value of the assets of a pension plan is the unfunded actuarial liability. The excess of the actuarial value of the assets of a pension plan over the actuarial accrued liability is an actuarial surplus and is treated as a negative unfunded actuarial liability.

*Actuarial assumption* means an estimate of future conditions affecting pension cost; e.g., mortality rate, employee turnover, compensation levels, earnings on pension plan assets, and changes in values of pension plan assets.

*Actuarial cost method* means a technique that uses actuarial assumptions to measure the present value of future pension benefits and pension plan administrative expenses, and that assigns the cost of such benefits and expenses to cost accounting periods. The actuarial cost method includes the asset valuation method used to determine the actuarial value of the assets of a pension plan.

\* \* \* \* \*

*Actuarial valuation* means the determination, as of a specified date, of the normal cost, actuarial accrued liability, actuarial value of the assets of a pension plan, and other relevant values for the pension plan.

\* \* \* \* \*

*Funded pension cost* means the portion of pension cost for a current or prior cost accounting period that has been paid to a funding agency.

\* \* \* \* \*

*Nonqualified pension plan* means any pension plan other than a qualified pension plan as defined in this part.

*Normal cost* means the annual cost attributable, under the actuarial cost method in use, to current and future years as of a particular valuation date excluding any payment in respect of an unfunded actuarial liability.

\* \* \* \* \*

*Pension plan* means a deferred compensation plan established and maintained by one or more employers to provide systematically for the payment of benefits to plan participants after their retirements, provided that the benefits are paid for life or are payable for life at the option of the employees. Additional benefits such as permanent and total disability and death payments, and survivorship payments to

beneficiaries of deceased employees, may be an integral part of a pension plan.

\* \* \* \* \*

*Projected benefit cost method* means either—

(1) Any of the several actuarial cost methods that distribute the estimated total cost of all of the employees' prospective benefits over a period of years, usually their working careers; or

(2) A modification of the accrued benefit cost method that considers projected compensation levels.

\* \* \* \* \*

*Qualified pension plan* means a pension plan comprising a definite written program communicated to and for the exclusive benefit of employees that meets the criteria deemed essential by the Internal Revenue Service as set forth in the Internal Revenue Code for preferential tax treatment regarding contributions, investments, and distributions. Any other plan is a nonqualified pension plan.

\* \* \* \* \*

*Termination of employment gain or loss* means an actuarial gain or loss resulting from the difference between the assumed and actual rates at which pension plan participants separate from employment for reasons other than retirement, disability, or death.

\* \* \* \* \*

4. Section 31.201-5 is amended by revising the last sentence to read as follows:

**31.201-5 Credits.**

\* \* \* See 31.205-6(j)(4) for rules governing refund or credit to the Government associated with pension adjustments and asset reversions.

5. Section 31.205-6 is amended by revising paragraphs (j)(1) through (j)(6) to read as follows:

**31.205-6 Compensation for personal services.**

\* \* \* \* \*

(j) *Pension costs.* (1) A pension plan, as defined in 31.001, is a deferred compensation plan. Additional benefits such as permanent and total disability and death payments and survivorship payments to beneficiaries of deceased employees may be treated as pension costs, provided the benefits are an integral part of the pension plan and meet all the criteria pertaining to pension costs.

(2) Pension plans are normally segregated into two types of plans: defined-benefit or defined-contribution pension plans. The cost of all defined-benefit pension plans shall be measured, allocated, and accounted for

in compliance with the provisions of 48 CFR 9904.412, Cost accounting standard for composition and measurement of pension cost, and 48 CFR 9904.413, Adjustment and allocation of pension cost. The costs of all defined-contribution pension plans shall be measured, allocated, and accounted for in accordance with the provisions of 48 CFR 9904.412 and 48 CFR 9904.413. Pension costs are allowable subject to the referenced standards and the cost limitations and exclusions set forth in paragraphs (j)(2)(i) and (j)(3) through (8) of this subsection.

(i) Except for nonqualified pension plans using the pay-as-you-go cost method, to be allowable in the current year, pension costs must be funded by the time set for filing of the Federal income tax return or any extension thereof. Pension costs assigned to the current year, but not funded by the tax return time, shall not be allowable in any subsequent year. For nonqualified pension plans using the pay-as-you-go cost method, to be allowable in the current year, pension costs must be allocable in accordance with 48 CFR 9904.412-50(d)(3).

(ii) Pension payments must be reasonable in amount and must be paid pursuant to—an agreement entered into in good faith between the contractor and employees before the work or services are performed; and the terms and conditions of the established plan. The cost of changes in pension plans that are discriminatory to the Government or are not intended to be applied consistently for all employees under similar circumstances in the future are not allowable.

(iii) Except as provided for early retirement benefits in paragraph (j)(7) of this subsection, one-time-only pension supplements not available to all participants of the basic plan are not allowable as pension costs unless the supplemental benefits represent a separate pension plan and the benefits are payable for life at the option of the employee.

(iv) Increases in payments to previously retired plan participants covering cost-of-living adjustments are allowable if paid in accordance with a policy or practice consistently followed.

(3) *Defined-benefit pension plans.* This paragraph covers pension plans in which the benefits to be paid or the basis for determining such benefits are established in advance and the contributions are intended to provide the stated benefits. The cost limitations and exclusions pertaining to defined-benefit plans are as follows:

(i)(A) Except for nonqualified pension plans, pension costs (see 48 CFR

9904.412-40(a)(1)) assigned to the current accounting period, but not funded during it, shall not be allowable in subsequent years (except that a payment made to a fund by the time set for filing the Federal income tax return or any extension thereof is considered to have been made during such taxable year). However, any portion of pension cost computed for a cost accounting period, that exceeds the amount required to be funded pursuant to a waiver granted under the provisions of the Employee's Retirement Income Security Act of 1974 (ERISA), will be allowable in those future accounting periods in which the funding of such excess amounts occurs (see 48 CFR 9904.412-50(c)(5)).

(B) For nonqualified pension plans, except those using the pay-as-you-go cost method, allowable costs are limited to the amount allocable in accordance with 48 CFR 9904.412-50(d)(2).

(C) For nonqualified pension plans using the pay-as-you-go cost method, allowable costs are limited to the amounts allocable in accordance with 48 CFR 9904.412-50(d)(3).

(ii) Any amount funded in excess of the pension cost assigned to a cost accounting period is not allowable and shall be accounted for as set forth at 48 CFR 9904.412-50(a)(4), and shall be allowable in the future period to which it is assigned, to the extent it is allocable, reasonable, and not otherwise unallowable.

(iii) Increased pension costs caused by delay in funding beyond 30 days after each quarter of the year to which they are assignable are unallowable. If a composite rate is used for allocating pension costs between the segments of a company and if, because of differences in the timing of the funding by the segments, an inequity exists, allowable pension costs for each segment will be limited to that particular segment's calculation of pension costs as provided for in 48 CFR 9904.413-50(c). Determinations of unallowable costs shall be made in accordance with the actuarial cost method used in calculating pension costs.

(iv) Allowability of the cost of indemnifying the Pension Benefit Guaranty Corporation (PBGC) under ERISA Section 4062 or 4064 arising from terminating an employee deferred compensation plan will be considered on a case-by-case basis, provided that if insurance was required by the PBGC under ERISA Section 4023, it was so obtained and the indemnification payment is not recoverable under the insurance. Consideration under the foregoing circumstances will be primarily for the purpose of appraising

the extent to which the indemnification payment is allocable to Government work. If a beneficial or other equitable relationship exists, the Government will participate, despite the requirements of 31.205-19(a)(3) and (b), in the indemnification payment to the extent of its fair share.

(v) Increased pension costs resulting from the withdrawal of assets from a pension fund and transfer to another employee benefit plan fund, or transfer of assets to another account within the same fund, are unallowable except to the extent authorized by an advance agreement. If the withdrawal of assets from a pension fund is a plan termination under ERISA, the provisions of paragraph (j)(4) of this subsection apply. The advance agreement shall—

(A) State the amount of the Government's equitable share in the gross amount withdrawn or transferred; and

(B) Provide that the Government receive a credit equal to the amount of the Government's equitable share of the gross withdrawal or transfer.

(4) *Pension adjustments and asset reversions.* (i) For segment closings, pension plan terminations, or curtailment of benefits, the adjustment amount shall be the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12) for contracts and subcontracts that are subject to Cost Accounting Standards (CAS) Board rules and regulations (48 CFR Chapter 99). For contracts and subcontracts that are not subject to CAS, the adjustment amount shall be the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12), except the numerator of the fraction at 48 CFR 9904.413-50(c)(12)(vi) shall be the sum of the pension plan costs allocated to all non-CAS-covered contracts and subcontracts that are subject to Subpart 31.2 or for which cost or pricing data were submitted.

(ii) For all other situations where assets revert to the contractor, or such assets are constructively received by it for any reason, the contractor shall, at the Government's option, make a refund or give 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 were submitted or that are subject to Subpart 31.2. Excise taxes on pension plan asset reversions or withdrawals under this paragraph (j)(4)(ii) are unallowable in accordance with 31.205-41(b)(6).

(5) *Defined-contribution pension plans.* This paragraph covers those pension plans in which the contributions are established in advance and the level of benefits is determined by the contributions made. It also covers profit sharing, savings plans, and other such plans, provided the plans fall within the definition of a pension plan in paragraph (j)(1) of this subsection.

(i) Allowable pension cost is limited to the net contribution required to be made for a cost accounting period after taking into account dividends and other credits, where applicable. However, any portion of pension cost computed for a cost accounting period that exceeds the amount required to be funded pursuant to a waiver granted under the provisions of ERISA will be allowable in those future accounting periods in which the funding of such excess amounts occurs (see 48 CFR 9904.412-50(c)(5)).

(ii) The provisions of paragraphs (j)(3)(ii) and (iv) of this subsection apply to defined-contribution plans.

(6) *Pension plans using the pay-as-you-go cost method.* The cost of pension plans using the pay-as-you-go cost method shall be measured, allocated, and accounted for in accordance with 48 CFR 9904.412 and 9904.413. Pension costs for a pension plan using the pay-as-you-go cost method shall be allowable to the extent they are allocable, reasonable, and not otherwise unallowable.

\* \* \* \* \*

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 52.215-15 is revised to read as follows:

### 52.215-15 Pension adjustments and asset reversions.

As prescribed in 15.408(g), insert the following clause:

#### Pension Adjustments and Asset Reversions (Dec 1998)

(a) 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.

(b) For segment closings, pension plan terminations, or curtailment of benefits, the adjustment amount shall be the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12) for contracts and subcontracts that are subject to Cost Accounting Standards (CAS) Board rules and regulations (48 CFR Chapter 99). For contracts and subcontracts that are not subject to CAS, the adjustment amount shall be the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12), except the numerator of the fraction at 48 CFR 9904.413-50(c)(12)(vi) shall be the sum of the pension plan costs

allocated to all non-CAS-covered contracts and subcontracts that are subject to Federal Acquisition Regulation (FAR) Subpart 31.2 or for which cost or pricing data were submitted.

(c) For all other situations where assets revert to the Contractor, or such assets are constructively received by it for any reason, the Contractor shall, at the Government's option, make a refund or give 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 were submitted or that are subject to FAR Subpart 31.2.

(d) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(g). (End of clause)

[FR Doc. 98-28958 Filed 10-29-98; 8:45 am]

BILLING CODE 6820-EP-U

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 22 and 52

[FAC 97-09; FAR Case 96-610; Item V]

RIN 9000-AH99

#### Federal Acquisition Regulation; Rehabilitation Act, Workers With Disabilities

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

**ACTION:** Interim rule adopted as final without change.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to adopt the interim rule published in the **Federal Register** at 63 FR 34073, June 22, 1998, as a final rule without change. The rule amends the Federal Acquisition Regulation (FAR) to implement revised Department of Labor regulations regarding affirmative action to employ and advance in employment qualified individuals with disabilities. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

**EFFECTIVE DATE:** October 30, 1998.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202)

501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jack O'Neill, Procurement Analyst, at (202) 501-3856. Please cite FAC 97-09, FAR case 96-610.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

On June 22, 1998, FAR Case 96-610, Rehabilitation Act, Workers with Disabilities, was published in the **Federal Register** as an interim rule. The FAR rule implemented Department of Labor (DoL) regulations at 41 CFR 60-741 that implement Section 503 of the Rehabilitation Act of 1973 (29 U.S.C. 793). The rule amended FAR Subpart 22.14 and the clauses at 52.212-5, 52.213-4, and 52.222-36 to conform to the DoL regulations. No public comments were received in response to the interim rule. The interim rule is being adopted as a final rule without change.

##### B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely implements existing Department of Labor regulations and imposes no new requirements.

##### 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 22 and 52

Government procurement.

Dated: October 22, 1998.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

#### Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR Parts 22 and 52, which was published at 63 FR 34073, June 22, 1998, is adopted as a final rule without change.

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

[FR Doc. 98-28959 Filed 10-29-98; 8:45 am]

BILLING CODE 6820-EP-U

#### DEPARTMENT OF DEFENSE

##### GENERAL SERVICES ADMINISTRATION

##### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 31

[FAC 97-09; FAR Case 97-036; Item VI]

RIN 9000-AH95

#### Federal Acquisition Regulation; Civil Defense Costs

**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 delete the civil defense cost principle. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

**EFFECTIVE DATE:** December 29, 1998.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 97-09, FAR case 97-036.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

A proposed rule was published in the **Federal Register** on March 20, 1998 (63 FR 13771). The proposed rule deleted the cost principle at FAR 31.205-5, Civil defense costs. With the end of the Cold War, the special guidance provided in this cost principle is no longer deemed necessary. The acceptability of this type of costs will remain governed by the allocability, allowability, and reasonableness criteria discussed in FAR Part 31. The proposed rule is converted to a final rule without change.

One comment was received in response to the proposed rule. This comment was considered in the development of the final 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 within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the FAR cost principles.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the change to the FAR does 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: October 22, 1998.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

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).

#### 31.205-5 [Removed and Reserved]

2. Section 31.205-5 is removed and reserved.

[FR Doc. 98-28960 Filed 10-29-98; 8:45 am]

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#### DEPARTMENT OF DEFENSE

##### GENERAL SERVICES ADMINISTRATION

##### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 31

[FAC 97-09; FAR Case 95-020; Item VII]

RIN 9000-AH05

#### Federal Acquisition Regulation; Costs Related to Legal/Other Proceedings

**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 the allowability of costs incurred for qui tam suits in which the Government does not intervene. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

**EFFECTIVE DATE:** December 29, 1998.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 97-09, FAR case 95-020.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

A proposed rule was published in the **Federal Register** on June 20, 1996 (61 FR 31790). Seven sources submitted public comments. All comments were considered in developing the final rule.

This final rule clarifies the cost principle at FAR 31.205-47 as it relates to qui tam suits not joined in by the Government. The final rule also clarifies, at FAR 31.205-47(e)(3), that the maximum reimbursement contractors may receive for legal costs in connection with agreements reached under FAR 31.205-47(c) is 80 percent of otherwise allowable and allocable incurred costs.

Industry has commented that this coverage should be effective prospectively. After consideration of these comments, it is concluded that this coverage is properly characterized as a clarification. Nevertheless, it is recognized that certain Government contracting personnel and contractors may have had common misinterpretations of the regulatory coverage. Indeed, those inconsistencies are the catalyst behind this clarification. On August 24, 1995, the Defense Contract Audit Agency issued audit guidance that clarified audit treatment for qui tam legal fees. For qui tam legal fees incurred before August 24, 1995, if the Government contracting personnel and the contractor shared a common misinterpretation of the regulatory coverage, the contracting officer, in consultation with his or her legal

advisors, should determine the appropriate treatment of those costs on a case-by-case basis.

**B. Regulatory Flexibility Act**

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive fixed-price basis, and do not require application of the cost principle contained in this rule.

**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: October 22, 1998.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

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 31.205-47 is amended by revising the introductory text of paragraph (b); by redesignating (c) as (c)(1) and adding (c)(2); and by revising paragraph (e)(3) to read as follows:

**31.205-47 Costs related to legal and other proceedings.**

\* \* \* \* \*

(b) Costs incurred in connection with any proceeding brought by a Federal, State, local, or foreign government for violation of, or a failure to comply with, law or regulation by the contractor (including its agents or employees), or costs incurred in connection with any proceeding brought by a third party in the name of the United States under the False Claims Act, 31 U.S.C. 3730, are unallowable if the result is—

\* \* \* \* \*

(c) \* \* \*

(2) In the event of a settlement of any proceeding brought by a third party under the False Claims Act in which the United States did not intervene, reasonable costs incurred by the contractor in connection with such a proceeding, that are not otherwise unallowable by regulation or by separate agreement with the United States, may be allowed if the contracting officer, in consultation with his or her legal advisor, determines that there was very little likelihood that the third party would have been successful on the merits.

\* \* \* \* \*

(e) \* \* \*

(3) The percentage of costs allowed does not exceed the percentage determined to be appropriate considering the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate. Such percentage shall not exceed 80 percent. Agreements reached under paragraph (c) of this subsection shall be subject to this limitation. If, however, an agreement described in paragraph (c)(1) of this subsection explicitly states the amount of otherwise allowable incurred legal fees and limits the allowable recovery to 80 percent or less of the stated legal fees, no additional limitation need be applied. The amount of reimbursement allowed for legal costs in connection with any proceeding described in paragraph (c)(2) of this subsection shall be determined by the cognizant contracting officer, but shall not exceed 80 percent of otherwise allowable legal costs incurred.

\* \* \* \* \*

[FR Doc. 98-28961 Filed 10-29-98; 8:45 am]

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 32 and 37**

[FAC 97-09; FAR Case 97-302; Item VIII]

RIN 9000-A109

**Federal Acquisition Regulation; Service Contracts**

**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 expand the authority of the Department of Defense and the Coast Guard to enter into contracts that cross fiscal years.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

**EFFECTIVE DATE:** December 29, 1998.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy F. Olson at (202) 501-0692. Please cite FAC 97-09, FAR case 97-302.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Section 801 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85) amends 10 U.S.C. 2410a to authorize the Secretary of Defense, the Secretary of a military department, or the Secretary of Transportation with regard to the Coast Guard when not operating as a service in the Navy, to enter into a contract for procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year.

**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. However, comments from small entities concerning the affected FAR subparts will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97-09, FAR case 97-302), 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 Parts 32 and 37**

Government procurement.

Dated: October 22, 1998.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, 48 CFR Parts 32 and 37 are amended as set forth below:

1. The authority citation for 48 CFR Parts 32 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 32—CONTRACT FINANCING**

2. Section 32.703-3 is revised to read as follows:

**32.703-3 Contracts crossing fiscal years.**

(a) A contract that is funded by annual appropriations may not cross fiscal years, except in accordance with statutory authorization (e.g., 41 U.S.C. 11a, 31 U.S.C. 1308, 42 U.S.C. 2459a, 42 U.S.C. 3515, and paragraph (b) of this subsection), or when the contract calls for an end product that cannot feasibly be subdivided for separate performance in each fiscal year (e.g., contracts for expert or consultant services).

(b) The head of an executive agency, except NASA, may enter into a contract, exercise an option, or place an order under a contract for severable services for a period that begins in one fiscal year and ends in the next fiscal year if the period of the contract awarded, option exercised, or order placed does not exceed one year (10 U.S.C. 2410a and 41 U.S.C. 2531). Funds made available for a fiscal year may be obligated for the total amount of an action entered into under this authority.

**PART 37—SERVICE CONTRACTING**

3. Section 37.106 is amended by revising paragraph (b) to read as follows:

**37.106 Funding and term of service contracts.**

\* \* \* \* \*

(b) The head of an executive agency, except NASA, may enter into a contract, exercise an option, or place an order under a contract for severable services for a period that begins in one fiscal year and ends in the next fiscal year if the period of the contract awarded, option exercised, or order placed does not exceed one year (10 U.S.C. 2410a and 41 U.S.C. 2531). Funds made available for a fiscal year may be obligated for the total amount of an action entered into under this authority.

\* \* \* \* \*

[FR Doc. 98-28962 Filed 10-29-98; 8:45 am]

BILLING CODE 6820-EP-U

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 32**

[FAC 97-09; FAR Case 97-609; Item IX]

RIN 9000-A111

**Federal Acquisition Regulation; Payment Due Dates**

**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 agencies may authorize amendment of the FAR payment clauses to specify a period shorter than 30 days for making contract invoice payments, provided such period is not less than 7 days. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

**EFFECTIVE DATE:** December 29, 1998.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, 1800 F Street, NW, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson at (202) 501-0692. Please cite FAC 97-09, FAR case 97-609.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This final rule amends FAR Subpart 32.9 to clarify that agencies may amend the clauses at FAR 52.232-25, Prompt Payment, and 52.232-26, Prompt Payment for Fixed-Price Architect-Engineer Contracts, to specify a period shorter than 30 days (but not less than 7 days) for making contract invoice payments.

**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. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5

U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, et seq. (FAC 97-09, FAR case 97-609), 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 32:

Government procurement.

Dated: October 22, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 32 is amended as set forth below:

1. The authority citation for 48 CFR Part 32 continues to read as follows:

PART 32—CONTRACT FINANCING

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

2. Section 32.905 is amended in paragraph (a) by revising the introductory text to read as follows:

32.905 Invoice payments.

(a) General. Except as prescribed in paragraphs (b), (c), and (d) of this section, or as authorized in 32.908(a)(3) or (c)(3), the due date for making an invoice payment by the designated payment office shall be as follows:

\* \* \* \* \*

3. Section 32.908 is amended by adding paragraphs (a)(3) and (c)(3) to read as follows:

32.908 Contract clauses.

(a) \* \* \*

(3) As provided in 32.904, agency policies and procedures may authorize amendment of paragraphs (a)(1)(i) and (iii) of the clause to insert a period shorter than 30 days (but not less than 7 days) for making contract invoice payments.

\* \* \* \* \*

(c) \* \* \*

(3) As provided in 32.904, agency policies and procedures may authorize amendment of paragraph (a)(1)(i) of the clause to insert a period shorter than 30 days (but not less than 7 days) for making contract invoice payments.

[FR Doc. 98-28963 Filed 10-29-98; 8:45 am]

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 6, 14, 15, 19, 32, 33, 36, 41, 52, and 53

[FAC 97-09; Item X]

Federal Acquisition Regulation; Technical Amendments

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

ACTION: Technical amendments.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation in order to update references and make editorial changes.

EFFECTIVE DATE: October 30, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GSA Building, Washington, DC 20405, (202) 501-4755.

List of Subjects in 48 CFR Parts 1, 6, 14, 15, 19, 32, 33, 36, 41, 52, and 53

Government procurement.

Dated: October 22, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 1, 6, 14, 15, 19, 32, 33, 36, 41, 52, and 53 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 6, 14, 15, 19, 32, 33, 36, 41, 52, and 53 continues to read as follows:

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

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. The table in section 1.106 is amended by revising entries "41.004.2(c)" to read "41.202(c)"; "52.241-2" to read "52.241-3"; "52.241-6" to read "52.241-7"; and "52.241-11" to read "52.241-1"; removing the FAR segment and the corresponding OMB Control Number entries for 52.211-5, 52.253-1, and 53.105; and adding entries, in numerical order, to read as follows:

1.106 OMB approval under the Paperwork Reduction Act.

\* \* \* \* \*

Table with FAR segment and OMB Control No. columns. Rows include 52.227-14 through 52.227-23.

\* \* \* \* \*

PART 6—COMPETITION REQUIREMENTS

6.302-3 [Amended]

3. Section 6.302-3 is amended at the end of paragraph (a)(2) introductory text by removing the colon and inserting a dash; and at the beginning of paragraphs (a)(2)(i) and (a)(2)(ii), by removing "to" and inserting "To".

PART 14—SEALED BIDDING

14.407-4 [Amended]

5. Section 14.407-4 is amended in paragraph (a) by revising the word "amendment" to read "modification".

PART 15—CONTRACTING BY NEGOTIATION

15.404-1 [Amended]

6. Section 15.404-1 is amended in the first sentence of paragraph (a)(7) by removing the word "Resource" and adding "Reference".

PART 19—SMALL BUSINESS PROGRAMS

7. Section 19.102(f)(4) is amended by revising the third sentence to read as follows:

19.102 Size standards.

\* \* \* \* \*

(f)(4) \* \* \* A listing is also available on SBA's Internet Homepage at http://www.sba.gov/gc. \* \* \*

\* \* \* \* \*

19.1004 [Amended]

8. Section 19.1004 is amended by revising the term "Defense Mapping Agency" to read "National Imagery and Mapping Agency".

PART 32—CONTRACT FINANCING

9. Section 32.705-1 is amended by revising paragraph (b) to read as follows:

32.705-1 Clauses for contracting in advance of funds.

\* \* \* \* \*

(b) The contracting officer shall insert the clause at 52.232-19, Availability of Funds for the Next Fiscal Year, in solicitations and contracts if a one-year indefinite-quantity or requirements contract for services is contemplated and the contract—

(1) Is funded by annual appropriations; and

(2) Is to extend beyond the initial fiscal year (see 32.703-2(b)).

### PART 33—PROTESTS, DISPUTES, AND APPEALS

#### 33.104 [Amended]

10. Section 33.104 is amended in the last sentence of paragraph (e) by revising “7 days” to read “5 days”.

### PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

#### 36.601-4 [Amended]

8. Section 36.601-4 is amended in the fourth sentence of paragraph (a)(4) by revising the term “Defense Mapping Agency” to read “National Imagery and Mapping Agency”.

### PART 41—ACQUISITION OF UTILITY SERVICES

#### 41.103 [Amended]

11. Section 41.103 is amended in paragraph (a)(2) by revising “40 U.S.C.

474(3)” to read “40 U.S.C. 474(d)(3)”; and in the first sentence of paragraph (a)(3) by revising “(42 U.S.C. 2751, *et seq.*)” to read “(42 U.S.C. 7251, *et seq.*)”.

### PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

12. Section 52.212-5 is amended by revising the clause heading and paragraph (b)(3) to read as follows:

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

\* \* \* \* \*

#### Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (Oct. 1998)

\* \* \* \* \*

(b) \* \* \*

\_\_\_\_(3) 52.219-8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns (15 U.S.C. 637(d)(2) and (3)).

\* \* \* \* \*

#### 52.244-6 [Amended]

13. Section 52.244-6 is amended by revising the date of the clause to read “(Oct 1998)”; and in paragraph (c)(3) of the clause by removing the words “Handicapped Workers” and adding “Workers with Disabilities”.

### PART 53—FORMS

14. Section 53.228 is amended by revising paragraphs (h) and (i) to read as follows:

#### 53.228 Bonds and insurance.

\* \* \* \* \*

(h) *SF 273 (Rev. 10/98) Reinsurance Agreement for a Miller Act Performance Bond.* (See 28.106-1(h) and 28.202-1(a)(4).) *SF 273* is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(i) *SF 274 (Rev. 10/98) Reinsurance Agreement for a Miller Act Payment Bond.* (See 28.106-1(i) and 28.202-1(a)(4).) *SF 274* is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

\* \* \* \* \*

15. Section 53.301-273 is revised to read as follows:

#### 53.301-273 Reinsurance Agreement for a Miller Act Performance Bond.

BILLING CODE 6820-EP-U

**REINSURANCE AGREEMENT FOR A MILLER ACT PERFORMANCE BOND**  
(See instructions on reverse)

OMB No.: 9000-0045

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

1. DIRECT WRITING COMPANY*		1A. DATE DIRECT WRITING COMPANY EXECUTES THIS AGREEMENT	
		1B. STATE OF INCORPORATION	
2. REINSURING COMPANY		2A. AMOUNT OF THIS REINSURANCE (\$)	
		2B. DATE REINSURING COMPANY EXECUTES THIS AGREEMENT	
		2C. STATE OF INCORPORATION	
3. DESCRIPTION OF CONTRACT		4. DESCRIPTION OF BOND	
3A. AMOUNT OF CONTRACT		4A. PENAL SUM OF BOND	
3B. CONTRACT DATE	3C. CONTRACT NO.	4B. DATE OF BOND	4C. BOND NO.
3D. DESCRIPTION OF CONTRACT		4D. PRINCIPAL*	
3E. CONTRACTING AGENCY		4E. STATE OF INCORPORATION (If Corporate Principal)	

**AGREEMENT:**

(a) The Direct Writing Company named above is bound as surety to the United States of America on the performance bond described above, wherein the above described is the principal, for the protection of the United States on the contract described above. The contract is for the construction, alteration, or repair of a public building or public work of the United States and the performance bond was furnished to the United States under the Act of August 24, 1935, as amended (40 U.S.C. 270a-280e), known as the Miller Act. The Direct Writing Company has applied to the Reinsuring Company named above to be reinsured and countersecured in the amount shown opposite the name of the Reinsuring Company (referred to as the "Amount of this Reinsurance"), or for whatever amount less than the "Amount of this Reinsurance" the Direct Writing Company is liable to pay under or by virtue of the performance bond.

(b) For a sum mutually agreed upon, paid by the Direct Writing Company to the Reinsuring Company which acknowledges its receipt, the parties to this Agreement covenant and agree to the terms and conditions of this agreement.

**TERMS AND CONDITIONS:**

(a) The purpose and intent of this agreement is to guarantee and indemnify the United States against loss under the performance and to the extent of the "Amount of this Reinsurance," or any sum less than the "Amount of this Reinsurance" that is owing and unpaid by the Direct Writing Company to the United States under the performance bond.

(b) If the Direct Writing Company fails to pay any default under the performance bond equal to or in excess of the "Amount of this Reinsurance," the Reinsuring Company covenants and agrees to pay to the United States, the obligee on the performance bond, the "Amount of this Reinsurance." If the Direct Writing Company fails to pay to the United States any default for a sum less than the "Amount of this Reinsurance" the Reinsuring Company covenants and agrees to pay to the United States the full amount of the default, or so much thereof that is not paid to the United States by the Direct Writing Company.

(c) If there is a default on the performance bond for the "Amount of this Reinsurance," or more, the Reinsuring Company and the Direct Writing Company hereby covenant and agree that the United States may bring suit against the Reinsuring Company for the "Amount of this Reinsurance" or, in the case the amount of the default is for less than the "Amount of this Reinsurance," for the full amount of the default.

**WITNESS:**

The Direct Writing Company and the Reinsuring Company, respectively, have caused this Agreement to be signed and impressed with their respective corporate seals by officers possessing power to sign this instrument, and to be duly attested by officers empowered thereto, on the day and date above written opposite their respective names.

\*Items 1, 2, 4D - Furnish legal name, business address and ZIP Code.

(Over)

AUTHORIZED FOR LOCAL REPRODUCTION  
Previous edition is usable

**STANDARD FORM 273** (REV. 10-98)  
Prescribed by GSA - FAR (48 CFR) 53.228(h)

5. DIRECT WRITING COMPANY		
5A(1) SIGNATURE	(2) ATTEST: SIGNATURE	<i>Corporate Seal</i>
5B(1) NAME AND TITLE ( <i>Typed</i> )	(2) NAME AND TITLE ( <i>Typed</i> )	
6. REINSURING COMPANY		
6A(1) SIGNATURE	(2) ATTEST: SIGNATURE	<i>Corporate Seal</i>
6B(1) NAME AND TITLE ( <i>Typed</i> )	(2) NAME AND TITLE ( <i>Typed</i> )	

### INSTRUCTIONS

This form is to be used in cases where it is desired to cover the excess of a Direct Writing Company's underwriting limitation by reinsurance instead of co-insurance on Miller Act performance bonds running to the United States. See FAR (48 CFR) 28.202-1 and 53.228(h).

Execute and file this form as follows:

Original and copies (as specified by the bond-approving officer), signed and sealed, shall accompany the bond or be filed within the time period shown in the bid or proposal.

One carbon copy, signed and sealed, shall accompany the Direct Writing Company's quarterly Schedule of Excess Risks filed with the Department of the Treasury.

Other copies may be prepared for the use of the Direct Writing Company and Reinsuring Company. Each Reinsuring Company should use a separate form.

STANDARD FORM 273 (REV. 10-98) BACK

16. Section 53.301-274 is revised to read as follows:

53.301-274 Reinsurance Agreement for a Miller Act Payment Bond.

**REINSURANCE AGREEMENT FOR A MILLER ACT PAYMENT BOND**  
(See instruction on reverse)

OMB No.: 9000-0045

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

1. DIRECT WRITING COMPANY*		1A. DATE DIRECT WRITING COMPANY EXECUTES THIS AGREEMENT	
		1B. STATE OF INCORPORATION	
2. REINSURING COMPANY*		2A. AMOUNT OF THIS REINSURANCE \$	
		2B. DATE REINSURING COMPANY EXECUTES THIS AGREEMENT	
		2C. STATE OF INCORPORATION	
3. DESCRIPTION OF CONTRACT		4. DESCRIPTION OF BOND	
3A. AMOUNT OF CONTRACT		4A. PENAL SUM OF BOND	
3B. CONTRACT DATE	3C. CONTRACT NO.	4B. DATE OF BOND	4C. BOND NO.
3D. DESCRIPTION OF CONTRACT		4D. PRINCIPAL*	
3E. CONTRACTING AGENCY		4E. STATE OF INCORPORATION (If Corporate Principal)	

## AGREEMENT:

(a) The Direct Writing Company named above is bound as a surety on the payment bond described above, wherein the above described is the principal, for the protection of all persons supplying labor and material on the contract described above, which is for the construction, alteration, or repair of a public building or public work of the United States. The payment bond is for the use of persons supplying labor or material, and is furnished to the United States under the Act of August 24, 1935, as amended (40 U.S.C. 270a-270e), known as the Miller Act. The Direct Writing Company has applied to the Reinsuring Company named above to be reinsured and counter-secured in the amount above opposite the name of the Reinsuring Company (referred to as "Amount of this Reinsurance"), or for whatever amount less than the "Amount of this Reinsurance" the Direct Writing Company is liable to pay under or by virtue of the payment bond.

(b) For a sum mutually agreed upon, paid by the Direct Writing Company to the Reinsuring Company which acknowledges its receipt, the parties to this Agreement covenant and agree to the terms and conditions of this agreement.

## TERMS AND CONDITIONS:

The purpose and intent of this agreement is (a) to guarantee and indemnify the persons who have furnished or supplied labor or material in the prosecution of the work provided for in the contract referred to above (hereinafter referred to as "laborers and materialmen," the term "materialmen" including persons having a direct contractual relation with a subcontractor but no contractual relationship expressed or implied with the contractor who has furnished the said payment bond) against loss under the payment bond to the extent of the "Amount of this Reinsurance," or for any sum less than the "Amount of this Reinsurance," that is owing and unpaid by the Direct Writing Company to the "laborers and materialmen" on the payment bond; and (b) to make the "laborers and materialmen" obligees under this Reinsurance Agreement to the same extent as if their respective names were written herein.

## THEREFORE:

1. The Reinsuring Company covenants and agrees -

(a) To pay the "Amount of this Reinsurance" to the "laborers and materialmen" in the event of the Direct Writing Company's failure to pay to the "laborers and materialmen" any default under the payment bond equal to or in excess of the "Amount of this Reinsurance"; and

(b) To pay (1) the full amount to the "laborers and materialmen," or (2) the amount not paid to them by the Direct Writing Company; in case the Direct Writing Company fails to pay the "laborers and materialmen" any default under the payment bond less than the "Amount of this Reinsurance."

\*Items 1, 2, 4D - Furnish legal name, business address and ZIP Code.

(Over)

AUTHORIZED FOR LOCAL REPRODUCTION  
Previous edition is usable

**STANDARD FORM 274** (REV. 10-98)  
Prescribed by GSA - FAR (48 CFR) 53.228(i)

2. The Reinsuring Company and the Direct Writing Company covenant and agree that, in the case of default on the payment bond for the "Amount of this Reinsurance," or more, the persons given a "right of action" or a "right to sue" on the payment bond by section 2(a) of the Miller Act (40 U.S.C. 270b(a)) may bring suit against the Reinsuring Company in the United States District Court for the district in which the contract described above is to be performed and executed for the "Amount of this Reinsurance" or, if the amount of the default is for less than the "Amount of this Reinsurance," for whatever the full amount of the default may be. The Reinsuring Company further covenants and agrees to comply with all requirements necessary to give such court jurisdiction, and to consent to determination of matters arising under this Reinsurance Agreement in accordance with the law and practice of the court. It is expressly understood by the parties that the rights, powers, and privileges given in this paragraph to persons are in addition to or supplemental to or in accordance with other rights, powers, and privileges which they might have under the statutes of the United States, any States, or the other laws of either, and should not be construed as limitations.

3. The Reinsuring Company and the Direct Writing Company further covenant and agree that the Reinsuring Company designates the process agent, appointed by the Direct Writing Company in the district in which the contract is to be performed and executed, as an agent to accept service of process in any suit instituted on this Reinsurance Agreement, and that the process agent shall send, by registered mail, to the Reinsuring Company at its principal place of business shown above, a copy of the process.

4. The Reinsuring Company and the Direct Writing Company further covenant and agree that this Reinsurance Agreement is an integral part of the payment bond.

WITNESS:

The Direct Writing Company and the Reinsuring Company, respectively, have caused this Agreement to be signed and impressed with their respective corporate seals by officers possessing the power to sign this instrument, and to be duly attested to by officers empowered thereto, on the day and date in Item 1A written opposite their respective names.

5. DIRECT WRITING COMPANY		
5A.(1) SIGNATURE	(2) ATTEST SIGNATURE	<i>Corporate Seal</i>
5B.(1) NAME AND TITLE ( <i>Typed</i> )	(2) NAME AND TITLE ( <i>Typed</i> )	
6. REINSURING COMPANY		
6A.(1) SIGNATURE	(2) ATTEST SIGNATURE	<i>Corporate Seal</i>
6B.(1) NAME AND TITLE ( <i>Typed</i> )	(2) NAME AND TITLE ( <i>Typed</i> )	

#### INSTRUCTIONS

This form is to be used in cases where it is desired to cover the excess of a Direct Writing Company's underwriting limitation by reinsurance instead of co-insurance on Miller Act payment bonds running to the United States. See FAR (48 CFR) 28.202-1 and 53.228(i).

Execute and file this form as follows:

Original and copies (as specified by the bond-approving officer), signed and sealed, shall accompany the bond or be filed within the time period shown in the bid or proposal.

One carbon copy, signed and sealed, shall accompany the Direct Writing Company's quarterly Schedule of Excess Risks filed with the Department of Treasury.

Other copies may be prepared for the use of the Direct Writing Company and Reinsuring Company. Each Reinsuring Company should use a separate form.

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

**Federal Acquisition Regulation; Small Entity Compliance Guide**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

**ACTION:** Small Entity Compliance Guide.

**SUMMARY:** This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121). It consists

of a summary of rules appearing in Federal Acquisition Circular (FAC) 97-09 which amend the FAR. The rules marked with an asterisk (\*) are those for which a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Further information regarding these rules may be obtained by referring to FAC 97-09 which precedes this document. This document may be obtained from the Internet at <http://www.arnet.gov/far>.

**FOR FURTHER INFORMATION CONTACT:** Laurie Duarte, FAR Secretariat, (202) 501-4225.

LIST OF RULES IN FAC 97-09

Item	Subject	FAR case	Analyst
I	Taxpayer Identification Numbers (Interim)	97-003	Olson.
II	* Electronic Commerce in Federal Procurement (Interim)	97-304	Nelson.
III	Alternate Dispute Resolution—1996	97-015	O'Neill.
IV	Pay-As-You-Go Pension Costs	89-012	Olson.
V	Rehabilitation Act, Workers With Disabilities	96-610	O'Neill.
VI	Civil Defense Costs	97-036	Nelson.
VII	Costs Related to Legal/Other Proceedings	95-020	Nelson.
VIII	Service Contracts	97-302	Olson.
IX	Payment Due Dates	97-609	Olson.

**Item I—Taxpayer Identification Numbers (FAR Case 97-003)**

This interim rule amends FAR Parts 1, 4, 13, 14, 15, and 52 to implement Subsection (i) of the Debt Collection Improvement Act of 1996 (Pub. L. 104-134) and Section 1022 of the Taxpayer Relief Act of 1997 (Pub. L. 105-32). The rule clarifies requirements for obtaining Taxpayer Identification Number (TIN) information from contractors and forwarding the information to payment offices; specifies that TIN information may be used by the Government to collect and report on any delinquent amounts arising out of the contractor's relationship with the Government; and clarifies and updates requirements for reporting contract information and payment information to the Internal Revenue Service.

*(Orders under Federal Supply Schedule (FSS) contracts.* Ordering officials are required to provide the FSS contractor's TIN (and other information) to the payment office for each order under an FSS contract. The General Services Administration is planning to establish an Internet based system by early 1999 that can be used by ordering officials to obtain this information. In the meantime, the information can be obtained from most FSS contract price lists or by requesting it directly from the FSS contractor prior to placing an order.)

**Item II—Electronic Commerce in Federal Procurement (FAR Case 97-304) \***

This interim rule revises FAR Subpart 4.5 and makes associated changes to FAR Parts 2, 5, 13, and 14, to implement Section 850 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85) to eliminate the preference for electronic commerce within Federal agencies to be conducted on the Federal Acquisition Computer Network (FACNET) Architecture. In addition, this interim rule promotes the use of cost-effective procedures and processes that employ electronic commerce in the conduct and administration of Federal procurement systems. In order to facilitate access to Federal procurements, Section 850 mandates that a single Governmentwide point of entry be used. Once the Administrator of the Office of Federal Procurement Policy (OFPP) designates the single Governmentwide point of entry, the FAR will be changed accordingly. FACNET qualifies as the single, Governmentwide point of entry until the Administrator of OFPP designates the single, Governmentwide point of entry. Federal procurement systems that employ electronic commerce shall apply nationally and internationally recognized standards that broaden interoperability and ease the electronic interchange of information.

**Item III—Alternative Dispute Resolution—1996 (FAR Case 97-015)**

This final rule amends FAR 6.302-3, 24.202, 33.2, and the clause at 52.233-1 to implement the Administrative Dispute Resolution Act of 1996 (Pub. L. 104-320) and Section 4321(a)(7) of the Clinger-Cohen Act of 1996 (Pub. L. 104-106). The rule makes clear the authority to contract with a neutral person as an exception to requirements for full and open competition; revises requirements for certification of a claim under the Administrative Dispute Resolution Act to conform to the requirements under the Contract Disputes Act; and specifies that certain dispute resolution communications are exempt from disclosure under the Freedom of Information Act.

**Item IV—Pay-As-You-Go Pension Costs (FAR Case 89-012)**

The interim rule published as Item I of FAC 84-44 is converted to a final rule with amendments at FAR 15.408, 31.001, 31.205-6, and the clause at 52.215-15. The rule amends the FAR for consistency with 48 CFR 9904.412, Cost accounting standard for composition and measurement of pension cost (CAS 412), and 48 CFR 9904.413, Adjustment and allocation of pension cost (CAS 413). CAS 412 and CAS 413 relate to accounting for pension costs under negotiated Government contracts.



**Item V—Rehabilitation Act, Workers With Disabilities (FAR Case 96-610)**

The interim rule published as Item V of FAC 97-05 is converted to a final rule without change. The rule implements Department of Labor regulations at 41 CFR 60-741 regarding affirmative action to employ, and advance in employment, qualified individuals with disabilities.

**Item VI—Civil Defense Costs (FAR Case 97-036)**

This final rule deletes the civil defense cost principle at FAR 31.205-5, as this guidance is no longer deemed necessary. The acceptability of civil defense costs will remain governed by the allocability, allowability, and reasonableness criteria discussed in FAR Part 31.

**Item VII—Costs Related to Legal/Other Proceedings (FAR Case 95-020)**

This final rule amends FAR 31.205-47, Costs related to legal and other proceedings, to clarify the allowability of costs incurred for *qui tam* suits in

which the Government does not intervene. This rule is consistent with audit guidance issued by the Defense Contract Audit Agency on August 24, 1995. Certain Government contracting personnel and contractors may have had common misinterpretations of the language at FAR 31.205-47 prior to August 24, 1995. For *qui tam* legal fees incurred prior to August 24, 1995, if the Government contracting personnel and the contractor shared a common misinterpretation of the language at FAR 31.205-47, the contracting officer, in consultation with his or her legal advisors, should determine the appropriate treatment of those costs on a case-by-case basis.

**Item VIII—Service Contracts (FAR Case 97-302)**

This final rule revises FAR 32.703-3 and amends 37.106 to implement Section 801 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85). Section 801 provides that the Secretary of Defense, the Secretary of a military department, or

the Secretary of Transportation with respect to the Coast Guard, when it is not operating as a service in the Navy, may enter into a contract for procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year. This authority remains the same for civilian agencies other than NASA.

**Item IX—Payment Due Dates (FAR Case 97-609)**

This final rule amends FAR Subpart 32.9 to clarify that agencies may amend the clauses at FAR 52.232-25, Prompt Payment, and 52.232-26, Prompt Payment for Fixed-Price Architect-Engineer Contracts, to specify a period shorter than 30 days (but not less than 7 days) for making contract invoice payments.

Dated: October 22, 1998.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*  
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