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Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1, et al.
Federal Acquisition Circular 2001–08; Final Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 2001–08; Introduction

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

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

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2001–08. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.arnet.gov/far.*

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

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2001–08 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	Definition of ''Claim'' and Terms Relating to Termination	2000–406	Klein.
II	Federal Supply Schedule Order Disputes and Incidental Items	1999–614	Nelson.
III	Relocation Costs	1997–032	Olson.
IV	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.

FAC 2001–08 amends the FAR as specified below:

Item I—Definition of ''Claim'' and Terms Relating to Termination (FAR Case 2000–406)

The purpose of this final rule is to clarify the applicability of definitions, eliminate redundant or conflicting definitions, and streamline the process for locating definitions. This rule is not intended to change the meaning of any FAR text or clause. Movement of various definitions to FAR 2.101 is not intended to change the operation of the cost principles and, specifically, the movement of the definition of ''claim'' to FAR 2.101 is not intended to change the scope or context of FAR 31.205–47(f)(1).

This final rule—

- Revises and moves the definitions of ''claim'' from FAR 33.201; ''continued portion of the contract,'' ''partial termination,'' ''terminated portion of the contract'' from FAR 49.001; and ''termination for convenience'' from FAR 17.103;
- Adds a definition of ''termination for default'' at FAR 2.101 and a new paragraph (d) at FAR 17.104 that explains the distinction between ''termination for convenience'' and ''cancellation'' that was deleted from the definition of ''termination for convenience'' that was moved from FAR 17.103;
- Revises FAR 33.213(a) to clarify the distinction between claims ''arising under a contract'' and claims ''relating to a contract''
- Revises the definition of ''claim'' in the FAR clause at 52.233–1 to conform to the definition at FAR 2.101; and
- Makes other editorial revisions for clarity.

Item II—Federal Supply Schedule Order Disputes and Incidental Items (FAR Case 1999–614)

This final rule amends the FAR to add policies on disputes and incidental items under Federal Supply Schedule contracts and to remove the requirement to notify GSA when a schedule contractor refuses to honor an order placed by a Government contractor. This rule affects all ordering offices acquiring supplies or services subject to the procedures of FAR Subpart 8.4.

Item III—Relocation Costs (FAR Case 1997–032)

This final rule amends the relocation cost principle at FAR 31.205–35. The rule will only affect contracting officers that price contracts using cost analysis, or that are required by a contract clause to use cost principles for the determination, negotiation, or allowance of costs.

The relocation cost principle addresses the allowability of costs incurred by an existing contractor employee incident to the permanent change of the employee's assigned work location for a period of 12 months or more, or upon recruitment of a new employee. The final rule revises the cost principle by making allowable payments for spouse employment assistance and for increased employee income and Federal Insurance Contributions Act taxes incident to allowable reimbursed relocation costs, increasing the ceiling for allowance of miscellaneous costs of relocation, and making a number of editorial changes.

Item IV—Technical Amendments

These amendments update sections and make editorial changes at FAR 52.202–1, 52.212–3, and 52.225–11.

Dated: June 19, 2002.

Al Matera,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001–08 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2001–08 are effective July 24, 2002.

Dated: June 18, 2002.

Deidre A. Lee,

Director, Defense Procurement.

Dated: June 10, 2002.

David A. Drabkin,

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

Dated: June 10, 2002.

Tom Luedtke,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 02–15939 Filed 6–26–02; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 17, 31, 33, 49, and 52

[FAC 2001–08; FAR Case 2000–406; Item I]

RIN 9000–AJ19

Federal Acquisition Regulation; Definition of ''Claim'' and Terms Relating to Termination

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify and move the definitions of ''claim'' and certain terms relating to termination to the FAR part regarding definitions.

DATES: *Effective Date:* July 29, 2002.

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 Klein, Procurement Analyst, at (202) 501–3775. Please cite FAC 2001–08, FAR case 2000–406.

SUPPLEMENTARY INFORMATION:

A. Background

The purpose of this rule is to clarify the applicability of definitions, eliminate redundant or conflicting definitions, and streamline the process for locating definitions. This rule is not intended to change the meaning of any FAR text or clause. Movement of various definitions to FAR 2.101 is not intended to change the operation of the cost principles, and specifically the movement of the definition of ''claim'' to FAR 2.101 is not intended to change the scope or context of FAR 31.205–47(f)(1).

This final rule—

- Revises and moves the definitions of ''claim'' from 33.201; ''continued portion of the contract,'' ''partial termination,'' ''terminated portion of the contract'' from FAR 49.001; and ''termination for convenience'' from FAR 17.103;
- Adds a definition of ''termination for default'' at FAR 2.101 and a new paragraph 17.104(d) that explains the distinction between ''termination for convenience'' and ''cancellation'' that was deleted from the definition of ''termination for convenience'' that was moved from FAR 17.103;
- Revises FAR 33.213(a) to clarify the distinction between claims ''arising under a contract'' and claims ''relating to a contract'';
- Revises the definition of ''claim'' in the clause at FAR 52.233–1 to conform to the definition at FAR 2.101; and
- Makes other editorial revisions for clarity.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 66 FR 42922, August 15, 2001, with a request for comment. One respondent submitted two comments to the proposed rule. The Councils considered and accepted both comments. The rule was modified as a result. The first comment recommended that the parenthetical reference at FAR 31.205(f)(1) be changed to reflect the new location of the definition of ''claim'' at FAR 2.101. This was done. The second comment recommended that a clarifying statement be added to the **Federal Register** notice stating that the movement of the various definitions to FAR 2.101 is not intended to change the operation of the cost principles, and specifically the movement of the definition of ''claim'' to FAR 2.101 is not intended to change the scope of FAR 31.205–47(f)(1). This was also done.

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

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule does not change policy. We did not receive any comments regarding this determination as a result of publication of the proposed rule in the **Federal Register** on August 15, 2001 (66 FR 42922).

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 2, 17, 31, 33, 49, and 52

Government procurement.

Dated: June 19, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 17, 31, 33, 49, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 17, 31, 33, 49, and 52 continues to read as follows:

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

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by adding, in alphabetical order, the definitions ''Claim,'' ''Continued portion of the contract,'' ''Partial termination,'' ''Termination for convenience,'' ''Termination for default,'' and ''Terminated portion of the contract'' to read as follows:

2.101 Definitions.

* * * * *

Claim means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. However, a written demand or written assertion by the contractor seeking the payment of money exceeding $100,000 is not a claim under the Contract Disputes Act of 1978 until certified as required by the Act. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim, by written notice to the contracting officer as provided in

33.206(a), if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

* * * * *

Continued portion of the contract means the portion of a contract that the contractor must continue to perform following a partial termination.

* * * * *

Partial termination means the termination of a part, but not all, of the work that has not been completed and accepted under a contract.

* * * * *

Termination for convenience means the exercise of the Government's right to completely or partially terminate performance of work under a contract when it is in the Government's interest.

Termination for default means the exercise of the Government's right to completely or partially terminate a contract because of the contractor's actual or anticipated failure to perform its contractual obligations.

Terminated portion of the contract means the portion of a contract that the contractor is not to perform following a partial termination. For construction contracts that have been completely terminated for convenience, it means the entire contract, notwithstanding the completion of, and payment for, individual items of work before termination.

* * * * *

PART 17—SPECIAL CONTRACTING METHODS

17.103 [Amended]

3. Amend section 17.103 by removing the definition ''Termination for convenience.''

4. Amend section 17.104 by adding paragraph (d) to read as follows:

17.104 General.

* * * * *

(d) The termination for convenience procedure may apply to any Government contract, including multiyear contracts. As contrasted with cancellation, termination can be effected at any time during the life of the contract (cancellation is effected between fiscal years) and can be for the total quantity or partial quantity (where as cancellation must be for all subsequent fiscal years' quantities).

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.205–47 [Amended]

5. Amend section 31.205–47 in paragraph (f)(1) by removing ''(see 33.201)'' and adding ''(see 2.101)'' in its place.

PART 33—PROTESTS, DISPUTES, AND APPEALS

33.201 [Amended]

6. Amend section 33.201 by removing the definition ''Claim.''

7. Amend section 33.213 by revising paragraph (a) to read as follows:

33.213 Obligation to continue performance.

(a) In general, before passage of the Act, the obligation to continue performance applied only to claims arising under a contract. However, the Act, at 41 U.S.C. 605(b), authorizes agencies to require a contractor to continue contract performance in accordance with the contracting officer's decision pending a final resolution of any claim arising under, or relating to, the contract. (A claim arising under a contract is a claim that can be resolved under a contract clause, other than the clause at 52.233–1, Disputes, that provides for the relief sought by the claimant; however, relief for such claim can also be sought under the clause at 52.233–1. A claim relating to a contract is a claim that cannot be resolved under a contract clause other than the clause at 52.233–1.) This distinction is recognized by the clause with its Alternate I (see 33.215).

* * * * *

PART 49—TERMINATION OF CONTRACTS

49.001 [Amended]

8. Amend section 49.001 by removing the definitions ''Claim,'' ''Continued portion of the contract,'' ''Partial termination,'' and ''Terminated portion of the contract.''

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.213–4 [Amended]

9. Amend section 52.213–4 by revising the date of the clause to read ''(7/02)''; and by removing from paragraph (a)(2)(v) ''(Dec 1998)'' and adding ''7/02'' in its place.

10. Amend section 52.233–1 by revising the date and paragraph (c) of the clause; and by revising the introductory paragraph of Alternate I to read as follows:

52.233–1 Disputes.

* * * * *

Disputes (7/02)

* * * * *

(c) *Claim,* as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding $100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

* * * * *

Alternate I (Dec 1991). As prescribed in 33.215, substitute the following paragraph (i) for paragraph (i) of the basic clause:

* * * * *

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8 and 51

[FAC 2001–08; FAR Case 1999–614; Item II]

RIN 9000–AJ01

Federal Acquisition Regulation; Federal Supply Schedule Order Disputes and Incidental Items

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to incorporate policies for disputes in schedule contracts and the handling of incidental items, and to remove the requirement to notify GSA when a schedule contractor refuses to honor an order placed by a Government contractor.

DATES: *Effective Date:* July 29, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 2001–08, FAR case 1999–614.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 79702, December 19, 2000. Nine respondents submitted comments in response to the **Federal Register** notice. The public comments were received from contractors, professional associations, and Federal agencies. Clarifying revisions have been made to FAR 8.401(d) and 8.405–7(d) of the rule as a result of the public comments. A summary of the significant comments and concerns expressed by respondents is summarized below.

• *Addition of Open Market, Noncontract Items on a Schedule Order.* Some respondents believed that the intent regarding the incorporation of open market, noncontract items on a schedule order needed further clarification and recommended alternative language. The Councils agreed that absent a definition of ''open market'' or ''noncontract'' items in the FAR further clarification is needed. Accordingly, it has substituted the expression ''items not on the Federal Supply Schedule'' to best characterize what these items mean.

• *Inclusion of FAR Part 19 in the Listing of Applicable Acquisition Regulations.* One respondent expressed concern regarding the omission of a reference to FAR Part 19, Small Business Programs, in the proposed language in FAR 8.401(d) for adding open market, noncontract items to a Federal Supply Schedule BPA. The respondent believes that the omission of FAR Part 19 in the list of applicable acquisition regulations an agency must follow will allow ordering offices to circumvent the requirement that all procurements valued between $2,500 and $100,000 be set aside for small business concerns.

The Councils agreed that FAR Part 19 should be included in the list of applicable regulations in FAR 8.401(d)(1). Even though FAR 13.003(b)(1) addresses small business set-asides for acquisitions above the micro-purchase threshold, the inclusion of FAR Part 19, in addition to FAR Part 13, further emphasizes that ordering offices must consider small business programs when acquiring items not on the Federal Supply Schedule.

• *FAR Reference to Alternative Dispute Resolution (ADR) Procedures for Schedule Disputes.* One respondent suggested that in lieu of the proposed language in FAR 8.405–7(d) (''The contracting officer should use the alternative dispute resolution (ADR) procedures, when appropriate (see 33.214)''), the language should be revised to cite the policy statement as it is set forth in FAR 33.204, that ADR should be used ''to the maximum extent practicable.'' The respondent further suggested that either FAR 33.204 be cited alone, or that 33.204 be cited in addition to 33.214. Since the language in FAR 33.204 speaks to policy regarding the use of ADR, while 33.214 provides additional information regarding ADR, the Councils agreed that, for clarity, both citations be included in the final rule, and that the language in FAR 8.405–7(d) be revised.

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

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule addresses internal Government administrative procedures and does not impose any additional requirements on Government offerors or contractors.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 8 and 51

Government procurement.

Dated: June 19, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 8 and 51 as set forth below:

1. The authority citation for 48 CFR parts 8 and 51 continues to read as follows:

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

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. Amend section 8.401 by adding paragraph (d) to read as follows:

8.401 General.

* * * * *

(d) For administrative convenience, an ordering office contracting officer may add items not on the Federal Supply Schedule (also referred to as open market items) to a Federal Supply Schedule blanket purchase agreement (BPA) or an individual task or delivery order only if—

(1) All applicable acquisition regulations pertaining to the purchase of the items not on the Federal Supply Schedule have been followed (*e.g.,* publicizing (Part 5), competition requirements (Part 6), acquisition of commercial items (Part 12), contracting methods (Parts 13, 14, and 15), and small business programs (Part 19));

(2) The ordering office contracting officer has determined the price for the items not on the Federal Supply Schedule is fair and reasonable;

(3) The items are clearly labeled on the order as items not on the Federal Supply Schedule; and

(4) All clauses applicable to items not on the Federal Supply Schedule are included in the order.

3. Revise section 8.405–7 to read as follows:

8.405–7 Disputes.

(a) *Disputes pertaining to the performance of orders under a schedule contract.* (1) Under the Disputes clause of the schedule contract, the ordering office contracting officer may—

(i) Issue final decisions on disputes arising from performance of the order (but see paragraph (b) of this section); or

(ii) Refer the dispute to the schedule contracting officer.

(2) The ordering office contracting officer shall notify the schedule contracting officer promptly of any final decision.

(b) *Disputes pertaining to the terms and conditions of schedule contracts.* The ordering office contracting officer shall refer all disputes that relate to the contract terms and conditions to the schedule contracting officer for resolution under the Disputes clause of the contract and notify the schedule contractor of the referral.

(c) *Appeals.* Contractors may appeal final decisions to either the Board of Contract Appeals servicing the agency that issued the final decision or the U.S. Court of Federal Claims.

(d) *Alternative dispute resolution.* The contracting officer should use the alternative dispute resolution (ADR) procedures, to the maximum extent practicable (see 33.204 and 33.214).

PART 51—USE OF GOVERNMENT SOURCES BY CONTRACTORS

51.103 [Amended]

4. Amend section 51.103 by removing paragraph (b); and by redesignating paragraph (c) as (b).

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 2001–08; FAR Case 1997–032; Item III]

RIN 9000–AH96

Federal Acquisition Regulation; Relocation 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 (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) ''relocation costs'' cost principle by making allowable payments for spouse employment assistance and for increased employee income and Federal Insurance Contributions Act (FICA) (26 U.S.C. chapter 21) taxes incident to allowable reimbursed relocation costs, increasing the ceiling for allowance of miscellaneous costs of relocation, and making a number of editorial changes.

DATES: *Effective Date:* July 29, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson at (202) 501–3221. Please cite FAC 2001–08, FAR case 1997–032.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 64 FR 28330, May 25, 1999, that revised the cost principle at FAR 31.205–35, Relocation costs, to—

- Remove the numerous ceilings imposed on individual relocation cost elements;
- Recognize the growing commercial practice of reimbursing relocation costs on a lump-sum basis in certain situations;
- Make allowable payments for employment assistance for spouses and for increased employee income and FICA taxes incident to allowable reimbursed relocation costs;
- Increase the ceiling for allowable miscellaneous relocation costs; and
- Make a number of editorial changes.

The final rule amends the FAR to—

- Increase the limit for miscellaneous expenses when a lump-sum approach is used. The current FAR requires the reimbursement of miscellaneous expenses to be limited to actual expenses or $1,000 (if the lump-sum approach is used). The proposed rule removed the $1,000 limitation in its entirety. To reduce the Government's risk in this area, the final rule maintains a ceiling for miscellaneous expenses when a contractor uses the lump-sum payment method, but increases the limit from $1,000 to $5,000. The cost principle continues to have no ceiling for miscellaneous expenses when reimbursement is based on actual expenses;
- Add two new categories of allowable relocation costs. Consistent with the proposed rule, the final rule makes allowable two categories of expenses that are currently unallowable: (1) Payments for increased employee income and FICA taxes incident to allowable reimbursed relocations costs, and (2) payments for spouse employee assistance. Since contractors incur these types of costs in a good faith effort to keep transferred employees from being adversely affected by the relocation, it appears equitable to reimburse contractors for these types of costs. In addition, the Employee Relocation Council (ERC) data showed that it is a common industry practice to reimburse relocating employees for both of these costs; and
- Make a number of editorial changes, including revising the ''compensation for personal services'' cost principle at FAR 31.205–6(e)(2) to clarify that the differential allowances paid to compensate for increased taxes on employee compensation is unallowable, but that the payments to compensate for increased taxes incident to allowable reimbursed relocation costs is allowable.

Twenty-two respondents submitted public comments. The Councils considered all comments when developing the final rule. A discussion of the major comments follows:

- *Inadequate Analysis.* One commenter expressed the opinion that ''the proposed changes to FAR 31.205–35 have not been adequately researched and the potential impact has not been documented.'' The commenter went on to suggest that all of the proposed changes, except for the lump-sum payment option, have been carefully considered by the FAR drafters in the past and that those previous decisions should not be overturned lightly and without thorough research and documentation that demonstrate how the conditions have changed to make previously rejected proposed changes now acceptable. In a related comment, another commenter cautioned that ''the councils should carefully review the information provided in response to the questions directed to industry respondents to determine that the administrative time and cost savings will offset increased costs before eliminating the ceilings.''

Response to Comments: As an integral part of its review of the public comments submitted in response to this proposed rule, current industry relocation practices were carefully analyzed (primarily using data compiled by the ERC in its 1998 report entitled ''Relocation Assistance:

Transferred Employees''), together with the past regulatory history of the relocation cost principle.

- *Disagree With Removing Ceilings.* Four commenters opposed the removal of the current ceilings on individual relocation cost elements, while two of them added that ''if the current limitations are not adequate, they should be adjusted but not eliminated.'' These two commenters disagreed with the **Federal Register** justification that the ''ceilings represent unnecessary micromanagement of contractor business practices.'' One stated that ''cost ceilings are a means of controlling business expenses reimbursed with taxpayer dollars,'' and the other argued that ''the ceilings merely represent the maximum the Government believes is reasonable.'' The commenter continued: ''The FAR ceilings were initially implemented to assure that reasonableness determinations were consistently applied to all contractors and that unreasonable costs would not be paid because the cost principle is too general or unenforceable.''

One commenter stated that ''the ceilings * * * are necessary to protect the Government from liability for reimbursement of excessive costs.'' Another maintained that since the 14 percent limitation on closing costs and

the continuing costs of ownership of a former residence (FAR 31.205–35(a)(3) and (4)) and the 5 percent limitation on costs for purchasing a new home (FAR 31.205–35(a)(6)(ii)) were based on commercial industry standards, there is no justification for their removal. Another stated that these 14 percent and 5 percent caps appeared reasonable, but added that waivers ''may be acceptable on a case-by-case basis.''

Response to Comments: Three alternatives were evaluated during consideration of this issue: removal of the ceilings, adjustment of the ceilings, and retention of the current ceilings. The alternatives are discussed below:

Alternative 1—Remove Ceilings as Reflected in the Proposed Rule. The ERC data indicated that some of the current FAR ceilings on individual relocation cost elements were too low. One alternative to eliminating this relationship is for the ceilings to be eliminated as shown in the proposed rule, rather than adjusted. This alternative would be a fundamental shift in how the Government evaluates the allowability of contractor relocation costs. An argument can be made that this change is consistent with promoting greater acceptance of commercial practices. Under this approach, the Government would place greater reliance upon contractors' individual corporate relocation policies to limit such costs to reasonable amounts, rather than continuing to micromanage contractor business practices. This would involve a systems approach requiring greater use of professional judgment by our auditors and contracting officers to ensure that relocation costs in total are reasonable, which is more difficult than utilizing a series of caps to determine cost allowability. This alternative would tend to satisfy those who believe that the various ceilings on individual relocation cost elements have made the current cost principle unnecessarily detailed.

Alternative 2—Retain Ceilings With Appropriate Adjustments. This alternative is more consistent with the argument that the rationale behind the numerous past decisions to retain the ceilings was sound. That is, (1) industry practice varies widely, (2) reasonableness determinations should be consistently applied to all contractors, and (3) the cost principle without ceilings is too general and unenforceable. Further, the Federal procurement process argues for the retention of the ceilings. Without these stated ceilings, contracting officers would be put in the unenviable position of determining what constitutes reasonable relocation costs without ready access to the necessary information to make this determination. By performing the necessary market research and setting reasonable ceilings in this cost principle, the Government avoids the inefficient process of having hundreds of different procurement personnel performing various levels of research and making inconsistent determinations. The ceilings should be set at a level that allows contractors to be reimbursed for reasonable relocation costs that are not unallowable.

Alternative 3—Retain Current Ceilings but Reevaluate.

The basis for this alternative is that the rationale supporting a shift either to eliminate or to adjust the ceilings is incomplete, and a reasoned policy change cannot be made at this time. There is sufficient information to justify evaluation of whether a policy change should be considered, but there is not sufficient information to determine what a better policy might be. This is the approach adopted by the FAR Council.

• *Lump-Sum Approach.*

Lump-Sum Approach Would Result in Savings. Nine commenters argued that an expanded lump-sum approach would result in significant savings for contractors and the Government. One stated that at a Government business segment using a lump-sum approach, instead of an actual and reasonable method, savings achieved for the temporary living portion of relocation costs averaged $4,432 per relocated employee for a total savings on Government contracts of almost $200,000 per year. Similarly, another indicated that it is experiencing savings of $6.4 million per year by offering a lump-sum option for reimbursement of temporary living expenses to relocated employees in its commercial segments. This commenter projected that it has ''the potential to save an additional $1 million per year by offering the same option within its businesses that sell goods and services to the U. S. Government.'' Another commenter indicated an estimated saving of between $400,000 and $500,000 per year due to the lump-sum relocation option.

Disagree With Lump-Sum Approach. One commenter objected ''to the lump-sum payment as proposed because it would increase administrative cost with no evident benefit for the Government.'' The commenter added that ''few contractors use a lump-sum approach for total relocation cost,'' and expressed concern that ''expanding the lump-sum approach beyond miscellaneous expenses (for which a lump-sum up to $1,000 is already permitted) would make it virtually impossible to assure that the lump-sum payment does not include unallowable costs.'' While not directly opposing an expanded use of the lump-sum approach, three other commenters expressed concerns that ''in the absence of a database that establishes what constitutes reasonable relocation expenses in various locations, contracting officers will have difficulty negotiating advance agreements on a broad range of relocation expenses.'' One commenter added: ''Without some objective data, it is unreasonable to impose the burden of determining reasonableness on the contracting officer.''

Response to Comments: Review of the ERC data found that there is no current industry practice of using lump-sum reimbursements for the purchase or sale of a home. It appears inappropriate for the cost principle to recognize lump-sum payments for these types of relocation costs if there is no evidence of such an industry practice.

Additionally, an industry association commenter noted that in its survey of member companies, ''no respondent used the lump-sum approach on all relocation costs.'' Accordingly, the broad lump-sum reimbursement approach was removed from the rule.

The lump-sum reimbursement approach covering miscellaneous expenses only that is currently in the FAR was retained, but the ceiling amount was increased from $1,000 to $5,000. An unlimited lump-sum for miscellaneous expenses could easily become a sub rosa vehicle for reimbursing unallowable costs (such as a loss on the sale of a home) or for awarding a hidden bonus to the relocating employee. While some commenters contend that contractors and the Government will share in cost reductions through use of lump-sum payments, others believe the opposite will occur. No convincing data were found one way or the other. This is further bolstered by indications from ERC that companies use lump-sum reimbursements primarily to improve employee morale and to reduce administrative costs. The net cost impact is unclear. This issue may be pursued again in a separate FAR case to determine if there is a clear answer justifying adoption of a broader lump-sum approach.

• *Remove Mandatory Advance Agreement Requirement for Lump-Sum Approach.* Eight commenters recommended that the requirement for an advance agreement with the Government prior to using the lump-sum payment option be eliminated.

Some argued that ''the requirement for an advance agreement is not necessary'' because ''lump-sum payments are an accepted commercial practice'' and ''are more cost effective than actual cost tracking.'' One added that ''at times, whether or not an advance agreement is executed depends on subjective rather than objective factors.'' It added that ''inconsistent actions concerning the execution of an advance agreement on lump-sum payments could put companies on an unequal footing when bidding on Government contracts.'' Another observed that ''formal acceptance by the contracting officer of what is likely to be a case-by-case implementation of lump-sums is not consistent with streamlining or acceptance of commercial practices.'' Another stated that the mandatory advance agreement requirement ''is contrary to the spirit of Acquisition Reform'' and ''creates another administrative burden.''

Response to Comments: The original rationale for including a mandatory advance agreement requirement in the proposed rule was to give the Government additional control over the broadly worded lump-sum guidance. However, we have revised paragraph (b)(2) of FAR 31.205–35 to delete the mandatory advance agreement requirement, since we have removed the lump-sum approach from the rule.

• *Disagree/Agree With Removing Mortgage Interest Differential and Rental Differential Payments.* Two commenters saw no reason for removing the specific references to mortgage interest differential and rental differential payments currently found at paragraphs (a)(7) and (a)(8) of FAR 31.205–35. One stated: ''Our survey data, along with analysis of published relocation survey data, did not demonstrate any significant difference in conditions that exist now versus conditions that existed when these provisions were included in the cost principle. Therefore, we cannot determine the basis for the statement that coverage of these types of costs is no longer needed.'' Conversely, another commenter expressed its belief that ''eliminating paragraphs FAR 31.205–35(a)(7) and (8) will provide the advantage of simplification without adding costs to the Government.''

Response to Comments: Although interest rates are currently very low and the impact of interest differential is now very limited, interest rates could increase in the future. We have added both of these types of payments back into the paragraph (a) list of allowable relocation costs.

• *Delete FAR 31.205–35 (a)(1) thru (a)(9).* Three commenters, noting that the proposed rule would remove the specific references to mortgage interest differential and rental differential payments, expressed concern ''that Government auditors may assert that these costs are now unallowable, notwithstanding the statements pertaining to them included in the background section of this proposed rule.'' To avoid such disputes over these and other relocation costs not specifically mentioned under paragraph (a), they suggested that the whole list of allowable relocation costs at FAR 31.205–35(a) (1) thru (a)(9) be deleted.

Response to Comments: The Councils agree that removing the specific references to mortgage interest differential and rental differential payments from the cost principle could create confusion about the future allowability of such costs, and they have added both of these types of payments back into the paragraph (a) list of allowable relocation costs. The Councils are also convinced there is great benefit in making it absolutely clear that the listed types of relocation costs in paragraph (a) are allowable and do not think this list should be deleted.

• *Agree/Disagree With Making Spouse Employment Assistance Payments and Tax Gross-Ups Allowable.* Eight commenters agreed with the equitable treatment rationale in the **Federal Register** for making two new categories of relocation costs allowable: (1) Payments for spouse employment assistance, and (2) payments for increased employee income and FICA taxes incident to allowable reimbursed relocation costs (commonly referred to as ''tax gross-ups''). Several commenters ''applauded'' this change which, as one commenter put it, ''acknowledges that contractors find it necessary to make such payments to avoid unfairly penalizing the relocating employee.''

On the other hand, another commenter found it ''illogical'' to use the ''good faith effort'' rationale to allow these costs, but not the other unallowable relocation costs. However, after noting that ''there is some evidence that spousal employment assistance is becoming a general industry practice,'' that commenter stated that it does ''not object to the reconsideration of the allowability of spouse employment assistance (subject to reasonable limitations) after adequate research and analysis is performed.''

Regarding tax gross-ups, that commenter quoted from a 1985 Cost Principles Committee report: ''We believe that there was no Congressional intention to grant tax relief to contractor employees, but that it was the intent to grant such relief to Federal employees in order to reduce the out-of-pocket costs heretofore being borne by Federal employees.'' That commenter also pointed out that past Cost Principles Committee reports have concluded tax gross-ups are actually a compensation cost, and not a relocation cost. Finally, the commenter disagreed ''with the theory that contractors should be reimbursed for these types of costs merely because Federal employees are.'' In support of this position, the commenter cited OFPP's 1986 ''Study of Relocation Costs,'' which found that ''the policies governing the payment for contractor relocation should remain separate from the policies governing the relocation benefits paid to Federal employees.''

Response to Comments: The ERC data showed that it is a common industry practice to reimburse relocating employees for both of these costs. The Councils believe they are *bona fide* relocation costs and that it is fair to make them allowable now on Government contracts, just as it was fair to begin reimbursing Federal employees for them.

• *Apparent Conflict Between Tax Gross-Ups and Taxes Cost Principle.* One commenter noted an apparent conflict between the new language allowing tax gross-ups for reimbursed relocation costs and the taxes cost principle provision that makes Federal income taxes unallowable (FAR 31.205–41(b)(1)).

Response to Comments: The Councils do not see a conflict. The taxes cost principle makes contractor Federal income tax payments unallowable, not contractor reimbursements to an employee for the relocating employee's increased tax liability.

• *Federal Employees Do Not Get Tax Gross-Ups on FICA.* One commenter noted that ''Government employees are reimbursed income taxes on relocation reimbursements, but not FICA. Employees, particularly employees of private contractors, theoretically receive a future benefit from increased FICA contributions. Therefore, reimbursement of FICA could be considered inappropriate, and we would recommend reimbursement of income taxes, but not FICA.''

Response to Comments: The Councils disagree with this recommendation. They do not believe the allowability of contractor relocation costs must always parallel the treatment afforded relocating Federal employees; nor do they see uncertain future benefits as a valid reason for excluding FICA from

allowable contractor tax gross-ups. The Councils believe this is a *bona fide* relocation cost, which should be made allowable.

• *Administrative Costs Will Decrease/Increase.* Thirteen commenters agreed with the **Federal Register** rationale that the proposed rule would reduce administrative costs. As one commenter put it: ''We believe that the proposed changes would result in savings to both contractors and the Government by reducing or eliminating a number of burdensome administrative processes. For instance, with the elimination of thresholds, contractors would no longer need to track applicable costs separately and compare them to artificial thresholds. Detailed training on how to apply the thresholds would no longer be required. We believe that, to the extent that contractors find it otherwise appropriate and feasible to adopt lump-sum practices, record-keeping requirements would be reduced for both the contractor and the relocating employee. Finally, internal and external oversight requirements would be streamlined.''

In contrast, two commenters maintained that administrative costs would increase under the proposed rule. One argued that ''audit effort will necessarily increase (as will the contractor support of the increased audit effort) since instead of having stated reasonableness limitations, the auditor will now be forced to evaluate individual contractor systems for assuring reasonableness.'' The commenter added that ''using a broad criterion such as reasonableness naturally leads to differences of opinion,'' which ''will result in increased disputes which will increase the effort required by contractors, contracting officers, and the courts to settle these disputes.'' Finally, the commenter stated: ''Our survey of Government contractors found that the administrative cost incurred by contractors to comply with the requirements of FAR 31.205–35 is immaterial. Any potential savings would certainly be offset by the administrative cost involved in obtaining an advance agreement for the use of lump-sum payments.'' The other commenter expressed concern that ''without the ceilings, we anticipate contracting officers will need to perform a greater amount of analysis to determine the reasonableness of a contractor's proposed relocation costs.''

Response to Comments: The Councils expect that adoption of the rule will result in reduced administrative burden for contractors and increased administrative burden for the Government; but, they have no way to quantify these anticipated impacts. They do not consider an increase in the Government's administrative effort, by itself, to be a valid reason for retaining the existing FAR language.

• *Relocation Costs Will Increase.* Three commenters argued against the proposed rule because they believed it will result in higher relocation costs being claimed under Government contracts. Based on its own analysis of more than 50 Government contractors, one commenter projected that ''the proposed rule may result in more than $130 million in additional relocation costs claimed by Government contractors annually.'' However, another commenter countered that ''concerns about added costs or potential savings that may result from a policy change should be irrelevant to the objective at hand; *i.e.*, ensuring that the Government pays fair and reasonable expenses under noncompetitive and cost reimbursable contracts.''

Response to Comments: While relocation costs claimed on Government contracts may increase if the proposed rule is adopted, that is not a valid argument for retaining the existing FAR language. The Councils believe the cost principles should ensure that contractors are treated fairly, consistent with sound public policy. The cost principles should not be used as a cost containment mechanism.

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

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because 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 principles contained in this rule.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: June 19, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 31 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. Revise paragraph (e)(2) of section 31.205–6 to read as follows:

31.205–6 Compensation for personal services.

* * * * *

(e)(1) * * *

(2) Differential allowances for additional Federal, State, or local income taxes resulting from domestic assignments are unallowable. (However, payments for increased employee income or Federal Insurance Contributions Act taxes incident to allowable reimbursed relocation costs are allowable under 31.205–35(a)(10).)

* * * * *

3. Revise paragraphs (a), (b), (c), and (f)(1) of section 31.205–35 to read as follows:

31.205–35 Relocation costs.

(a) Relocation costs are costs incident to the permanent change of assigned work location (for a period of 12 months or more) of an existing employee or upon recruitment of a new employee. The following types of relocation costs are allowable as noted, subject to the limitations in paragraphs (b) and (f) of this subsection:

(1) Costs of travel of the employee and members of the employee's immediate family (see 31.205–46) and transportation of the household and personal effects to the new location.

(2) Costs of finding a new home, such as advance trips by the employee or the spouse, or both, to locate living quarters, and temporary lodging during the transition period for the employee and members of the employee's immediate family.

(3) Closing costs incident to the disposition of the actual residence owned by the employee when notified of the transfer (*e.g.*, brokerage fees, legal fees, appraisal fees, points, and finance charges), except that these costs, when

added to the costs described in paragraph (a)(4) of this subsection, shall not exceed 14 percent of the sales price of the property sold.

(4) Continuing costs of ownership of the vacant former actual residence being sold, such as maintenance of building and grounds (exclusive of fixing up expenses), utilities, taxes, property insurance, and mortgage interest, after the settlement date or lease date of a new permanent residence, except that these costs, when added to the costs described in paragraph (a)(3) of this subsection, shall not exceed 14 percent of the sales price of the property sold.

(5) Other necessary and reasonable expenses normally incident to relocation, such as disconnecting and connecting household appliances; automobile registration; driver's license and use taxes; cutting and fitting rugs, draperies, and curtains; forfeited utility fees and deposits; and purchase of insurance against damage to or loss of personal property while in transit.

(6) Costs incident to acquiring a home in the new work location, except that—

(i) These costs are not allowable for existing employees or newly recruited employees who were not homeowners before the relocation; and

(ii) The total costs shall not exceed 5 percent of the purchase price of the new home.

(7) Mortgage interest differential payments, except that these costs are not allowable for existing or newly recruited employees who, before the relocation, were not homeowners and the total payments are limited to an amount determined as follows:

(i) The difference between the mortgage interest rates of the old and new residences times the current balance of the old mortgage times 3 years.

(ii) When mortgage differential payments are made on a lump-sum basis and the employee leaves or is transferred again in less than 3 years, the amount initially recognized shall be proportionately adjusted to reflect payments only for the actual time of the relocation.

(8) Rental differential payments covering situations where relocated employees retain ownership of a vacated home in the old location and rent at the new location. The rented quarters at the new location must be comparable to those vacated, and the allowable differential payments may not exceed the actual rental costs for the new home, less the fair market rent for the vacated home times 3 years.

(9) Costs of canceling an unexpired lease.

(10) Payments for increased employee income or Federal Insurance Contributions Act (26 U.S.C. chapter 21) taxes incident to allowable reimbursed relocation costs.

(11) Payments for spouse employment assistance.

(b) The costs described in paragraph (a) of this subsection must also meet the following criteria to be considered allowable:

(1) The move must be for the benefit of the employer.

(2) Reimbursement must be in accordance with an established policy or practice that is consistently followed by the employer and is designed to motivate employees to relocate promptly and economically.

(3) The costs must not be otherwise unallowable under subpart 31.2.

(4) Amounts to be reimbursed shall not exceed the employee's actual expenses, except that for miscellaneous costs of the type discussed in paragraph (a)(5) of this subsection, a flat amount, not to exceed $5,000, may be allowed in lieu of actual costs.

(c) The following types of costs are unallowable:

(1) Loss on the sale of a home.

(2) Costs incident to acquiring a home in the new location as follows:

(i) Real estate brokers' fees and commissions.

(ii) Costs of litigation.

(iii) Real and personal property insurance against damage or loss of property.

(iv) Mortgage life insurance.

(v) Owner's title policy insurance when such insurance was not previously carried by the employee on the old residence. (However, the cost of a mortgage title policy is allowable.)

(vi) Property taxes and operating or maintenance costs.

(3) Continuing mortgage principal payments on a residence being sold.

(4) Costs incident to furnishing equity or nonequity loans to employees or making arrangements with lenders for employees to obtain lower-than-market rate mortgage loans.

* * * * *

(f) * * *

(1) The term of employment is 12 months or more;

* * * * *

[FR Doc. 02–15942 Filed 6–26–02; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 2001–08; Item IV]

Federal Acquisition Regulation; Technical Amendments

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

ACTION: Final rule.

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

DATES: *Effective Date:* July 29, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 2001–08, Technical Amendments.

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: June 19, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 52 as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 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).

52.202–1 [Amended]

2. Amend section 52.202–1 by removing from Alternate I ''(Mar 2001)'' and adding ''(May 2001)'' in its place.

52.212–3 [Amended]

3. Amend section 52.212–3 in the provision heading by removing ''(May 2002)'' and adding ''(July 2002)'' in its place; removing from paragraph (c)(10)(i) of the provision ''principal place of ownership'' and adding ''principal office'' in its place; and removing from the first sentence of paragraph (c)(10)(ii) ''on the joint'' and adding ''in the joint'' in its place.

52.225–11 [Amended]

4. Amend section 52.225–11 in the clause heading by removing ''(May 2002)'' and adding ''(July 2002)'' in its

place; and in the third sentence of paragraph (b)(1) of the clause by removing ''and Balance of Payments Program''.

[FR Doc. 02–15943 Filed 6–26–02; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

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

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2001–08 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 2001–08 which precedes this document. These documents are also available via the Internet at *http://www.arnet.gov/far.*

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2001–08

Item	Subject	FAR case	Analyst
I	Definition of ''Claim'' and Terms Relating to Termination	2000–406	Klein.
II	Federal Supply Schedule Order Disputes and Incidental Items	1999–614	Nelson.
III	Relocation Costs	1997–032	Olson.
IV	Technical Amendments		

Item I—Definition of ''Claim'' and Terms Relating to Termination (FAR Case 2000–406)

The purpose of this final rule is to clarify the applicability of definitions, eliminate redundant or conflicting definitions, and streamline the process for locating definitions. This rule is not intended to change the meaning of any FAR text or clause. Movement of various definitions to FAR 2.101 is not intended to change the operation of the cost principles and, specifically, the movement of the definition of ''claim'' to FAR 2.101 is not intended to change the scope or context of FAR 31.205–47(f)(1).

This final rule—

- Revises and moves the definitions of ''claim'' from FAR 33.201; ''continued portion of the contract,'' ''partial termination,'' ''terminated portion of the contract'' from FAR 49.001; and ''termination for convenience'' from FAR 17.103;
- Adds a definition of ''termination for default'' at FAR 2.101 and a new paragraph (d) at FAR 17.104 that explains the distinction between ''termination for convenience'' and ''cancellation'' that was deleted from the definition of ''termination for convenience'' that was moved from FAR 17.103;
- Revises FAR 33.213(a) to clarify the distinction between claims ''arising under a contract'' and claims ''relating to a contract'';
- Revises the definition of ''claim'' in the FAR clause at 52.233–1 to conform to the definition at FAR 2.101; and
- Makes other editorial revisions for clarity.

Item II—Federal Supply Schedule Order Disputes and Incidental Items (FAR Case 1999–614)

This final rule amends the FAR to add policies on disputes and incidental items under Federal Supply Schedule contracts and to remove the requirement to notify GSA when a schedule contractor refuses to honor an order placed by a Government contractor. This rule affects all ordering offices acquiring supplies or services subject to the procedures of FAR Subpart 8.4.

Item III—Relocation Costs (FAR Case 1997–032)

This final rule amends the relocation cost principle at FAR 31.205–35. The rule will only affect contracting officers that price contracts using cost analysis, or that are required by a contract clause to use cost principles for the determination, negotiation, or allowance of costs.

The relocation cost principle addresses the allowability of costs incurred by an existing contractor employee incident to the permanent change of the employee's assigned work location for a period of 12 months or more, or upon recruitment of a new employee. The final rule revises the cost principle by making allowable payments for spouse employment assistance and for increased employee income and Federal Insurance Contributions Act taxes incident to allowable reimbursed relocation costs, increasing the ceiling for allowance of miscellaneous costs of relocation, and making a number of editorial changes.

Item IV—Technical Amendments

These amendments update sections and make editorial changes at FAR 52.202–1, 52.212–3, and 52.225–11.

Dated: June 19, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–15944 Filed 6–26–02; 8:45 am]

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