

(2) Is an "incurred cost" for cost-reimbursement purposes under applicable cost-reimbursement contracts and for progress payment purposes under fixed-price contracts; and

(3) Refers to—

(i) Facilities capital cost of money (48 CFR 9904.414); and

(ii) Cost of money as an element of the cost of capital assets under construction (48 CFR 9904.417).

(b) Cost of money is allowable, provided—

(1) It is measured, assigned, and allocated to contracts in accordance with 48 CFR 9904.414 or measured and added to the cost of capital assets under construction in accordance with 48 CFR 9904.417, as applicable;

(2) The requirements of 31.205-52, which limit the allowability of cost of money, are followed; and

(3) The estimated facilities capital cost of money is specifically identified and proposed in cost proposals relating to the contract under which the cost is to be claimed.

(c) Actual interest cost in lieu of the calculated imputed cost of money is unallowable.

■ 5. In section 31.205-28, revise the introductory text to read as follows:

**31.205-28 Other business expenses.**

The following types of recurring costs are allowable:

\* \* \* \* \*

**31.205-45 [Reserved]**

■ 6. Remove and reserve section 31.205-45.

**31.205-48 Research and development costs.**

■ 7. Amend section 31.205-48 by revising the section heading to read as set forth above; and in the first sentence by removing the word "section" and adding "subsection" in its place.

**PART 47—TRANSPORTATION**

**47.300 [Amended]**

■ 8. Amend section 47.300 in the introductory text of paragraph (b) by removing "(see 31.205-45)".

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

■ 9. Amend section 52.215-16 by revising the date of the provision and paragraph (a) to read as follows:

**52.215-16 Facilities Capital Cost of Money.**

\* \* \* \* \*

**Facilities Capital Cost of Money (June 2003)**

(a) Facilities capital cost of money will be an allowable cost under the contemplated

contract, if the criteria for allowability in FAR 31.205-10(b) are met. One of the allowability criteria requires the prospective Contractor to propose facilities capital cost of money in its offer.

\* \* \* \* \*

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 2, 32, and 52**

[FAC 2001-14; FAR Case 2000-308; Item III]

RIN 9000-AJ17

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

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

**ACTION:** 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 adopt, as final, the interim rule published at 66 FR 53485, October 22, 2001. This rule requires an agency to pay an interest penalty whenever it makes an interim payment under a cost reimbursement contract for services more than 30 days after the agency receives a proper invoice from the contractor.

**DATES:** *Effective Date:* May 23, 2003.

*Applicability Date:* This final rule applies to cost-reimbursement contracts for services, irrespective of award date, if interim payments requests under such contracts are due on or after December 15, 2000. In no event may agencies pay late payment penalty interest for any delay in payment that occurred prior to December 15, 2000.

**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. Edward Loeb at (202) 501-0650. Please cite FAC 2001-14, FAR case 2000-308.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 66 FR 53485, October 22, 2001, with request for comments. This FAR amendment eliminated the prior policy and contract clause prohibition on payment of late payment penalty interest for late interim finance payments under cost-reimbursement contracts for services. It added new policy and a contract clause, Alternate I to the FAR clause at 52.232-25, to provide for those penalty payments.

The interim FAR rule implemented section 1010 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106-398). Section 1010 requires an agency to pay an interest penalty, in accordance with regulations issued by the Office of Management and Budget (OMB), whenever an interim payment under a cost reimbursement contract for services is paid more than 30 days after the agency receives a proper invoice from the contractor. The Act does not permit payment of late payment interest penalty for any period prior to December 15, 2000. OMB published an interim rule in the **Federal Register** at 65 FR 78403, December 15, 2000, and a final rule at 67 FR 79515, December 30, 2002. OMB's rule revised the prompt payment regulations at 5 CFR part 1315 to implement section 1010 of Public Law 106-398.

The Councils received no public comments to the interim FAR rule and have agreed to convert the interim rule to a final rule without change. The applicability date, however, has changed as explained below. The **Federal Register** notice published in conjunction with the FAR interim rule stated that "The policy and clause apply to all covered contracts awarded on or after December 15, 2000 \* \* \* agencies may apply the FAR changes made by this rule to contracts awarded prior to December 15, 2000, at their discretion \* \* \*." (66 FR 53485, October 22, 2001.) This was consistent with OMB regulations. Subsequently, as a result of enactment of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107-107) on December 28, 2001, agencies no longer have this discretion. Section 1007 of Public Law 107-107 states that this policy applies to cost-reimbursement contracts for services awarded before, on, or after December 15, 2000. Section 1007 retains the prohibition against payment of late payment interest penalty for any period prior to December 15, 2000. For this reason, the applicability of the rule has been revised to reflect this change.

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 only applies to the very limited number of contractors that are awarded cost-reimbursement service contracts and that are paid more than 30 days after the agency receives a proper invoice.

### 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, 32, and 52

Government procurement.

Dated: May 13, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

### Interim Rule Adopted as Final Without Change

■ Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR parts 2, 32, and 52 which was published in the **Federal Register** at 66 FR 53485, October 22, 2001, as a final rule without change.

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 4

[FAC 2001-14; FAR Case 2000-304; Item IV]

RIN 9000-AI94

### Federal Acquisition Regulation; Electronic Signatures

**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 that agencies are permitted to accept electronic signatures and records in connection with Government contracts.

**DATES:** *Effective Date:* June 23, 2003.

**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. Laura Smith, Procurement Analyst, at (202) 501-7279. Please cite FAC 2001-14, FAR case 2000-304.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

On October 21, 1998, the Government Paperwork Elimination Act (Title XVII of Division C of Public Law 105-277) was enacted. On June 30, 2000, the Electronic Signatures in Global and National Commerce Act (E-SIGN) (Pub. L. 106-229) was enacted. These laws eliminate legal barriers to using electronic technology in business transactions, such as the formation and signing of contracts. The Office of Management and Budget (OMB) has issued guidance on both of these laws. See Memorandum M-00-15, "OMB Guidance on Implementing the Electronic Signatures in Global and National Commerce Act," dated September 25, 2000, and Memorandum M-00-10, "OMB Procedures and Guidance on Implementing the Government Paperwork Elimination Act," dated April 25, 2000. These memoranda are available on the OMB Home page at <http://www.omb.gov>.

This final rule furthers Government participation in electronic commerce when conducting Government procurements by adding a statement at FAR Subpart 4.5, Electronic Commerce in Contracting, clarifying that agencies are permitted to accept electronic signatures and records in connection with Government contracts.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 65698, November 1, 2000. In addition to proposing a policy statement recognizing the use of electronic signatures, the proposed rule would have revised the current FAR definitions of "in writing" and "signature" at FAR 2.101 to clarify that these terms include electronic, in addition to paper, transactions. It also would have made minor changes to the definition of electronic commerce. Twenty-five sources submitted comments in response to the proposed rule. All comments were considered in the development of the final rule.

Several surety companies expressed support for greater use of electronic technologies for the filing of bid, performance, and payment bonds and associated powers of attorney. They noted that such technologies will "streamline the procurement process, reduce costs, and increase efficiency for all trading partners." However, they cautioned that FAR coverage should not result in reliance on a single proprietary system for electronic signatures for the entire Federal government. They further recommended a phase-in period so sureties that are not yet automated have alternative means of transacting with the Government in the near term.

With respect to the choice of technology, the final rule simply states, "agencies may accept electronic signatures and records in connection with Government contracts." The choice of technology for implementing electronic signatures is left to each agency. As for the execution of bonds and powers of attorney, the rule does not require that these documents be submitted electronically, which will allow time for parties to effectively transition to electronic transactions.

One commenter made several recommendations regarding the definitions. In particular, the commenter asserted that—

- A definition for "electronic commerce" is unnecessary and should be removed from the FAR;
- The current FAR definition of "signature" should be replaced by the E-SIGN definition of "electronic signature"; and
- The E-SIGN definition of electronic record should be substituted for the