

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 1, 13, 19, 36 and 53**

[FAC 2001–25; FAR Case 2002–017; Item I]

RIN 9000–AJ73

**Federal Acquisition Regulation;
Elimination of Standard Form 1417**

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 eliminate the use of the Standard Form (SF) 1417, Pre-Solicitation Notice (Construction Contract).

DATES: *Effective Date:* November 4, 2004.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia Davis, Procurement Analyst, at (202) 219–0202. Please cite FAC 2001–25, FAR case 2002–017.

SUPPLEMENTARY INFORMATION:**A. Background**

This final rule amends FAR parts 1, 13, 19, 36, and 53, deleting the prescription for the use of the SF 1417. This final rule eliminates the use of this form in contracts for construction, alteration or repair, dismantling, demolition, or removal of improvements. The use of the form has become unnecessary because contracting officers are required to provide access to presolicitation notices through the Governmentwide point of entry (GPE) via the Internet at <http://www.fedbizopps.gov> pursuant to FAR 5.204. This FAR change to eliminate the SF 1417 complements the efforts to increase reliance on electronic business practices in procurement in furtherance of the Administration's commitment to create a citizen-centric E-Government, as outlined in the President's Management Agenda. DOD, GSA, and NASA published a proposed rule in the

Federal Register at 68 FR 54294, September 16, 2003. No public comments were received. The Councils agree to convert this proposed rule to a final rule with technical editorial changes.

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 changes are not imposing any additional burden on small business. Small businesses are already aware of the publicizing medium the Government uses via the Internet and have made the necessary adaptation to keep abreast of business opportunities disseminated therein.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000–0037. This change has reduced the paperwork burden and no additional approval from OMB is required. The collection will be revised to reflect this reduction.

This final rule eliminates the use of Standard Form 1417 in contracts for construction, alteration or repair, dismantling, demolition, or removal of improvements but not the requirement for contracting officers to provide access to presolicitation notices through the Governmentwide point of entry via the Internet at <http://www.fedbizopps.gov>.

Requester may obtain a copy of the information collection from the General Services Administration, FAR Secretariat (V), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–0037, Presolicitation Notice and Response, Standard Form 1417, in all correspondence.

List of Subjects in 48 CFR Parts 1, 13, 19, 36 and 53

Government procurement.

Dated: September 28, 2004.

Ralph J. De Stefano,

Acting Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 13, 19, 36, and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 13, 19, 36, and 53 is revised to read as follows:

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

**PART 1—FEDERAL ACQUISITION
REGULATIONS SYSTEM****1.106 [Amended]**

■ 2. Amend section 1.106 in the table following the introductory paragraph by removing FAR segment “36.701” and its corresponding OMB Control Number “9000–0037” removing FAR segment “53.236–1(a)” and its corresponding OMB Control Number “9000–0037”; and removing FAR segment “SF 1417” and its corresponding OMB Control Number “9000–0037”.

**PART 13—SIMPLIFIED ACQUISITION
PROCEDURES****13.003 [Amended]**

■ 3. Amend section 13.003 in paragraph (g)(1) by removing “36.701(b)” and adding “36.701(a)” in its place.

**PART 19—SMALL BUSINESS
PROGRAMS****19.811–1 [Amended]**

■ 4. Amend section 19.811–1 in the last sentence of paragraph (a) by removing “36.701(b)” and adding “36.701(a)” in its place.

**PART 36—CONSTRUCTION AND
ARCHITECT ENGINEER CONTRACTS****36.213–2 [Amended]**

■ 5. Amend section 36.213–2—
■ a. In the first sentence of paragraph (a) by removing “send” and adding “issue” in its place; and removing “to prospective bidders”;
■ b. By removing paragraph (b)(6) and redesignating paragraphs (b)(7), (b)(8), and (b)(9) as (b)(6), (b)(7), and (b)(8), respectively.

36.701 [Amended]

■ 6. Amend section 36.701 by removing paragraph (a) and redesignating paragraphs (b), (c), (d), and (e) as (a), (b), (c), and (d), respectively.

PART 53—FORMS**53.213 [Amended]**

■ 7. Amend section 53.213 in paragraph (f)(4) by removing “36.701(c)” and adding “36.701(b)” in its place.

53.236-1 [Amended]

■ 8. Amend section 53.236-1 by removing paragraph (a) and redesignating paragraphs (b), (c), (d), (e), (f), and (g) as (a), (b), (c), (d), (e), and (f), respectively; in newly redesignated paragraph (a) by removing “36.701(e)” and adding “36.701(d)” in its place; in newly redesignated paragraph (d)(2) by removing “36.701(b)” and adding “36.701(a)” in its place; in newly redesignated paragraph (e)(2) by removing “36.701(c)” and adding “36.701(b)” in its place; and in newly redesignated paragraph (f) by removing “36.701(d)” and adding “36.701(c)” in its place.

53.301-1417 [Removed]

■ 9. Remove section 53.301-1417.
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DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 5, 12, 13, 14, 17, 19, 22,
25, 33, and 52**

[FAC 2001-25; FAR Case 2003-016; Item II]

RIN 9000-AJ87

**Federal Acquisition Regulation; Free
Trade Agreements-Chile and
Singapore, and Trade Agreements
Thresholds**

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 to convert to a final rule, with changes, an interim rule amending the Federal Acquisition Regulation (FAR). The interim rule implemented new Free Trade Agreements with Chile and Singapore, as approved by Congress (Public Laws 108-77 and 108-78). The interim rule also implemented new dollar thresholds for application of trade agreements.

DATES: *Effective Date:* October 5, 2004.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia Davis,

Procurement Analyst, at (202) 219-0202. Please cite FAC 2001-25, FAR case 2003-016.

SUPPLEMENTARY INFORMATION:**A. Background**

The Free Trade Agreements with Chile and Singapore waive the applicability of the Buy American Act for some foreign supplies and construction materials from Chile and Singapore, and specify procurement procedures designed to ensure fairness, applicable to the acquisition of supplies and services (see the Government Procurement provisions at Chapters 9 and 13, respectively, of the trade agreements). The interim rule was published in the **Federal Register** at 69 FR 1050, January 7, 2004. One public comment was received. To implement Section 106 of the authorizing acts, the interim rule added the statement “United States law will apply to resolve any claim of breach of contract.” to the Buy American Act/Trade Agreements clauses at FAR 52.225-3, 52.225-5, and 52.225-11. The Department of Justice noted that Section 106 of each authorizing act applies to all contracts entered into by any agency of the United States. Therefore, the Department of Justice recommended that the statement be a separate clause, included in every contract. The Councils concur. The final rule removes the statement of applicability of U.S. law from FAR clauses 52.225-3, 52.225-5, and 52.225-11, and creates a new clause at FAR 52.233-4, *Applicable Law for Breach of Contract Claim*, to include the statement of applicability of U.S. law in every contract subject to the FAR.

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.* Although the interim rule opened up Government procurement to the products of Chile, there will not be any significant economic impact on U.S. small businesses. The Department of Defense only applies the trade agreements to the non-defense items listed at DFARS 225.401-70, and acquisitions under

\$100,000 that are set aside for small businesses are exempt. We did not receive any comments on this issue from small business concerns or other interested parties.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Numbers 9000-0130, 9000-0025, and 9000-0141, respectively.

**List of Subjects in 48 CFR Parts 5, 12,
13, 14, 17, 19, 22, 25, 33, and 52**

Government procurement.

Dated: September 28, 2004.

Ralph J. De Stefano,

Acting Director, Contract Policy Division.

**Interim Rule Adopted as Final with
Changes**

■ Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR parts 5, 12, 13, 14, 17, 19, 22, 25, and 52, which was published in the **Federal Register** at 69 FR 1050, January 7, 2004, as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 5, 12, 13, 14, 17, 19, 22, 25, 33, and 52 is revised to read as follows:

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

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

■ 2. Revise the section heading and text of section 33.215 to read as follows:

33.215 Contract clauses.

(a) Insert the clause at 52.233-1, *Disputes*, in solicitations and contracts, unless the conditions in 33.203(b) apply. If it is determined under agency procedures that continued performance is necessary pending resolution of any claim arising under or relating to the contract, the contracting officer shall use the clause with its Alternate I.

(b) Insert the clause at 52.233-4 in all solicitations and contracts.

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

■ 3. Amend section 52.212-5 by-

■ a. Revising the date of the clause and paragraph (a); and

■ b. Removing “(Jan 2004)” from paragraph (b)(23)(i) of the clause and adding “(OCT 2004)” in its place; and removing “(June 2004)” from paragraph (b)(24) of the clause and adding “(OCT 2004)” in its place. The revised text reads as follows: