



# Federal Register

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**Tuesday,  
April 25, 2000**

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## **Part IV**

### **Department of Defense General Services Administration**

### **National Aeronautics and Space Administration**

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**48 CFR Chapter 1 and Parts 2, 16, 37, et al.**

**Federal Acquisition Circular 97-17;  
Introduction; Federal Acquisition  
Regulations; Competition Under Multiple  
Award Contracts; Determination of Price  
Reasonableness and Commerciality;  
Caribbean Basin Trade Initiative;  
Utilization of Indian Organizations and  
Indian-Owned Economic Enterprises;  
Ocean Transportation by U.S. Flag  
Vessels; Technical Amendments; Small  
Entity Compliance Guide; Final Rules**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

**Federal Acquisition Circular 97-17; Introduction**

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

**ACTION:** Summary presentation of final rules.

**SUMMARY:** This document summarizes the Federal Acquisition Regulation (FAR) rules issued by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 97-17. The Councils drafted these FAR rules using plain language in accordance with the White House memorandum, Plain Language in Government Writing, dated June 1, 1998. The Councils wrote all new and revised text using plain language. 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 97-17 and specific FAR case numbers. Interested parties may also visit our website at <http://www.arnet.gov/far>.

Item	Subject	FAR case	Analyst
I .....	Competition under Multiple Award Contracts .....	1999-014	De Stefano.
II .....	Determination of Price Reasonableness and Commerciality .....	1998-300 (98-300)	Olson.
III .....	Caribbean Basin Trade Initiative .....	2000-003	Linfield.
IV .....	Utilization of Indian Organizations and Indian-Owned Economic Enterprises .....	1999-301 (99-301)	Moss.
V .....	Ocean Transportation by U.S.-Flag Vessels .....	1998-604 (98-604)	Klein.
VI .....	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 97-17 amends the FAR as specified below:

**Item I—Competition Under Multiple Award Contracts (FAR Case 1999-014)**

This rule amends FAR 2.101, Subpart 16.5, and 37.201 to clarify what the contracting officer should consider when planning for and placing orders under multiple award contracts. This rule affects all contracting officers that award multiple award contracts or place task or delivery orders under them. The rule—

- Requires the contracting officer to include the name, address, telephone number, facsimile number, and e-mail address of the agency task and delivery order ombudsman in the solicitation and contracts if multiple awards will be made;
- Stresses key things the contracting officer must consider when deciding if a multiple award contract is appropriate, such as—
- Avoiding situations in which awardees specialize exclusively in one or a few areas within the statement of work;

- The scope and complexity of the contract requirement;
- The expected duration and frequency of task or delivery orders;
- The mix of resources a contractor must have to perform expected task or delivery order requirements; and
- The ability to maintain competition among the awardees throughout the contract's period of performance;
- Requires contracting officers to document their decision on whether or not to use multiple awards in the acquisition plan or contract file;
- Emphasizes the use of performance-based statements of work;
- Provides guidance on how to develop tailored order placement procedures;
- Requires contracting officers to consider cost or price as one of the factors in each selection decision for orders;
- Requires contracting officers to establish prices for each order that was not priced under the basic contract using the policies and methods in Subpart 15.4; and
- Requires contracting officers to document the order placement rationale and price in the contract file.

**Item II—Determination of Price Reasonableness and Commerciality (FAR Case 1998-300) (98-300)**

This final rule makes a minor editorial change to FAR 15.403-3 and

converts the interim rule, which was published in FAC 97-14 as Item VI, as final. The editorial change amends the cross reference at 15.403-3(c)(1). The remainder of the interim rule that has been in effect since September 24, 1999, remains the same. The primary amendments made in the interim rule that are made final in this rule—

- Clarify procedures associated with obtaining information other than cost or pricing data when acquiring commercial items; and
- Establish that offerors who fail to comply with requirements to provide the information shall be ineligible for award.

**Item III—Caribbean Basin Trade Initiative (FAR Case 2000-003)**

This final rule amends FAR Parts 25.003, 25.400, 25.404, and the clause at 52.225-5, Trade Agreements, to implement the determination of the United States Trade Representative to renew the treatment of Caribbean Basin country end products as eligible products under the Trade Agreements Act, with the exception of end products from the Dominican Republic and Honduras. This rule applies only if an acquisition is subject to the Trade Agreements Act (see FAR 25.403). Offers of end products from the Dominican Republic and Honduras are no longer acceptable under such acquisitions unless the contracting

officer does not receive any offers of U.S.-made end products or eligible products (designated, Caribbean Basin, or NAFTA country end products).

**Item IV—Utilization of Indian Organizations and Indian-Owned Economic Enterprises (FAR Case 1999-301) (99-301)**

This final rule amends FAR Subpart 26.1 and the clause at 52.226-1 to delete DoD-unique requirements relating to Indian Organizations and Indian-Owned Economic Enterprises from the FAR.

**Item V—Ocean Transportation by U.S.-Flag Vessels (FAR Case 1998-604) (98-604)**

This final rule amends FAR 47.504 and the clauses at 52.212-5, 52.213-4, and 52.247-64 to apply the preference for U.S.-flag vessels to contracts awarded using simplified acquisition procedures. This rule only affects civilian agency contracts that may involve ocean transportation of supplies subject to the Cargo Preference Act of 1954.

The rule also adds Alternate I of 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels, to the clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items. Alternate I applies when the supplies furnished under the contract must be transported exclusively in privately owned U.S.-flag vessels.

**Item VI—Technical Amendments**

These amendments update references and make editorial changes at sections 6.304, 31.101, 32.411, 32.502-4, 32.805, 42.1204, and 42-1205.

Dated: April 13, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Federal Acquisition Circular (FAC) 97-17 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.

All Federal Acquisition Regulation (FAR) changes and other directive material contained in FAC 97-17 are effective April 25, 2000, except for Items IV and V, which are effective June 26, 2000. Each rule is applicable to solicitations issued on or after the rule's effective date.

Dated: April 5, 2000.

**R.D. Kerrins, Jr.,**

*Acting Director, Defense Procurement.*

Dated: April 11, 2000.

**Sue McIver,**

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

Dated: April 3, 2000.

**Tom Luedtke,**

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

[FR Doc. 00-10130 Filed 4-24-00; 8:45 am]

**BILLING CODE 6820-EP-P**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 2, 16, and 37**

[FAC 97-17; FAR Case 1999-014; Item I]

RIN 9000-AI53

**Federal Acquisition Regulation; Competition Under Multiple Award 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 (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify what contracting officers should consider when planning for multiple awards of indefinite-delivery contracts and clarify how orders should be placed against the resultant contracts.

**DATES:** *Effective Date:* April 25, 2000.

*Applicability Date:* The FAR, as amended by this rule, is applicable to solicitations issued on or after April 25, 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. Ralph De Stefano, Procurement Analyst, at (202) 501-1758. Please cite FAC 97-17, FAR case 1999-014.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This final rule, FAR case 1999-014, amends FAR Part 16 to provide

guidance on multiple award task and delivery order contracts and amends FAR Part 37 to delete a definition and amends FAR Part 2 to insert the definition that was deleted from Part 37. FAR case 1999-014 is one of two cases that implement subsections 804(a) and (b) of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106-65). The other case, FAR Case 1999-303, Task Order and Delivery Order Contracts, has been developed and promulgation is awaiting final review and analysis of the Report Number GAO/NSIAD-00-56, B-281493, March 20, 2000, recently issued by the GAO regarding multiple award contracts. The Councils will evaluate the GAO report, in conjunction with the Office of Federal Procurement Policy, to determine what additional changes are needed.

FAR case 1999-014—

- Clarifies what contracting officers should consider when planning for multiple awards of indefinite-delivery contracts and clarifies how orders should be placed against the resultant contracts;

- Requires that all awardees be given a fair opportunity to compete on every task or delivery order placed under multiple-award contracts, unless a specific exception applies;

- Emphasizes key things the contracting officer should consider when placing orders, including streamlined procedures; and

- Reorganizes and revises the FAR text for ease of use.

The rule is written using plain language in accordance with the White House memorandum, Plain Language in Government Writing, dated June 1, 1998.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 64 FR 70158, December 15, 1999. Fourteen respondents provided public comments. We considered twelve public comments in finalizing the rule. We received the other two public comments more than two weeks after the closing date for comments and after the ad hoc committee had analyzed public comments. We did not consider these comments in the finalization of the rule.

This rule was not subject to Office of Management and Budget 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 clarifies what the contracting officer should consider when planning for and placing orders under multiple award contracts.

#### 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, 16, and 37

Government procurement.

Dated: April 13, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 16, and 37 as set forth below:

1. The authority citation for 48 CFR parts 2, 16, 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 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by adding, in alphabetical order, the definition "Advisory and assistance services" to read as follows:

##### 2.101 Definitions.

\* \* \* \* \*

*Advisory and assistance services* means those services provided under contract by nongovernmental sources to support or improve: Organizational policy development; decision-making; management and administration; program and/or project management and administration; or R&D activities. It can also mean the furnishing of professional advice or assistance rendered to improve the effectiveness of Federal management processes or procedures (including those of an engineering and technical nature). In rendering the foregoing services, outputs may take the form of information, advice, opinions, alternatives, analyses, evaluations, recommendations, training and the day-to-day aid of support personnel needed for the successful performance of ongoing Federal operations. All advisory and assistance services are classified in one of the following definitional subdivisions:

(1) Management and professional support services, *i.e.*, contractual services that provide assistance, advice or training for the efficient and effective management and operation of organizations, activities (including management and support services for R&D activities), or systems. These services are normally closely related to the basic responsibilities and mission of the agency originating the requirement for the acquisition of services by contract. Included are efforts that support or contribute to improved organization of program management, logistics management, project monitoring and reporting, data collection, budgeting, accounting, performance auditing, and administrative technical support for conferences and training programs.

(2) Studies, analyses and evaluations, *i.e.*, contracted services that provide organized, analytical assessments/evaluations in support of policy development, decision-making, management, or administration. Included are studies in support of R&D activities. Also included are acquisitions of models, methodologies, and related software supporting studies, analyses or evaluations.

(3) Engineering and technical services, *i.e.*, contractual services used to support the program office during the acquisition cycle by providing such services as systems engineering and technical direction (see 9.505-1(b)) to ensure the effective operation and maintenance of a weapon system or major system as defined in OMB Circular No. A-109 or to provide direct support of a weapon system that is essential to research, development, production, operation or maintenance of the system.

\* \* \* \* \*

#### PART 16—TYPES OF CONTRACTS

3. Revise section 16.500 to read as follows:

##### 16.500 Scope of subpart.

(a) This subpart prescribes policies and procedures for making awards of indefinite-delivery contracts and establishes a preference for making multiple awards of indefinite-quantity contracts.

(b) This subpart does not limit the use of other than competitive procedures authorized by part 6.

(c) Nothing in this subpart restricts the authority of the General Services Administration (GSA) to enter into schedule, multiple award, or task or delivery order contracts under any other provision of law. Therefore, GSA

regulations and the coverage for the Federal Supply Schedule program in subpart 8.4 and part 38 take precedence over this subpart.

(d) The statutory multiple award preference implemented by this subpart does not apply to architect-engineer contracts subject to the procedures in subpart 36.6. However, agencies are not precluded from making multiple awards for architect-engineer services using the procedures in this subpart, provided the selection of contractors and placement of orders are consistent with subpart 36.6.

##### 16.501-1 [Amended]

4. Amend section 16.501-1 by removing the definition "Advisory and assistance services".

5. Revise section 16.504 to read as follows:

##### 16.504 Indefinite-quantity contracts.

(a) *Description.* An indefinite-quantity contract provides for an indefinite quantity, within stated limits, of supplies or services during a fixed period. The Government places orders for individual requirements. Quantity limits may be stated as number of units or as dollar values.

(1) The contract must require the Government to order and the contractor to furnish at least a stated minimum quantity of supplies or services. In addition, if ordered, the contractor must furnish any additional quantities, not to exceed the stated maximum. The contracting officer should establish a reasonable maximum quantity based on market research, trends on recent contracts for similar supplies or services, survey of potential users, or any other rational basis.

(2) To ensure that the contract is binding, the minimum quantity must be more than a nominal quantity, but it should not exceed the amount that the Government is fairly certain to order.

(3) The contract may also specify maximum or minimum quantities that the Government may order under each task or delivery order and the maximum that it may order during a specific period of time.

(4) A solicitation and contract for an indefinite quantity must—

(i) Specify the period of the contract, including the number of options and the period for which the Government may extend the contract under each option;

(ii) Specify the total minimum and maximum quantity of supplies or services the Government will acquire under the contract;

(iii) Include a statement of work, specifications, or other description, that reasonably describes the general scope,

nature, complexity, and purpose of the supplies or services the Government will acquire under the contract in a manner that will enable a prospective offeror to decide whether to submit an offer;

(iv) State the procedures that the Government will use in issuing orders, including the ordering media, and, if multiple awards may be made, state the procedures and selection criteria that the Government will use to provide awardees a fair opportunity to be considered for each order (see 16.505(b)(1));

(v) Include the name, address, telephone number, facsimile number, and e-mail address of the agency task and delivery order ombudsman (see 16.505(b)(5)) if multiple awards may be made;

(vi) Include a description of the activities authorized to issue orders; and

(vii) Include authorization for placing oral orders, if appropriate, provided that the Government has established procedures for obligating funds and that oral orders are confirmed in writing.

(b) *Application.* Contracting officers may use an indefinite-quantity contract when the Government cannot predetermine, above a specified minimum, the precise quantities of supplies or services that the Government will require during the contract period, and it is inadvisable for the Government to commit itself for more than a minimum quantity. The contracting officer should use an indefinite-quantity contract only when a recurring need is anticipated.

(c) *Multiple award preference—(1) Planning the acquisition.* (i) Except for indefinite-quantity contracts for advisory and assistance services as provided in paragraph (c)(2) of this section, the contracting officer must, to the maximum extent practicable, give preference to making multiple awards of indefinite-quantity contracts under a single solicitation for the same or similar supplies or services to two or more sources.

(ii)(A) The contracting officer must determine whether multiple awards are appropriate as part of acquisition planning. The contracting officer must avoid situations in which awardees specialize exclusively in one or a few areas within the statement of work, thus creating the likelihood that orders in those areas will be awarded on a sole-source basis; however, each awardee need not be capable of performing every requirement as well as any other awardee under the contracts. The contracting officer should consider the following when determining the number of contracts to be awarded:

(1) The scope and complexity of the contract requirement.

(2) The expected duration and frequency of task or delivery orders.

(3) The mix of resources a contractor must have to perform expected task or delivery order requirements.

(4) The ability to maintain competition among the awardees throughout the contracts' period of performance.

(B) The contracting officer must not use the multiple award approach if—

(1) Only one contractor is capable of providing performance at the level of quality required because the supplies or services are unique or highly specialized;

(2) Based on the contracting officer's knowledge of the market, more favorable terms and conditions, including pricing, will be provided if a single award is made;

(3) The expected cost of administration of multiple contracts outweighs the expected benefits of making multiple awards;

(4) The projected orders are so integrally related that only a single contractor can reasonably perform the work;

(5) The total estimated value of the contract is less than the simplified acquisition threshold; or

(6) Multiple awards would not be in the best interests of the Government.

(C) The contracting officer must document the decision whether or not to use multiple awards in the acquisition plan or contract file. The contracting officer may determine that a class of acquisitions is not appropriate for multiple awards (see subpart 1.7).

(2) *Contracts for advisory and assistance services.* (i) Except as provided in paragraph (c)(2)(ii) of this section, if an indefinite-quantity contract for advisory and assistance services exceeds 3 years and \$10 million, including all options, the contracting officer must make multiple awards unless—

(A) The contracting officer or other official designated by the head of the agency determines in writing, as part of acquisition planning, that multiple awards are not practicable. The contracting officer or other official must determine that only one contractor can reasonably perform the work because either the scope of work is unique or highly specialized or the tasks so integrally related;

(B) The contracting officer or other official designated by the head of the agency determines in writing, after the evaluation of offers, that only one offeror is capable of providing the

services required at the level of quality required; or

(C) Only one offer is received.

(ii) The requirements of paragraph (c)(2)(i) of this section do not apply if the contracting officer or other official designated by the head of the agency determines that the advisory and assistance services are incidental and not a significant component of the contract.

6. Revise section 16.505 to read as follows:

#### 16.505 Ordering.

(a) *General.* (1) The contracting officer does not synopsise orders under indefinite-delivery contracts.

(2) Individual orders must clearly describe all services to be performed or supplies to be delivered. Orders must be within the scope, period, and maximum value of the contract.

(3) Performance-based work statements must be used to the maximum extent practicable, if the contract is for services (see 37.102(a)).

(4) Orders may be placed by using any medium specified in the contract.

(5) Orders placed under indefinite-delivery contracts must contain the following information:

(i) Date of order.

(ii) Contract number and order number.

(iii) For supplies and services, contract item number and description, quantity, and unit price or estimated cost or fee.

(iv) Delivery or performance schedule.

(v) Place of delivery or performance (including consignee).

(vi) Any packaging, packing, and shipping instructions.

(vii) Accounting and appropriation data.

(viii) Method of payment and payment office, if not specified in the contract (see 32.1110(e)).

(6) No protest under subpart 33.1 is authorized in connection with the issuance or proposed issuance of an order under a task-order contract or delivery-order contract, except for a protest on the grounds that the order increases the scope, period, or maximum value of the contract (10 U.S.C. 2304c(d) and 41 U.S.C. 253j(d)).

(b) *Orders under multiple award contracts—(1) Fair opportunity.* (i) The contracting officer must provide each awardee a fair opportunity to be considered for each order exceeding \$2,500 issued under multiple delivery-order contracts or multiple task-order contracts, except as provided for in paragraph (b)(2) of this section.

(ii) The contracting officer may exercise broad discretion in developing

appropriate order placement procedures. The contracting officer should keep submission requirements to a minimum. Contracting officers may use streamlined procedures, including oral presentations. In addition, the contracting officer need not contact each of the multiple awardees under the contract before selecting an order awardee if the contracting officer has information available to ensure that each awardee is provided a fair opportunity to be considered for each order. The competition requirements in part 6 and the policies in subpart 15.3 do not apply to the ordering process. However, the contracting officer must—

(A) Develop placement procedures that will provide each awardee a fair opportunity to be considered for each order and that reflect the requirement and other aspects of the contracting environment;

(B) Not use any method (such as allocation or designation of any preferred awardee) that would not result in fair consideration being given to all awardees prior to placing each order;

(C) Tailor the procedures to each acquisition;

(D) Include the procedures in the solicitation and the contract; and

(E) Consider price or cost under each order as one of the factors in the selection decision.

(iii) The contracting officer should consider the following when developing the procedures:

(A)(1) Past performance on earlier orders under the contract, including quality, timeliness and cost control.

(2) Potential impact on other orders placed with the contractor.

(3) Minimum order requirements.

(B) Formal evaluation plans or scoring of quotes or offers are not required.

(2) *Exceptions to the fair opportunity process.* The only exceptions to the requirement to provide each awardee a fair opportunity to be considered for each order exceeding \$2,500 are—

(i) The agency need for the supplies or services is so urgent that providing a fair opportunity would result in unacceptable delays;

(ii) Only one awardee is capable of providing the supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized;

(iii) The order must be issued on a sole-source basis in the interest of economy and efficiency as a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order; or

(iv) It is necessary to place an order to satisfy a minimum guarantee.

(3) *Pricing orders.* If the contract did not establish the price for the supply or service, the contracting officer must establish prices for each order using the policies and methods in subpart 15.4.

(4) *Decision documentation for orders.* The contracting officer must document in the contract file the rationale for placement and price of each order.

(5) *Task and Delivery Order Ombudsman.* The head of the agency must designate a task-order contract and delivery-order contract ombudsman. The ombudsman must review complaints from contractors and ensure they are afforded a fair opportunity to be considered, consistent with the procedures in the contract. The ombudsman must be a senior agency official who is independent of the contracting officer and may be the agency's competition advocate.

(c) *Limitation on ordering period for task-order contracts for advisory and assistance services.* (1) Except as provided for in paragraphs (c)(2) and (c)(3), the ordering period of a task-order contract for advisory and assistance services, including all options or modifications, normally may not exceed 5 years.

(2) The 5-year limitation does not apply when—

(i) A longer ordering period is specifically authorized by a statute; or

(ii) The contract is for an acquisition of supplies or services that includes the acquisition of advisory and assistance services and the contracting officer, or other official designated by the head of the agency, determines that the advisory and assistance services are incidental and not a significant component of the contract.

(3) The contracting officer may extend the contract on a sole-source basis only once for a period not to exceed 6 months if the contracting officer, or other official designated by the head of the agency, determines that—

(i) The award of a follow-on contract is delayed by circumstances that were not reasonably foreseeable at the time the initial contract was entered into; and

(ii) The extension is necessary to ensure continuity of services, pending the award of the follow-on contract.

7. Amend section 16.506—

a. In paragraphs (a), (b), (c), (d)(1), and (e) by removing the words “The contracting officer shall insert” and adding, in their place, the word “Insert”;

b. In paragraphs (d)(2), (d)(3), and (d)(4) by removing the words “the contracting officer shall”; and

c. By revising paragraphs (d)(5), (f), and (g) to read as follows:

#### 16.506 Solicitation provisions and contract clauses.

\* \* \* \* \*

(d) \* \* \*

(5) If the contract—

(i) Includes subsistence for Government use and resale in the same schedule and similar products may be acquired on a brand-name basis; and

(ii) Involves a partial small business set-aside, use the clause with its Alternate IV.

\* \* \* \* \*

(f) Insert the provision at 52.216–27, Single or Multiple Awards, in solicitations for indefinite-quantity contracts that may result in multiple contract awards. Modify the provision to specify the estimated number of awards. Do not use this provision for advisory and assistance services contracts that exceed 3 years and \$10 million (including all options).

(g) Insert the provision at 52.216–28, Multiple Awards for Advisory and Assistance Services, in solicitations for task-order contracts for advisory and assistance services that exceed 3 years and \$10 million (including all options), unless a determination has been made under 16.504(c)(2)(i)(A). Modify the provision to specify the estimated number of awards.

## PART 37—SERVICE CONTRACTING

### 37.201 Definition.

8. Amend section 37.201 by revising the section heading to read as set forth above, and by removing the definition “Advisory and assistance services”.

[FR Doc. 00–10131 Filed 4–24–00; 8:45 am]

BILLING CODE 6820–EP–P

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 12, 13, and 15

[FAC 97–17; FAR Case 1998–300 (98–300); Item II]

RIN 9000–AI45

#### Federal Acquisition Regulation; Determination of Price Reasonableness and Commerciality

**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 implement Sections 803 and 808 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261).

**DATES:** *Effective Date:* April 25, 2000.

*Applicability Date:* The FAR, as amended by this rule, is applicable to solicitations issued on or after April 25, 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. Jeremy Olson at (202) 501-0692. Please cite FAC 97-17, FAR case 1998-300.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The Councils initiated this case to implement Sections 803 and 808 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261) as follows:

(a) *Section 803 of Public Law 105-261.* (1) Paragraphs (a)(2)(A) through (a)(2)(C) of Section 803 of Pub. L. 105-261 require that the FAR provide specific guidance concerning—

(i) The appropriate application and precedence of various price analysis tools;

(ii) The circumstances under which contracting officers should require offerors of exempt commercial items to provide information other than cost or pricing data; and

(iii) The role and responsibility of support organizations in determining price reasonableness.

(2) Paragraph (a)(2)(D) of Section 803 is not implemented under this case.

(b) *Section 808 of Public Law 105-261.* Section 808 of Public Law 105-261 requires amending the FAR to—

(1) Clarify procedures associated with obtaining information other than cost or pricing data;

(2) Establish that offerors who fail to comply with requirements to provide the information shall be ineligible for award; and

(3) Establish exceptions, as appropriate.

The Councils published an interim rule in the **Federal Register** on September 24, 1999 (64 FR 51828). Five respondents submitted comments in response to the interim rule. The Councils considered all comments in the development of the final rule.

This rule was not subject to Office of Management and Budget 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 Councils prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with 5 U.S.C. 604. Interested parties may obtain a copy of the FRFA from the FAR Secretariat. The FRFA is summarized as follows:

The primary objective of this rule is to provide guidance on determining price reasonableness and commerciality, and to specify that offerors failing to comply with a requirement to provide certain information other than cost or pricing data are ineligible for award. There were no issues raised by the public in response to the Initial Regulatory Flexibility Analysis. The rule will apply to all offerors, large or small, that respond to solicitations for commercial items for which information other than cost or pricing data is required. Few, if any, offerors are expected to fail to comply with the requirements to provide information other than cost or pricing data. The rule does not impose any new reporting or recordkeeping requirements. There are no significant alternatives to the rule that would accomplish the stated objectives yet further reduce impact on small entities. The rule includes only FAR text revisions required to implement the statute cited herein.

The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

**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 12, 13, and 15**

Government procurement.

Dated: April 13, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

**Interim Rule Adopted as Final With Change**

Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR parts 12, 13, and 15, which was published in the **Federal Register** on September 24, 1999 (64 FR 51828), as a final rule with the following change:

**PART 15—CONTRACTING BY NEGOTIATION**

1. The authority citation for 48 CFR parts 12, 13, and 15 continues to read as follows:

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

**15.403-3 [Amended]**

2. Amend section 15.403-3 at the end of paragraph (c)(1) by removing “(see 15.403-3(a)(1))” and adding “(see 15.404-1)” in its place.

[FR Doc. 00-10132 Filed 4-24-00; 8:45 am]

**BILLING CODE 6820-EP-P**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 25 and 52**

[FAC 97-17; FAR Case 2000-003; Item III]

**RIN 9000-AI73**

**Federal Acquisition Regulation; Caribbean Basin Trade Initiative**

**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 implement the determination of the United States Trade Representative (USTR) to renew the treatment of Caribbean Basin country end products as eligible products under the Trade Agreements Act, with the exception of end products from the Dominican Republic and Honduras.

**DATES:** *Effective Date:* April 25, 2000.

*Applicability Date:* The FAR, as amended by this rule, is applicable to solicitations issued on or after April 25, 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. Paul Linfield, Procurement Analyst, at (202) 501-1757. Please cite FAC 97-17, FAR case 2000-003.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The USTR published a notice in the **Federal Register** at 65 FR 9038, February 23, 2000, renewing the treatment of Caribbean Basin country

end products as eligible products under the Trade Agreements Act, with the exception of the end products from the Dominican Republic and Honduras. This rule implements that determination. The prior determination expired September 30, 1999, except that the determination regarding the end products of Panama extended until September 30, 2000.

This rule was not subject to Office of Management and Budget 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 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, the Councils will consider comments from small entities concerning the affected FAR parts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97-17, FAR case 2000-003), in correspondence.

### 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 25 and 52

Government procurement.

Dated: April 13, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA amend 48 CFR parts 25 and 52 as set forth below:

1. The authority citation for 48 CFR parts 25 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 25—FOREIGN ACQUISITION

2. Revise the definition “Caribbean Basin country” in section 25.003 to read as follows:

#### 25.003 Definitions.

\* \* \* \* \*

*Caribbean Basin country* means any of the following countries: Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, El Salvador, Grenada, Guatemala, Guyana, Haiti, Jamaica,

Montserrat, Netherlands Antilles, Nicaragua, Panama, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago.

\* \* \* \* \*

3. In section 25.400, revise paragraph (a)(2) to read as follows:

#### 25.400 Scope of subpart.

(a) \* \* \*

(2) The Caribbean Basin Trade Initiative (the determination of the U.S. Trade Representative that end products granted duty-free entry from countries designated by the President as beneficiaries under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701, *et seq.*), with the exception of the Dominican Republic and Honduras, must be treated as eligible products under the Trade Agreements Act);

\* \* \* \* \*

4. Revise section 25.404 to read as follows:

#### 25.404 Caribbean Basin Trade Initiative.

Under the Caribbean Basin Trade Initiative, the United States Trade Representative has determined that, for acquisitions subject to the Trade Agreements Act, Caribbean Basin country end products must be treated as eligible products. This determination is effective until September 30, 2000. The U.S. Trade Representative may extend these dates through a document in the *Federal Register*.

### PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

#### 52.225-5 [Amended]

5. Amend section 52.225-5 by revising the date of the clause to read “(APR 2000)”; and in paragraph (a), in the definition “Caribbean Basin country”, by removing “Dominican Republic,” and “Honduras,”.

[FR Doc. 00-10133 Filed 4-24-00; 8:45 am]

BILLING CODE 6820-EP-P

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 26 and 52

[FAC 97-17; FAR Case 1999-301 (99-301); Item IV]

RIN 9000-AI52

### Federal Acquisition Regulation; Utilization of Indian Organizations and Indian-Owned Economic Enterprises

**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 delete DoD-unique language pertaining to incentive payments made to prime contractors for the utilization of Indian organizations and Indian-owned economic enterprises.

**DATES:** *Effective Date:* June 26, 2000.

*Applicability Date:* The FAR, as amended by this rule, is applicable to solicitations issued on or after June 26, 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 Ms. Victoria Moss, Procurement Analyst, at (202) 501-4764. Please cite FAC 97-17, FAR case 1999-301.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

DoD, GSA, and NASA published a proposed rule in the *Federal Register* on October 27, 1999 (64 FR 57964). Six sources submitted comments in response to the proposed rule. The Councils considered all comments in the development of the final rule.

Section 504 of the Indian Financing Act of 1974 (25 U.S.C. 1544) established the Indian Incentive Program. Annual DoD appropriations acts have restricted DoD payments under the Program to those contractors that submitted subcontracting plans pursuant to 15 U.S.C. 637(d) and those contractors participating in the test program for comprehensive small business



subcontracting plans established by Section 854 of Public Law 101-189. Section 8024 of the DoD Appropriations Act for Fiscal Year 1999 (Public Law 105-262) eliminated the link between a DoD contractor's subcontracting plan requirement and the contractor's eligibility for participation in the Indian Incentive Program. This change now allows DoD to make incentive payments to small businesses that subcontract to Indian organizations or Indian-owned economic enterprises when the contract includes the clause at FAR 52.226-1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises. This rule removes obsolete DoD-unique implementing guidance from the FAR. The Defense Acquisition Regulations Council is adding guidance to the Defense Federal Acquisition Regulation Supplement under a separate case to implement the change made in Section 8024 of Public Law 105-262.

This rule was not subject to Office of Management and Budget 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 merely deletes obsolete DoD-unique implementing guidance from the FAR. The rule will have no effect on small entities doing business with civilian agencies.

#### C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104-13) 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 26 and 52

Government procurement.

Dated: April 13, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 26 and 52 as set forth below:

1. The authority citation for 48 CFR parts 26 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 26—OTHER SOCIOECONOMIC PROGRAMS

##### 26.101 [Amended]

2. Amend section 26.101 as follows:
- In the definition "Indian", remove "which" and insert "that" in its place;
  - In the definition "Indian-owned economic enterprise", remove "shall constitute" and insert "constitutes" in its place; and
  - In the definition "Indian tribe", remove "which" and insert "that" in its place.
3. Revise section 26.104 to read as follows:

##### 26.104 Contract clause.

Contracting officers in civilian agencies may insert the clause at 52.226-1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises, in solicitations and contracts if—

(a) In the opinion of the contracting officer, subcontracting possibilities exist for Indian organizations or Indian-owned economic enterprises; and

(b) Funds are available for any increased costs as described in paragraph (b)(2) of the clause at 52.226-1.

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

4. Amend section 52.226-1 as follows:

- Revise the date of the clause;
- Remove paragraph (a);
- Redesignate paragraphs (b) through (d) as (a) through (c), respectively;
- In the newly designated paragraph (a):

(1) Remove "which" from the definition "Indian" and insert "that" in its place;

(2) Remove "shall constitute" from the definition "Indian-owned economic enterprise" and insert "constitutes" in its place; and

(3) Remove "which" from the definition "Indian tribe" and insert "that" in its place.

e. Revise newly designated paragraphs (b) and (c).

The revised text reads as follows:

##### 52.226-1 Utilization of Indian Organizations and Indian-Owned Economic Enterprises.

\* \* \* \* \*

Utilization of Indian Organizations and Indian-Owned Economic Enterprises (June 2000)

\* \* \* \* \*

(b) The Contractor shall use its best efforts to give Indian organizations and Indian-

owned economic enterprises (25 U.S.C. 1544) the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with efficient performance of its contract.

(1) The Contracting Officer and the Contractor, acting in good faith, may rely on the representation of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status. In the event of a challenge to the representation of a subcontractor, the Contracting Officer will refer the matter to the U.S. Department of the Interior, Bureau of Indian Affairs (BIA), Attn: Chief, Division of Contracting and Grants Administration, 1849 C Street, NW., MS 2626-MIB, Washington, DC 20240-4000.

The BIA will determine the eligibility and notify the Contracting Officer. No incentive payment will be made within 50 working days of subcontract award or while a challenge is pending. If a subcontractor is determined to be an ineligible participant, no incentive payment will be made under the Indian Incentive Program.

(2) The Contractor may request an adjustment under the Indian Incentive Program to the following:

(i) The estimated cost of a cost-type contract.

(ii) The target cost of a cost-plus-incentive-fee prime contract.

(iii) The target cost and ceiling price of a fixed-price incentive prime contract.

(iv) The price of a firm-fixed-price prime contract.

(3) The amount of the adjustment to the prime contract is 5 percent of the estimated cost, target cost, or firm-fixed-price included in the subcontract initially awarded to the Indian organization or Indian-owned economic enterprise.

(4) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.

(c) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the amount paid to the subcontractor. The Contracting Officer will seek funding in accordance with agency procedures.

(End of clause)

[FR Doc. 00-10134 Filed 4-24-00; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 47 and 52

[FAC 97-17; FAR Case 1998-604 (98-604); Item V]

RIN 9000-A139

Federal Acquisition Regulation; Ocean Transportation by U.S.-Flag Vessels

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 apply the preference for U.S.-flag vessels to contracts awarded using simplified acquisition procedures.

DATES: Effective Date: June 26, 2000.

Applicability Date: The FAR, as amended by this rule, is applicable to solicitations issued on or after June 26, 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 Ms. Linda Klein, Procurement Analyst, at (202) 501-3775. Please cite FAC 97-17, FAR case 1998-604.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils published a proposed rule in the Federal Register on July 12, 1999 (64 FR 37640). Five respondents submitted public comments on the proposed rule. The Councils considered all public comments in the formulation of the final rule.

This rule amends the FAR as follows:

- Applies the preference for U.S.-flag vessels to contracts awarded using simplified acquisition procedures (47.504, 52.213-4, and 52.247-64).
- Adds to the clause at 52.212-5,

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, Alternate I to 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels.

The final rule does not incorporate in the clause at 52.247-64 the exception at

47.504(e) for subcontracts for commercial items or commercial components. The Councils will address this issue under FAR case 1999-024, Preference for U.S.-Flag Vessels—Subcontracts for Commercial Items.

This rule was not subject to Office of Management and Budget 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 ocean transportation companies are large business concerns. This rule does not apply to acquisitions by the Department of Defense.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies. The information collection requirements of the clause at FAR 52.247-64 have been approved under OMB Control Number 9000-0061, which also covers clauses at 52.247-6, 52.247-29 through 52.247-44, 52.247-48, 52.247-52, and 52.247-57. FAR 52.247-64 requires contractors to submit a legible copy of the on-board ocean bill of lading for each shipment to the contracting officer and the Maritime Administration. This rule makes 52.247-64 applicable to acquisitions below the simplified acquisition threshold. However, these respondents are already required to submit some form of bill of lading under 52.247-29 through 52.247-44. We estimate an increased number of responses per respondent (21), but a decreased number of hours per response (.05), resulting in no change to the number of respondents (65,000) and total response hours (65,780).

List of Subjects in 48 CFR Parts 47 and 52

Government procurement.

Dated: April 13, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 47 and 52 as set forth below:

1. The authority citation for 48 CFR parts 47 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 47—TRANSPORTATION

47.504 [Amended]

2. In section 47.504, remove paragraph (d) and redesignate paragraph (e) as (d).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. In section 52.212-5, revise the date of the clause; redesignate paragraph (b)(26) as (b)(26)(i); and add paragraph (b)(26)(ii) 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 (June 2000)

\* \* \* \* \*

(b) \* \* \*

— (26)(ii) Alternate I of 52.247-64.

\* \* \* \* \*

4. In section 52.213-4, revise the date of the clause; and add paragraph (b)(1)(xi) to read as follows:

52.213-4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

\* \* \* \* \*

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (June 2000)

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(xi) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (June 2000) (46 U.S.C. 1241). (Applies to supplies transported by ocean vessels.)

\* \* \* \* \*

5. In section 52.247-64, revise the date of the clause and paragraph (d); and remove paragraph (e)(1) and redesignate paragraphs (e)(2) through (e)(4) as (e)(1) through (e)(3), respectively. The revised text reads as follows:

52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels.

\* \* \* \* \*

Preference for Privately Owned U.S.-Flag Commercial Vessels (June 2000)

\* \* \* \* \*

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract.

\* \* \* \* \*

[FR Doc. 00-10135 Filed 4-24-00; 8:45 am]

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES  
ADMINISTRATION**

**NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

**48 CFR Parts 6, 31, 32, and 42**

[FAC 97-17; Item VI]

**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:** April 25, 2000.

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

**List of Subjects in 48 CFR Parts 6, 31, 32, and 42**

Government procurement.

Dated: April 13, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA amend 48 CFR Parts 6, 31, 32, and 42 as set forth below:

1. The authority citation for 48 CFR Parts 6, 31, 32, and 42 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. In section 6.304, revise the second sentence of paragraph (a)(4) to read as follows:

**6.304 Approval of the justification.**

(a) \* \* \*

(4) \* \* \* This authority is not delegable except in the case of the Under Secretary of Defense for Acquisition, Technology, and Logistics, acting as the senior procurement executive for the Department of Defense.

\* \* \* \* \*

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

**31.101 [Amended]**

3. In section 31.101, in the last sentence, remove “Acquisition and Technology” and add in its place “Acquisition, Technology, and Logistics”.

**PART 32—CONTRACT FINANCING**

4. Remove “19\_\_” and add “20\_\_” in the following places:

a. Section 32.411 in the Agreement for Special Bank Account; in paragraph (a) of Recitals; and after paragraph (e) of Covenants; and

b. Section 32.805(c) in the Acknowledgement.

**32.502-4 [Amended]**

5. In section 32.502-4 amend paragraph (a)(3) and (a)(4) by removing “(a)(5)” and adding in their places “(a)(6)”.

**PART 42—CONTRACT  
ADMINISTRATION AND AUDIT  
SERVICES**

6. Remove “19\_” and add “20\_” in the following places:

a. Section 42.1204, in the Novation Agreement following paragraph (i) at paragraphs (a)(2), (a)(8) (twice), and in the Certificates following paragraph (b)(9); and

b. Section 42.1205, in the Change-of-Name Agreement following paragraph (b) at paragraph (a)(2); and in the Certificate following paragraph (b)(2).

[FR Doc. 00-10136 Filed 4-24-00; 8:45 am]

**BILLING CODE 6820-EP-P**

**LIST OF RULES IN FAC 97-17**

**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) 97-17 which amend the FAR. The rule marked with an asterisk (\*) 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 97-17 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.

Item	Subject	FAR case	Analyst
I .....	Competition under Multiple Award Contracts .....	1999-014	De Stefano.
II .....	Determination of Price Reasonableness and Commerciality* .....	1998-300 (98-300)	Olson.
III .....	Caribbean Basin Trade Initiative .....	2000-003	Linfield.
IV .....	Utilization of Indian Organizations and Indian-Owned Economic Enterprises .....	1999-301 (99-301)	Moss.
V .....	Ocean Transportation by U.S.-Flag Vessels .....	1998-604 (98-604)	Klein.

**Item I—Competition under Multiple Award Contracts (FAR Case 1999-014)**

This rule amends FAR 2.101, Subpart 16.5, and 37.201 to clarify what the contracting officer should consider when planning for and placing orders under multiple award contracts. This rule affects all contracting officers that award multiple award contracts or place task or delivery orders under them. The rule—

- Requires the contracting officer to include the name, address, telephone number, facsimile number, and e-mail address of the agency task and delivery order ombudsman in the solicitation and contracts if multiple awards will be made;

- Stresses key things the contracting officer must consider when deciding if a multiple award contract is appropriate, such as—

- Avoiding situations in which awardees specialize exclusively in one or a few areas within the statement of work;

- The scope and complexity of the contract requirement;

- The expected duration and frequency of task or delivery orders;

- The mix of resources a contractor must have to perform expected task or delivery order requirements; and

- The ability to maintain competition among the awardees throughout the contract's period of performance;

- Requires contracting officers to document their decision on whether or not to use multiple awards in the acquisition plan or contract file;

- Emphasizes the use of performance-based statements of work;

- Provides guidance on how to develop tailored order placement procedures;

- Requires contracting officers to consider cost or price as one of the factors in each selection decision for orders;

- Requires contracting officers to establish prices for each order that was not priced under the basic contract using the policies and methods in Subpart 15.4; and

- Requires contracting officers to document the order placement rationale and price in the contract file.

**Item II—Determination of Price Reasonableness and Commerciality (FAR Case 1998-300) (98-300)**

This final rule makes a minor editorial change to FAR 15.403-3 and converts the interim rule, which was published in FAC 97-14 as Item VI, as final. The editorial change amends the cross reference at 15.403-3(c)(1). The remainder of the interim rule that has been in effect since September 24, 1999, remains the same. The primary amendments made in the interim rule that are made final in this rule—

- Clarify procedures associated with obtaining information other than cost or pricing data when acquiring commercial items; and

- Establish that offerors who fail to comply with requirements to provide the information shall be ineligible for award.

**Item III—Caribbean Basin Trade Initiative (FAR Case 2000-003)**

This final rule amends FAR Parts 25.003, 25.400, 25.404, and the clause at 52.225-5, Trade Agreements, to implement the determination of the United States Trade Representative to renew the treatment of Caribbean Basin country end products as eligible products under the Trade Agreements Act, with the exception of end products from the Dominican Republic and Honduras. This rule applies only if an acquisition is subject to the Trade Agreements Act (see FAR 25.403). Offers of end products from the Dominican Republic and Honduras are

no longer acceptable under such acquisitions unless the contracting officer does not receive any offers of U.S.-made end products or eligible products (designated, Caribbean Basin, or NAFTA country end products).

**Item IV—Utilization of Indian Organizations and Indian-Owned Economic Enterprises (FAR Case 1999-301) (99-301)**

This final rule amends FAR Subpart 26.1 and the clause at 52.226-1 to delete DoD-unique requirements relating to Indian Organizations and Indian-Owned Economic Enterprises from the FAR.

**Item V—Ocean Transportation by U.S.-Flag Vessels (FAR Case 1998-604) (98-604)**

This final rule amends FAR 47.504 and the clauses at 52.212-5, 52.213-4, and 52.247-64 to apply the preference for U.S.-flag vessels to contracts awarded using simplified acquisition procedures. This rule only affects civilian agency contracts that may involve ocean transportation of supplies subject to the Cargo Preference Act of 1954.

The rule also adds Alternate I of 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels, to the clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items. Alternate I applies when the supplies furnished under the contract must be transported exclusively in privately owned U.S.-flag vessels.

Dated: April 13, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

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