

Federal Register

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Part II

**Department of Defense
General Services
Administration**

**National Aeronautics and
Space Administration**

48 CFR Ch. I, et al.
Federal Acquisition Regulations (FAR);
Final and Interim Rules

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Chapter 1

**Federal Acquisition Circular 90-40;
Introduction**

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

ACTION: Summary presentation of final and interim rules with request for comment.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules which follow it in the order listed below. The FAR Council is issuing Federal Acquisition Circular (FAC) 90-40 to amend the Federal Acquisition Regulation (FAR). A companion document, the Small Entities Compliance Guide, follows this FAC and may be located on the Internet at <http://www.gsa.gov/far/compliance>.

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

follow. Please cite FAC 90-40 and the appropriate FAR case number(s) in all correspondence related to the following documents.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears (in the table below) in relation to each FAR case or subject area. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 90-40 and specific FAR case number(s).

SUPPLEMENTARY INFORMATION: Federal Acquisition Circular 90-40 amends the Federal Acquisition Regulation (FAR) as specified below:

Item	Subject	FAR case	Analyst
I	Contingent Fee Representation	93-009	DeStefano.
II	Simplified Acquisition Threshold/Federal Acquisition Computer Network; and Micro-Purchase Procedures.	94-770 94-771	Linfield.
III	Gratuities (Interim)	96-300	DeStefano.
IV	Disaster Relief Act	93-303	Klein.
V	Responsibility Determinations	95-007	DeStefano.
VI	Task and Delivery Orders	94-711	McAndrew.
VII	Multiyear Contracting	94-712	McAndrew.
VIII	Small Business/Simplified Acquisition Threshold	94-782	Moss.
IX	Indian-Owned Economic Enterprises	91-028	DeStefano.
X	General Agreement on Tariffs and Trade Patent Authorization	95-308	O'Neill.
XI	Performance and Payment Bonds	91-027	O'Such.
XII	Employee Compensation Costs	93-005	Olson.
XIII	Agency Procurement Protests (Interim)	95-309	O'Neill.
XIV	Value Engineering	96-315	O'Such.
XV	Termination Inventory Schedules	94-003	Klein.

Item I—Contingent Fee Representation (FAR Case 93-009)

This final rule amends FAR Subpart 3.4 to remove the requirement for prospective contractors to provide certain information regarding contingent fee arrangements. Accordingly, the provision at 52.203-4, Contingent Fee Representation and Agreement, and Standard Form 119, Statement of Contingent or Other Fees, are also removed. The underlying policy pertaining to contingent fee arrangements, as set forth in Subpart 3.4, remains the same.

Item II—Simplified Acquisition Threshold/Federal Acquisition Computer Network; and Micro-Purchase Procedures (FAR Cases 94-770 and 94-771)

The interim rules published as Item II of FAC 90-24 and Item III of FAC 90-29 are amended and adopted as final. The rules implement the micro-purchase, simplified acquisition, and Federal Acquisition Computer Network (FACNET) provisions of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355), and Section 4302(b) of the Federal Acquisition

Reform Act of 1996 (Public Law 104-106). The final rules differ from the interim rules in that they (1) move definitions pertaining to micro-purchases, simplified acquisition procedures, and FACNET from Parts 4 and 13 to Part 2; (2) remove the requirement for interim FACNET certification before a contracting office may use simplified acquisition procedures for contract actions exceeding \$50,000; (3) remove the clause at 52.222-40, Service Contract Act of 1965, as Amended—Contracts of \$2,500 or Less, based upon a change in Department of Labor regulations; and (4) provide a telephone number for information regarding FACNET at 4.503.

Item III—Gratuities (FAR Case 96-300)

This interim rule amends FAR 3.202 and 52.203-3 to implement Section 801 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104-106). Section 801 amends 10 U.S.C. 2207, generally referred to as the Gratuities Act, to exempt contracts which do not exceed the simplified acquisition threshold from application of the Act. Therefore, the clause at 52.203-3, Gratuities, is now prescribed

for inclusion in only those contracts which exceed the simplified acquisition threshold.

Item IV—Disaster Relief Act (FAR Case 93-303)

This final rule amends FAR 6.302-5, and adds FAR Subpart 26.2, to implement the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5150). Section 5150 establishes a preference for local sources in the award of contracts for major disaster or emergency assistance activities.

Item V—Responsibility Determinations (FAR Case 95-007)

This final rule amends FAR Subpart 9.1 to emphasize the use of commercial sources of information for determining the responsibility of prospective contractors, and to clarify that preaward surveys normally should be requested only when information on hand or readily available is not sufficient.

Item VI—Task and Delivery Orders (FAR Case 94-711)

The interim rule published as Item III of FAC 90-33 is amended and adopted as final. The interim rule added FAR

Section 16.500 to define the scope of the multiple award preference established by Subpart 16.5 for indefinite-quantity contracts. The final rule differs from the interim rule in that it amends Section 16.500 to clarify that the multiple award preference 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, provided the selection of contractors and placement of orders is consistent with Subpart 36.6. The rule also amends Section 16.504 to clarify procedures for determining if multiple awards are appropriate.

Item VII—Multiyear Contracting (FAR Case 94-712)

This final rule revises FAR Subpart 17.1, removes the clause at 52.217-1, and revises the clause at 52.217-2 to implement Sections 1022 and 1072 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355). Sections 1022 and 1072 provide for use of multiyear contracting in a manner that will encourage competition or promote economy in administration, performance, and operation of an agency's programs.

Item VIII—Small Business/Simplified Acquisition Threshold (FAR Case 94-782)

This final rule amends FAR Part 19 and the clauses at 52.219-6, 52.219-7, and 52.219-18 to implement Section 4004 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355). Section 4004 amends Section 15(j) of the Small Business Act (15 U.S.C. 644(j)) to reserve each contract for supplies or services that has an anticipated value greater than \$2,500, but not greater than \$100,000, for exclusive participation by small business concerns, unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with regard to price, quality, and delivery. This rule also reflects a final rule published by the Small Business Administration at 13 CFR 121.406, which provides that, where the procurement of a manufactured item is processed under FAR Part 13 procedures, set aside for small business concerns, and not expected to exceed \$25,000, an offeror need not supply the end product of a small business concern

as long as the product is manufactured or produced in the United States.

Item IX—Indian-Owned Economic Enterprises (FAR Case 91-028)

The interim rule published as Item VIII of FAC 90-7 is amended and adopted as final. The rule implements 25 U.S.C. 1544, which provides for payment of incentives to prime contractors who use Indian organizations or Indian-owned economic enterprises as subcontractors. The principal difference between the interim rule and the final rule is the method of incentive payment contained in each. The interim rule permitted prime contractors to recover certain costs of subcontracting with Indian organizations and Indian-owned economic enterprises based on the difference in price between the acceptable low non-Indian subcontractor and the acceptable low Indian subcontractor, when the Indian subcontractor's price exceeded the price of the non-Indian subcontractor. The final rule instead permits an incentive payment to the prime contractor in an amount which equals 5 percent of the amount of the subcontract awarded to the Indian organization or Indian-owned economic enterprise. The applicable amendments are in Subpart 26.1 and the clause at 52.226-1.

Item X—General Agreement on Tariffs and Trade Patent Authorization (FAR Case 95-308)

This final rule adds FAR Section 27.209 to provide guidance pertaining to the use of patented technology under the General Agreement on Tariffs and Trade.

Item XI—Performance and Payment Bonds (FAR Case 91-027)

This final rule amends FAR Subpart 28.1 and the clause at 52.228-1, and adds two clauses at 52.228-15 and 52.228-16, and new SF 1418 to update, clarify, and standardize policy pertaining to bid guarantees and performance and payment bonds.

Item XII—Employee Compensation Costs (FAR Case 93-005)

This final rule amends FAR Part 31 to clarify the allowability of personal services compensation costs. The rule adds definitions at 31.001; clarifies the standard for reasonableness of labor-management compensation agreements at 31.205-6(b); revises 31.205-6(b)(1)(i) to clearly allow offsets of allowable

elements of employee compensation packages among jobs of the same grade or level; and revises 31.205-6(i) to provide a general allowability rule pertaining to corporate securities.

Item XIII—Agency Procurement Protests (FAR Case 95-309)

This interim rule revises FAR 33.103 to implement Executive Order 12979, Agency Procurement Protests. Executive Order 12979 provides for inexpensive, informal, procedurally simple, and expeditious resolution of agency protests, including, where appropriate and permitted by law, the use of alternative dispute resolution techniques, third party neutrals, and another agency's personnel.

Item XIV—Value Engineering (FAR Case 96-315)

This final rule amends FAR Part 48 to revise the definition of value engineering and to require agencies to establish and maintain cost-effective value engineering procedures and processes. The rule implements Section 4306 of the Federal Acquisition Reform Act of 1996 (Public Law 104-106).

Item XV—Termination Inventory Schedules (FAR Case 94-003)

This final rule amends FAR Part 49 and the clauses at 52.249-2, 52.249-3, 52.249-5, 52.249-6, and 52.249-11 to require contractors under terminated contracts to submit termination inventory schedules within 120 days from the date of termination, unless this period is extended by the contracting officer.

Dated: July 16, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

FEDERAL ACQUISITION CIRCULAR

Number 90-40

Federal Acquisition Circular (FAC) 90-40 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 90-40 are effective September 24, 1996, except for Items III, VI thru VIII, and XIII, which are effective July 26, 1996, and Items II and XIV, which are effective August 26, 1996.

Dated: July 12, 1996.
 Eleanor R. Spector,
 Director, Defense Procurement.

Dated: July 8, 1996.
 Ida M. Ustad,
 Deputy Associate Administrator for
 Acquisition Policy, General Services
 Administration.

Dated: July 15, 1996.
 Tom Luedtke,
 Deputy Associate Administrator for
 Procurement, National Aeronautics and
 Space Administration.
 [FR Doc. 96-18497 Filed 7-25-96; 8:45 am]
 BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
 ADMINISTRATION**

**NATIONAL AERONAUTICS AND
 SPACE ADMINISTRATION**

48 CFR Parts 1, 3, 4, 13, 31, 52, and 53

[FAC 90-40; FAR Case 93-009; Item I]

RIN 9000-AG83

**Federal Acquisition Regulation;
 Contingent Fee Representation**

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

ACTION: Final rule.

SUMMARY: The Civilian Agency
 Acquisition Council and the Defense
 Acquisition Regulations Council have
 agreed on a final rule amending the
 Federal Acquisition Regulation (FAR) to
 delete the provision requiring an offeror
 to provide a contingent fee
 representation and agreement and to
 submit a statement of contingent or
 other fees. This regulatory action was
 not subject to Office of Management and
 Budget review under Executive Order
 12866, dated September 30, 1993, and is
 not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: September 24, 1996.

FOR FURTHER INFORMATION CONTACT: Mr.
 Ralph DeStefano at (202) 501-1758 in
 reference to this FAR case. For general
 information, contact the FAR
 Secretariat, Room 4037, GS Building,
 Washington, DC 20405 (202) 501-4755.
 Please cite FAC 90-40, FAR case 93-
 009.

SUPPLEMENTARY INFORMATION:

A. Background

FAR 3.404(b) requires the contracting
 officer to insert the provision at 52.203-
 4, Contingent Fee Representation and

Agreement, in all solicitations, with six
 exceptions. The provision requires
 offerors to provide a contingent fee
 representation as requested by the
 contracting officer. When the
 representation is answered
 affirmatively, the offeror must also
 provide a completed Standard Form
 (SF) 119, Statement of Contingent or
 Other Fees, or a signed statement
 indicating the SF 119 was previously
 submitted to the same contracting office.
 A proposed rule was published in the
 Federal Register at 60 FR 57140,
 November 13, 1995. This final rule
 revises FAR 3.404 to remove the
 requirement for the solicitation
 provision and removes the
 accompanying sections 3.405 through
 3.408 which deal with the SF 119. FAR
 3.409 and 3.410 have been renumbered.

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 there
 is a slight beneficial impact on small
 entities since offerors will no longer be
 required to provide contingent fee
 representations and agreements or to
 submit statements of contingent or other
 fees. However, the underlying policy
 pertaining to contingent fee
 arrangements has not changed.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub.
 L. 96-511) is deemed to apply because
 the final rule eliminates a previously
 approved information collection
 requirement under Office of
 Management and Budget (OMB) number
 9000-0003, Statement of Contingent or
 Other Fees (SF 119). Accordingly, a
 request for elimination of the
 information collection requirement is
 being submitted to OMB.

List of Subjects in 48 CFR Parts 1, 3, 4,
 13, 31, 52, and 53

Government procurement.

Dated: July 16, 1996.
 Edward C. Loeb,
 Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 1, 3, 4, 13, 31,
 52, and 53 are amended as set forth
 below:

1. The authority citation for 48 CFR
 Parts 1, 3, 4, 13, 31, 52, and 53
 continues to read as follows:

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

**PART 1—FEDERAL ACQUISITION
 REGULATIONS SYSTEM**

1.106 [Amended]

2. Section 1.106 is amended in the list
 of "FAR Segments" and "OMB Control
 Numbers" following the introductory
 text by removing "52.203-4" and
 "9000-0003", and "SF 119" and "9000-
 0003".

**PART 3—IMPROPER BUSINESS
 PRACTICES AND PERSONAL
 CONFLICTS OF INTEREST**

3. Section 3.404 is revised to read as
 follows:

3.404 Contract clause.

The contracting officer shall insert the
 clause at 52.203-5, Covenant Against
 Contingent Fees, in all solicitations and
 contracts exceeding the simplified
 acquisition threshold, other than those
 for commercial items (see parts 2 and
 12).

3.405 through 3.408-2 [Removed]

4. Sections 3.405 through 3.408-2 are
 removed.

**3.409 and 3.410 [Redesignated as 3.405
 and 3.406]**

5. Sections 3.409 and 3.410 are
 redesignated as 3.405 and 3.406.

6. The newly designated 3.406 is
 amended by revising the first sentence
 to read as follows:

3.406 Records.

For enforcement purposes, agencies
 shall preserve any specific evidence of
 one or more of the violations in 3.405(a),
 together with all other pertinent data,
 including a record of actions taken.
 * * *

PART 4—ADMINISTRATIVE MATTERS

7. Section 4.803 is amended by
 revising paragraph (a)(11) to read as
 follows:

4.803 Contents of contract files.

* * * * *

(a) * * *

(11) Contractor's certifications and
 representatives.

* * * * *

**PART 13—SIMPLIFIED ACQUISITION
 PROCEDURES**

13.111 [Amended]

8. Section 13.111 is amended by
 removing paragraph (c) and
 redesignating paragraphs (d) through (j)
 as (c) through (i).

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES**31.205–38 [Amended]**

9. Section 31.205–38 is amended at the end of paragraph (f) by removing the parenthetical “(see 3.408–2)”.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**52.203–4 [Reserved]**

10. Section 52.203–4 is removed and reserved.

52.203–5 [Amended]

11. Section 52.203–5 is amended in the introductory paragraph by removing “3.404(c)” and inserting “3.404”.

PART 53—FORMS**53.203 [Amended]**

12. Section 53.203 is amended by removing paragraph (a) and the designation of paragraph (b).

53.301–119 [Removed]

13. Section 53.301–119 is removed.

[FR Doc. 96–18498 Filed 7–25–96; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

48 CFR Parts 1, 2, 3, 4, 5, 8, 11, 12, 13, 15, 16, 19, 22, 23, 25, 28, 29, 32, 36, 41, 42, 43, 44, 45, 46, 47, 52, and 53

[FAC 90–40; FAR Cases 94–770 and 94–771; Item II]

RIN 9000–AG18/9000–AG26

Federal Acquisition Regulation; Simplified Acquisition Threshold; Federal Acquisition Computer Network; and Micro-Purchase Procedures

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

ACTION: Interim rules adopted as final with changes.

SUMMARY: The Federal Acquisition Regulatory Council is amending the Federal Acquisition Regulation (FAR) to finalize the interim rules concerning simplified acquisition procedures and Federal Acquisition Computer Network (FACNET) requirements of the Federal Acquisition Streamlining Act of 1994.

This rule also implements section 4302 of the Federal Acquisition Reform Act which deleted the requirement for attaining interim FACNET certification before simplified acquisition procedures could be used between \$50,000 and \$100,000. This is a significant rule within the meaning of Executive Order 12866; however, it is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 26, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Linfield at (202) 501–1757 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–40, FAR cases 94–770 and 94–771.

SUPPLEMENTARY INFORMATION:**A. Background**

The Federal Acquisition Streamlining Act of 1994, Public Law 103–355 (FASA), provided a number of authorities that streamlined the acquisition process and made a number of substantial changes in the manner in which relatively low dollar procurements are conducted. FASA created a micro-purchase threshold of \$2,500, a simplified acquisition threshold of \$100,000, provided for the use of simplified acquisition procedures up to the \$100,000 threshold, and created the Federal Acquisition Computer Network (FACNET). FASA limited use of simplified acquisition procedures by procurement activities not having certified interim FACNET to procurements not exceeding \$50,000. The Federal Acquisition Reform Act of 1996 (Division D of the National Defense Authorization Act for Fiscal Year 1996), Public Law 104–106 (FARA), deleted the requirement for attaining interim FACNET certification before simplified acquisition procedures could be used between \$50,000 and \$100,000. This final rule implements that provision of FARA, as well as the aforementioned provisions of FASA.

The simplified acquisition procedures of FASA were implemented in the FAR at 60 FR 34741 on July 3, 1995, in FAC 90–29, FAR case 94–770. The micro-purchase provisions of FASA were implemented in the FAR at 59 FR 64786 on December 15, 1994, in FAC 90–24, FAR case 94–771. Also published in FAC 90–29 was an interim rule on FAR case 91–104, Electronic Contracting, which remains interim and is not being finalized at this time.

An interagency team is considering technical issues pertaining to Central Contractor Registration at FAR 4.503.

There may be additional changes to that section as part of FAR case 94–772.

Among the changes in this final rule are:

- Definitions contained in the rule have been moved to FAR 2.101.
- The requirement for interim FACNET to be accomplished before simplified acquisition procedures can be used for acquisitions between \$50,000 and \$100,000 has been deleted.
- The clause at 52.222–40, Service Contract Act of 1965, as amended, Contracts of \$2,500 or Less, has been deleted based upon a regulatory change by the Department of Labor.
- An information phone number for FACNET is provided in 4.503.
- The coverage in Part 13 on small business programs has been moved to Part 19 under FAR case 94–782 of this Federal Acquisition Circular.

Note that for non-FACNET acquisitions over \$25,000, a synopsis for 15 days is still required.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule, and a Final Regulatory Flexibility Analysis (FRFA) has been prepared and submitted to the Chief Counsel for Advocacy for the Small Business Administration. This rule implements the simplified acquisition procedures and Federal Acquisition Computer Network (FACNET) requirements of the Federal Acquisition Streamlining Act of 1994 (the Act) (Public Law 103–355). The rule applies to all businesses, large and small organizations, educational and nonprofit, who are interested in participating in Government acquisitions at or below the simplified acquisition threshold of \$100,000. The implementation of FACNET provides for the electronic exchange of acquisition information between the private sector and the Federal Government. It is estimated that the electronic exchange of acquisition information will improve business opportunities for more than 300,000 vendors currently doing business with the Government. A copy of the FRFA may be obtained from the FAR Secretariat at the General Services Administration, 18th and F Streets NW., Washington, DC 20405.

C. Paperwork Reduction Act

This final rule does impose an additional reporting or recordkeeping requirement on the public which requires the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.* Contractors are required to electronically register with

the Central Contractor Registration operated by the Defense Information Megacenter. The information to be provided is information currently reported under several existing forms including the SF 129, Solicitation Mailing List Application, the SF 3881, ACH Vendor/Miscellaneous Payment Enrollment Form, and the DD-1052, Request for Assignment of a Commercial and Government Entity (CAGE) Code. Contractors are required to provide information pertaining to their electronic data interchange (EDI) capabilities. Establishment of a central registration system should eliminate the need to submit multiple registrations with each contracting office the contractor wishes to do business with.

A request for approval of the information collection requirement concerning simplified acquisition procedures was submitted to OMB and approved through April 30, 1998, under OMB Control Number 9000-0137. Public comments concerning this request were invited through a Federal Register notice at 60 FR 11659, March 2, 1995. No comments were received in response to this notice.

D. Public Comments

Public comments were solicited at 59 FR 64786, December 15, 1994, and 60 FR 34741, July 3, 1995. In response to the Federal Register notice, 30 commenters responded with hundreds of specific comments. These comments were considered in the formulation of the final rule. A matrix of comments is available from the FAR Secretariat.

List of Subjects in 48 CFR Parts 1, 2, 3, 4, 5, 8, 11, 12, 13, 15, 16, 19, 22, 23, 25, 28, 29, 32, 36, 41, 42, 43, 44, 45, 46, 47, 52, and 53

Government procurement.

Dated: July 16, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, the interim rules for FAR case 94-770 (60 FR 34741, July 3, 1995) and FAR case 94-771 (59 FR 64786, December 15, 1994) are adopted as final with the following changes:

1. The authority citation for 48 CFR 1, 2, 3, 4, 5, 8, 11, 12, 13, 15, 16, 19, 22, 23, 25, 28, 29, 32, 36, 41, 42, 43, 44, 45, 46, 47, 52, and 53 continues to read as follows:

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

Chapter 1 [Amended]

2. The following sections are amended by removing the words "in Part 13":

2.201

- 3.502-3
3.503-2
4.603
4.805(b)(13) introductory text
5.303(b), introductory text
8.203-1(a)(1)
15.106-1(b)(1)
16.504(c)(1)(v)
19.702, introductory text
19.708(a)
28.310(a)
29.401-3
29.401-4
32.202-1(b)(2)
32.908(c)
41.201(b)
42.903
43.205 (d)(2) and (e)
44.201-2(b)(2)
44.204(e)
45.106(e)
46.805 (a) and (b) heading and introductory text;
47.104-4 (a)(2) and (b)
47.200(b)(4)
47.305-16(b)

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

3. Section 1.304 is amended by revising paragraph (a) to read as follows:

1.304 Agency control and compliance procedures.

(a) Under the authorities of 1.301(c), agencies shall control and limit issuance of agency acquisition regulations and, in particular, local agency directives that restrain the flexibilities found in the FAR, and shall establish formal procedures for the review of these documents to assure compliance with this part 1.

* * * * *

4. Section 1.603-3 is revised to read as follows:

1.603-3 Appointment.

(a) Contracting officers shall be appointed in writing on an SF 1402, Certificate of Appointment, which shall state any limitations on the scope of authority to be exercised, other than limitations contained in applicable law or regulation. Appointing officials shall maintain files containing copies of all appointments that have not been terminated.

(b) Agency heads are encouraged to delegate micro-purchase authority to individuals who are employees of an executive agency or members of the Armed Forces of the United States who will be using the supplies or services being purchased. Individuals delegated this authority are not required to be appointed on an SF 1402, but shall be appointed in writing in accordance with agency procedures.

PART 2—DEFINITIONS OF WORDS AND TERMS

5. Section 2.101 is amended to add, in alphabetical order, the definitions of "delivery order," "Federal Acquisition Computer Network (FACNET) Architecture," "full FACNET," "Governmentwide FACNET," "interim FACNET," "micro-purchase," "micro-purchase threshold," "simplified acquisition procedures," "simplified acquisition threshold," and "task order" to read as follows:

2.101 Definitions.

* * * * *

Delivery order means an order for supplies placed against an established contract or with Government sources.

* * * * *

Federal Acquisition Computer Network (FACNET) Architecture means the Governmentwide Electronic Commerce/Electronic Data Interchange (EC/EDI) operational capability for the acquisition of supplies and services that provides for electronic data interchange of acquisition information between the Government and the private sector, employs nationally and internationally recognized data formats, and provides universal user access.

* * * * *

Full FACNET means an agency has certified that it has implemented all of the FACNET functions outlined in 4.504, and more than 75 percent of eligible contracts (not otherwise exempted from FACNET) in amounts exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold, were entered into by the agency during the preceding fiscal year using an interim FACNET certified electronic automated information system.

Governmentwide FACNET means that the Federal Government has certified its FACNET capability, and more than 75 percent of eligible contracts (not otherwise exempted from FACNET) in amounts exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold, entered into by the executive agencies during the preceding fiscal year were made through electronic automated information systems with full FACNET certification.

* * * * *

Interim FACNET means a contracting office has been certified as having implemented the electronic automated information systems capability to provide widespread public notice of contracting opportunities, issue solicitations, and receive responses to solicitations and associated requests for

information. Such capability must allow the private sector to access notices of solicitations, access and review solicitations, and respond to solicitations.

* * * * *

Micro-purchase means an acquisition of supplies or services (except construction), the aggregate amount of which does not exceed \$2,500, except that in the case of construction, the limit is \$2,000.

Micro-purchase threshold means \$2,500.

* * * * *

Simplified acquisition procedures means the methods prescribed in part 13 for making purchases of supplies or services.

Simplified acquisition threshold means \$100,000, except that in the case of any contract to be awarded and performed, or purchase to be made, outside the United States in support of a contingency operation as defined in 10 U.S.C. 101(a)(13), the term means \$200,000.

* * * * *

Task order means an order for services placed against an established contract or with Government sources.

* * * * *

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

6. Section 3.104-4 is amended by revising paragraph (h)(5) to read as follows:

3.104-4 Definitions.

* * * * *

(h) * * *

(5) For purposes of 3.104-4(h), the term *procurement official* does not include contracting officers or other individuals whose authority is limited to the micro-purchase threshold if the head of the contracting activity determines that it is unlikely that the individual will make purchases in a total amount greater than \$20,000 in any 12-month period.

3.104-10 [Amended]

7. Section 3.104-10 is amended in paragraph (c) by removing the parenthetical "(see Part 13)."

8. Section 3.502-2 is amended to revise the heading and the introductory text of paragraph (i) and to add paragraph (j) to read as follows:

3.502-2 Subcontractor kickbacks.

* * * * *

(i) Requires each contracting agency to include in each prime contract exceeding \$100,000 for other than

commercial items (see part 12), a requirement that the prime contractor shall—

* * * * *

(j) Notwithstanding paragraph (i) of this subsection, a prime contractor shall cooperate fully with any Federal government agency investigating a violation of Section 3 of the Anti-Kickback Act of 1986 (41 U.S.C. 51-58).

PART 4—ADMINISTRATIVE MATTERS

9. Section 4.501 is amended—

a. By removing the definitions of "Federal Acquisition Computer Network (FACNET)," "Full FACNET," "Governmentwide FACNET," "Interim FACNET," "Value-Added Network (VAN)," and "Value-Added Service (VAS)";

b. By revising the heading of the definition of "ANSI X.12" to read "ANSI X12, as used in this subpart,";

c. By inserting, following the end of the definition headings for "electronic commerce (EC)," "electronic data interchange (EDI)," and "transaction set", the phrase "as used in this subpart,"; and

d. By adding, in alphabetical order, the definitions of "Implementation convention" and "Trading partner". The revised text reads as follows:

4.501 Definitions.

* * * * *

Implementation convention (IC), as used in this subpart, means the common practices and/or interpretations of the use of ANSI X12 standards. Conventions define how trading partners will use the standards for their mutual needs. The Federal IC will be used by organizational elements of the Federal community and by government organizations and by Trading Partners to exchange data with the Federal community.

Trading Partner, as used in this subpart, means a business that has agreed to exchange business information electronically.

* * * * *

10. Section 4.502 is amended by revising paragraph (a); by removing paragraphs (b) and (c), and redesignating paragraph (d) as (b) to read as follows:

4.502 Policy.

(a) The Federal Government shall use FACNET whenever practicable or cost-effective. Contracting officers may supplement FACNET transactions by using other media to meet the requirements of any contract action governed by the FAR (e.g., transmit hard copy of drawings).

* * * * *

11. Section 4.503 is revised to read as follows:

4.503 Contractor registration.

(a) In order for a contractor to conduct electronic commerce with the Federal Government, the contractor must provide registration information to the Central Contractor Registration (CCR). Phone (800) EDI-3414 for information regarding FACNET.

(b) The contractor will be required to submit trading partner profile information, including a Data Universal Numbering System (DUNS) number, in accordance with the Federal implementation conventions of the appropriate ANSI X12 transaction set for contractor registration.

12. Section 4.504 is amended by revising the introductory text for paragraphs (a) and (b) to read as follows:

4.504 FACNET functions.

(a) For agencies—

* * * * *

(b) For the private sector—

* * * * *

4.507 [Removed]

13. Section 4.507 is removed.

4.800 [Amended]

14. Section 4.800 is amended in the parenthetical by removing the reference "12.106-2" and inserting "13.106-2(d)" in its place.

PART 5—PUBLICIZING CONTRACT ACTIONS

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

5.101 Methods of disseminating information.

* * * * *

(a) * * *

* * * * *

(2) For proposed contract actions expected to exceed \$10,000, but not expected to exceed \$25,000, by displaying in a public place, including on an electronic bulletin board, or any other appropriate electronic means located at the contracting office issuing the solicitation, an unclassified notice of the solicitation or a copy of the solicitation satisfying the requirements of 5.207 (c) and (f). * * *

* * * * *

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

* * * * *

16. Section 5.202 is amended to revise paragraphs (a)(2) and (a)(14) to read as follows:

5.202 Exceptions.

* * * * *

(a) * * *

(2) The contract action is made under the conditions described in 6.302-2 (or, for purchases conducted using simplified acquisition procedures, if unusual and compelling urgency precludes competition to the maximum extent practicable) and the Government would be seriously injured if the agency complies with the time periods specified in 5.203;

* * * * *

(14) The contract action is for an amount at or below \$250,000 and is made through FACNET after Governmentwide FACNET has been certified pursuant to 4.505-3; or

* * * * *

5.203 [Amended]

17. Section 5.203 is amended in the first sentence of paragraph (b) by removing "respond for" and inserting "respond to".

18. Section 5.205 is amended in paragraph (d)(2) by revising the first sentence to read as follows:

5.205 Special situations.

* * * * *

(d) * * *

(2) When the total fee is expected to exceed \$10,000 but not exceed \$25,000, the contracting officer shall comply with 5.101(a)(2).

* * * * *

19. Section 5.207 is amended by revising paragraph (c)(2)(xiv) and the first sentence of (e)(3) to read as follows:

5.207 Preparation and transmittal of synopses.

* * * * *

(c) * * *

(2) * * *

(xiv) In the case of noncompetitive contract actions (including those that do not exceed the simplified acquisition threshold), identify the intended source (see 5.207(e)(3)) and insert a statement of the reason justifying the lack of competition.

* * * * *

(e) * * *

(3) In the case of a noncompetitive contract action expected to exceed the simplified acquisition threshold, the synopsis shall refer to Numbered Note 22.

20. Section 5.503 is amended in paragraph (a) by designating the existing text as (a)(1) and adding paragraph (a)(2); by removing paragraph (c) and

re-designating paragraphs (d) and (e), as (c) and (d), respectively. The revised text reads as follows:

5.503 Procedures.

(a) *General.* (1) * * *

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

* * * * *

PART 11—DESCRIBING AGENCY NEEDS

21. Section 11.002 is amended to revise paragraph (a)(1)(i) to read as follows:

11.002 Policy.

(a) * * *

(1) * * *

(i) Promote full and open competition (see part 6), or maximum practicable competition when using simplified acquisition procedures, with due regard to the nature of the supplies or services to be acquired; and

* * * * *

22. Section 11.104 is amended to add paragraph (c) to read as follows:

11.104 Items peculiar to one manufacturer.

* * * * *

(c) The basis for not providing for maximum practicable competition is documented in the file when the acquisition is awarded using simplified acquisition procedures.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.102 [Amended]

23. Section 12.102 is amended in paragraphs (d)(1) and (d)(4) by removing the parenthetical "(see Subpart 13.6)" and by revising the parenthetical in paragraph (d)(2) to read "(see 13.505)".

12.206 [Amended]

24. Section 12.206 is amended in the last sentence by revising "13.106-1" to read "13.106-2".

12.301 [Amended]

25. Section 12.301 is amended in paragraph (c)(2) by revising "13.106-1" to read "13.106-2".

12.602 [Amended]

26. Section 12.602 is amended in the first sentence of paragraph (a) and the sixth sentence of paragraph (b) by revising "13.106-1" to read "13.106-2".

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

27. Section 13.000 is revised to read as follows:

13.000 Scope of part.

This part prescribes policies and procedures for the acquisition of supplies and services, including construction, research and development, and commercial items, the aggregate amount of which does not exceed the simplified acquisition threshold (see 2.101). See part 12, Acquisition of Commercial Items, for policies applicable to the acquisition of commercial items exceeding the micro-purchase threshold. See 36.602-5 for simplified procedures to be used when acquiring architect-engineer services.

28. Section 13.101 is amended by removing the definitions of "delivery order," "micro-purchase," "micro-purchase threshold," "simplified acquisition procedures," and "simplified acquisition threshold"; by inserting, following the end of the definition heading "bulk funding", ", as used in this part,"; by revising the definition of "Governmentwide commercial purchase card" by inserting following the end of the definition headings "imprest fund," and "purchase order", ", as used in this part,"; and by adding, in alphabetical order, the definition for "third party draft" to read as follows:

13.101 Definitions.

* * * * *

Governmentwide commercial purchase card, as used in this part, means a purchase card, similar in nature to a commercial credit card, issued to authorized agency personnel to use to acquire and to pay for supplies and services.

* * * * *

Third party draft, as used in this part, means an agency bank draft, similar to a check, which is used to acquire and to pay for supplies and services. (See Treasury Financial Manual Section 3040.70.)

29. Section 13.102 is amended by revising paragraph (b) and by removing the comma at the end of paragraph (c) to read as follows:

13.102 Purpose.

* * * * *

(b) Improve opportunities for small business, small disadvantaged business, and women-owned small business concerns to obtain a fair proportion of Government contracts;

* * * * *

30. Section 13.103 is revised to read as follows:

13.103 Policy.

(a) Simplified acquisition procedures shall be used to the maximum extent practicable for all purchases of supplies or services not exceeding the simplified acquisition threshold (including purchases below the micro-purchase threshold), unless requirements can be met by using required sources of supply under part 8 (e.g., Federal Prison Industries, Committee for Purchase from People Who Are Blind or Severely Disabled, and Federal Supply Schedule contracts), GSA Nonmandatory Schedule Contracts for FIP Resources, existing indefinite delivery/indefinite quantity contracts, or other established contracts.

(b) The contracting office shall not use simplified acquisition procedures for contract actions exceeding \$50,000 after December 31, 1999, unless the office's cognizant agency has certified full FACNET capability in accordance with 4.505-2.

(c) Simplified acquisition procedures shall not be used in the acquisition of supplies and services initially estimated to exceed the simplified acquisition threshold even though resulting awards do not exceed that threshold. Requirements aggregating more than the simplified acquisition threshold or the micro-purchase threshold shall not be broken down into several purchases that are less than the applicable threshold merely to permit use of simplified acquisition procedures, or to avoid any requirements that apply to purchases exceeding the micro-purchase threshold.

(d) Simplified acquisition procedures may be used to acquire personal services if the agency has specific statutory authority to acquire personal services (see 37.104).

(e) The Governmentwide commercial purchase card is the preferred means to purchase and pay for micro-purchases. This is not intended to limit use of the purchase card to micro-purchases, if otherwise authorized under agency procedures, nor is it intended to preclude use of electronic purchasing techniques.

(f) Agencies are encouraged to use the Governmentwide commercial purchase card and electronic purchasing techniques to the maximum extent practicable. The Governmentwide commercial purchase card may be used to purchase and pay for purchases under part 8 procedures when authorized, under existing indefinite delivery/indefinite quantity contracts,

or from other established contracts in accordance with agency procedures.

(g) FACNET shall be used to acquire supplies and services (including construction, research and development, and architect-engineer) for contract actions exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold when practicable and cost-effective (see 4.506). Drawings and lengthy specifications can be provided off-line in hard copy or through other appropriate means.

(h) Contracting officers shall establish deadlines for the submission of responses to solicitations which afford suppliers a reasonable opportunity to respond in accordance with 5.203, Publicizing and response time.

(i) Contracting officers shall consider all quotes/offers that are timely received.

(j) Contracting officers are encouraged to use innovative approaches in awarding contracts using the simplified acquisition procedures under the authority of this part. For commercial items, contracting officers may use either the streamlined solicitation procedure in subpart 12.6 or the existing procedures in parts 13, 14, 15, 35, or 36 as applicable, if they are more streamlined and beneficial, thereby allowing maximum flexibility. For other than commercial items, the procedures in other FAR parts may be appropriate. Other FAR parts that may be used include, but are not limited to parts 14, 15, 35, or 36.

(k) Micro-purchases may be awarded using any of the purchasing methods covered in this part, provided the purchaser is authorized and trained, pursuant to agency regulations, to use those methods.

31. Section 13.104 is amended by revising paragraphs (b), (e), and (f) to read as follows:

13.104 Procedures.

* * * * *

(b) Related items (such as small hardware items or spare parts for vehicles) may be included in one solicitation and the award made on an "all-or-none" or "multiple award" basis if suppliers are so advised when quotations are requested.

* * * * *

(e) Agencies shall use United States-owned excess or near-excess foreign currency, if appropriate, in making payments under simplified acquisition procedures (see subpart 25.3).

(f) For proposed purchases covered by this part, see 5.101 and 5.203 to

determine if public display and synopsis requirements apply.

* * * * *

32. Section 13.105 is revised to read as follows:

13.105 Small business set-asides.

(a) Each acquisition (non-FACNET and FACNET) of supplies or services that has an anticipated dollar value exceeding \$2,500 and not exceeding \$100,000, is reserved exclusively for small business concerns and shall be set aside in accordance with subpart 19.5.

(b) Each written solicitation under a set-aside shall contain the appropriate provisions prescribed by part 19. If the solicitation is oral, however, information substantially identical to that which is in the provision shall be given to potential quoters.

33. Sections 13.106, 13.106-1 and 13.106-2 are revised to read as follows:

13.106 Soliciting competition, evaluation of quotes, and award.

13.106-1 Purchases at or below the micro-purchase threshold.

(a) *Soliciting competition, evaluation of quotes, and award.* (1) To the extent practicable, micro-purchases shall be distributed equitably among qualified suppliers.

(2) Micro-purchases (as defined in 2.101) may be awarded without soliciting competitive quotations if the contracting officer or individual appointed in accordance with 1.603-3(b) considers the price reasonable.

(3) The administrative cost of verifying the reasonableness of the price for purchases at or below the micro-purchase threshold may more than offset potential savings from detecting instances of overpricing. Therefore, action to verify price reasonableness need only be taken if—

(i) The contracting officer or individual appointed in accordance with 1.603-3(b) suspects or has information to indicate that the price may not be reasonable (e.g., comparison to the previous price paid or personal knowledge of the supply or service); or

(ii) Purchasing a supply or service for which no comparable pricing information is readily available (e.g., a supply or service that is not the same as, or is not similar to, other supplies or services that have recently been purchased on a competitive basis).

(4) Prompt payment discounts should be solicited.

(5) Clauses are not required for micro-purchases using any method in part 12 or 13. However, this does not prohibit the use of any clause prescribed elsewhere in this chapter when

determined necessary by the contracting officer.

(b) *Documentation.* Minimize the documentation to support micro-purchases.

13.106-2 Purchases exceeding the micro-purchase threshold.

(a) *Soliciting competition.* (1) Contracting officers shall promote competition to the maximum extent practicable to ensure that the purchase is advantageous to the Government, based, as appropriate, on either price alone or price and other factors (e.g., past performance and quality) including the administrative cost of the purchase. Solicitations shall notify suppliers of the basis upon which award is to be made.

(2) If FACNET is not available, or an exemption set forth in 4.506 applies, quotations may be solicited through other appropriate means. The contracting officer shall comply with the requirements of 5.101 when not soliciting via FACNET.

(3) Requests for quotations should be solicited orally to the maximum extent practicable when FACNET is not available or a written determination has been made that it is not practicable or cost-effective to purchase via FACNET. However, oral solicitations may not be practicable for contract actions exceeding \$25,000 because of the synopsis requirement in 5.101. Sufficient information to permit suppliers to develop quotations may be incorporated into a combined synopsis/solicitation. In such cases, the contracting officer is not required to issue a separate solicitation. Paper solicitations for contract actions not expected to exceed \$25,000 should only be issued when obtaining electronic or oral quotations is not considered economical or practical. Written solicitations shall be issued for construction contracts over \$2,000.

(4) If using simplified acquisition procedures and not using FACNET, maximum practicable competition ordinarily can be obtained without soliciting quotations or offers from sources outside the local trade area. Generally, solicitation of at least three sources may be considered to promote competition to the maximum extent practicable if the contract action does not require synopsis pursuant to 5.101 and 5.202. If practicable, two sources not included in the previous solicitation should be requested to furnish quotations. The following factors influence the number of quotations required in connection with any particular purchase:

(i) The nature of the article or service to be purchased and whether it is highly competitive and readily available in several makes or brands, or is relatively noncompetitive.

(ii) Information obtained in making recent purchases of the same or similar item.

(iii) The urgency of the proposed purchase.

(iv) The dollar value of the proposed purchase.

(v) Past experience concerning specific dealers' prices.

(5) Contracting officers may solicit from one source if the contracting officer determines that the circumstances of the contract action deem only one source reasonably available.

(6) Contracting officers shall not limit solicitations to suppliers of well-known and widely distributed makes or brands (see 11.104), or solicit quotations on a personal preference basis.

(7) In accordance with 14.408-3, contracting officers shall make every effort to obtain trade and prompt payment discounts. However, prompt payment discounts shall not be considered in the evaluation of quotations.

(8)(i) Each contracting office should maintain a source list (or lists, if more convenient). New supply sources for the list may be obtained from a variety of sources, including the Central Contractor Registration (CCR) data base (see 4.503). The list should identify the status of each source (when the status is made known to the contracting office) in the following categories:

(A) Small business.

(B) Small disadvantaged business.

(C) Women-owned small business.

(ii) The status information may be used as the basis to ensure that small business concerns are given opportunities to respond to solicitations issued using simplified acquisition procedures.

(b) *Evaluation of quotes or offers.*

(1) Contracting officers may evaluate quotes or offers based on price alone or price and other factors (see 13.106-2(a)(1)). Contracting officers are encouraged to use best value. Formal evaluation plans, conduct of discussions, and scoring of quotes or offers are not required. Evaluation of other factors, such as past performance, does not require the creation or existence of a formal data base, but may be based on such information as the contracting officer's knowledge of and previous experience with the item or service being purchased, customer surveys, or other reasonable basis. When evaluating quotes or offers on price and

other factors, the evaluation must be performed based on the criteria established in the solicitation.

(2) Standing price quotations may be used in lieu of obtaining individual quotations each time a purchase is contemplated. In such cases, contracting officers shall ensure that the pricing information is current and that the Government obtains the benefit of maximum discounts before award is made.

(3) Contracting officers shall evaluate quotations inclusive of transportation charges from the shipping point of the supplier to the delivery destination.

(4) Contracting officers shall comply with the policy in 7.202 relating to economic purchase quantities, when practicable.

(c) *Award.* (1) Occasionally an item can be obtained only from a supplier who quotes a minimum order price or quantity that either unreasonably exceeds stated quantity requirements or results in an unreasonable price for the quantities required. In these instances, the contracting officer should inform the requiring activity of all facts regarding the quotation and ask it to confirm or alter its requirement. The file shall be documented to support the final action taken.

(2) Except for awards conducted through FACNET, notification to unsuccessful suppliers shall be given only if requested.

(3) If a supplier requests information on an award which was based on factors other than price, a brief explanation of the basis for the contract award decision shall be provided (see 15.1002(c)(2)).

(d) *Data to support purchases.* (1) The determination that a proposed price is reasonable should be based on competitive quotations/offers. If only one response is received, a statement shall be included in the contract file giving the basis of the determination of fair and reasonable price. The determination may be based on market research, a comparison of the proposed price with prices found reasonable on previous purchases, current price lists, catalogs, advertisements, similar items in a related industry, value analysis, the contracting officer's personal knowledge of the item being purchased, comparison to an independent government estimate, or any other reasonable basis.

(2) When other than price-related factors are considered in selecting the supplier (see 13.106-2(b)(1)), the contracting officer shall document the file to support the final award decision.

(3) If only one source is solicited, an additional notation shall be made to explain the absence of competition,

except for acquisition of utility services available from only one source.

(4) Documentation should be kept to a minimum. The following illustrate the extent to which quotation/offer information should be recorded:

(i) *Oral solicitations.* The contracting office should establish and maintain informal records of oral price quotations in order to reflect clearly the propriety of placing the order at the price paid with the supplier concerned. In most cases, this will consist merely of showing the names of the suppliers contacted and the prices and other terms and conditions quoted by each.

(ii) *Written solicitations (see 2.101).* Written records of solicitations/offers may be limited to notes or abstracts to show prices, delivery, references to printed price lists used, the supplier or suppliers contacted, and other pertinent data.

(5) Purchasing offices shall retain data supporting purchases (paper or electronic) to the minimum extent and duration necessary for management review purposes (see subpart 4.8) when using simplified acquisition procedures.

34. Section 13.107 is revised to read as follows:

13.107 Solicitation forms.

(a) The SF 1449, Solicitation/Contract/Order for Commercial Items, shall be used by the contracting officer when issuing a paper solicitation for commercial items, except when using a combined synopsis/solicitation (see subpart 12.6). This form may be used for other than commercial items.

(b) Except when quotations are solicited via FACNET, other electronic means, or orally, the SF 1449; SF 18, Request for Quotations; or other agency authorized form/automated format may be used for other than commercial items.

(c) OF 336, Continuation Sheet, may be used when additional space is needed.

35. Section 13.108 is amended by revising the first sentence of paragraph (b) to read as follows:

13.108 Legal effect of quotations.

* * * * *

(b) When appropriate, the contracting officer may ask the supplier to indicate acceptance of an order by notification to the Government, preferably in writing, as defined at 2.101. * * *

* * * * *

13.109 [Amended]

36. Section 13.109 is amended in the first sentence by inserting "task or" before "delivery orders", and in the beginning of the second sentence by removing "Therefore,".

37. Section 13.110 is amended by revising paragraphs (a)(2) and (a)(3); by removing paragraphs (a)(8), (a)(9), (a)(11), (a)(12), and (a)(13), and redesignating (a)(10) as (a)(8) to read as follows:

13.110 Federal Acquisition Streamlining Act of 1994 (FASA) list of inapplicable laws.

(a) * * *

(2) 40 U.S.C. 270a (Miller Act). (Although the Miller Act no longer applies to contracts at or below the simplified acquisition threshold, alternative forms of payment protection for suppliers of labor and material are still required if the contract exceeds \$25,000.)

(3) 40 U.S.C. 327 to 333 (Contract Work Hours and Safety Standards Act).

* * * * *

38. Section 13.111 is amended by revising the introductory text and paragraph (a); removing paragraph (b) and redesignating the existing paragraphs (c) through (i) as paragraphs (b) through (h); revising the newly designated paragraph (e); in the newly designated paragraph (g) by removing "and"; in the newly designated paragraph (h) by removing the "period" and inserting "; and"; and by adding a new paragraph (i) to read as follows:

13.111 Inapplicable provisions and clauses.

While certain statutes still apply, pursuant to Public Law 103-355, the following provisions and clauses are inapplicable to contracts and subcontracts at or below the simplified acquisition threshold—

(a) Clauses implementing Miller Act requirements in 28.102-3;

* * * * *

(e) 52.215-2, Audit and Records—Negotiation;

* * * * *

(i) 52.223-8, Estimate of Percentage of Recovered Material for Designated Items to be Used in the Performance of the Contract.

39. Section 13.202 is revised to read as follows:

13.202 Establishment of blanket purchase agreements (BPAs).

(a) The following are circumstances under which contracting officers may establish BPAs:

(1) There is a wide variety of items in a broad class of supplies or services that are generally purchased, but the exact items, quantities, and delivery requirements are not known in advance and may vary considerably.

(2) There is a need to provide commercial sources of supply for one or more offices or projects in a given area

that do not have or need authority to purchase otherwise.

(3) Use of this procedure would avoid the writing of numerous purchase orders.

(b) After determining a BPA would be advantageous, contracting officers shall—

(1) Establish the parameters to limit purchases to individual items or commodity groups or classes, or permit the supplier to furnish unlimited supplies or services; and

(2) Consider suppliers whose past performance has shown them to be dependable, who offer good quality at consistently lower prices, and who have provided numerous purchases at or below the simplified acquisition threshold.

(c) BPAs may be established with—

(1) More than one supplier for supplies or services of the same type to provide maximum practicable competition;

(2) A single firm from which numerous individual purchases at or below the simplified acquisition threshold will likely be made in a given period; or

(3) Federal Supply Schedule contractors and Federal Information Processing Multiple Award Schedule contractors (see part 39), if not inconsistent with the terms of the applicable schedule contract.

(d) BPAs should be prepared without a purchase requisition and only after contacting suppliers to make the necessary arrangements for—

(1) Securing maximum discounts;

(2) Documenting individual purchase transactions;

(3) Periodic billings; and

(4) Incorporating other necessary details.

(e) BPAs shall be prepared on the forms specified in 13.505(a) and shall not cite accounting and appropriation data (see 13.204(e)(4)).

(1) The following terms and conditions are mandatory:

(i) *Description of agreement.* A statement that the supplier shall furnish supplies or services, described in general terms, if and when requested by the contracting officer (or the authorized representative of the contracting officer) during a specified period and within a stipulated aggregate amount, if any.

(ii) *Extent of obligation.* A statement that the Government is obligated only to the extent of authorized purchases actually made under the BPA.

(iii) *Pricing.* A statement that the prices to the Government shall be as low or lower than those charged the supplier's most favored customer for comparable quantities under similar

terms and conditions, in addition to any discounts for prompt payment.

(iv) *Purchase limitation.* A statement that specifies the dollar limitation for each individual purchase under the BPA (see 13.204(b)).

(v) *Individuals authorized to purchase under the BPA.* A statement that a list of individuals authorized to purchase under the BPA, identified either by title of position or by name of individual, organizational component, and the dollar limitation per purchase for each position title or individual shall be furnished to the supplier by the contracting officer.

(vi) *Delivery tickets.* A requirement that all shipments under the agreement, except subscriptions and other charges for newspapers, magazines, or other periodicals, shall be accompanied by delivery tickets or sales slips which shall contain the following minimum information:

- (A) Name of supplier.
- (B) BPA number.
- (C) Date of purchase.
- (D) Purchase number.
- (E) Itemized list of supplies or services furnished.
- (F) Quantity, unit price, and extension of each item, less applicable discounts (unit prices and extensions need not be shown when incompatible with the use of automated systems; provided, that the invoice is itemized to show this information).

(G) Date of delivery or shipment.

(vii) *Invoices.* One of the following statements shall be included (except that the statement in paragraph (e)(1)(vii)(C) of this section should not be used if the accumulation of the individual invoices by the Government materially increases the administrative costs of this purchase method):

(A) A summary invoice shall be submitted at least monthly or upon expiration of this BPA, whichever occurs first, for all deliveries made during a billing period, identifying the delivery tickets covered therein, stating their total dollar value, and supported by receipt copies of the delivery tickets.

(B) An itemized invoice shall be submitted at least monthly or upon expiration of this BPA, whichever occurs first, for all deliveries made during a billing period and for which payment has not been received. These invoices need not be supported by copies of delivery tickets.

(C) When billing procedures provide for an individual invoice for each delivery, these invoices shall be accumulated; provided, that—

- (1) A consolidated payment will be made for each specified period; and
- (2) The period of any discounts will commence on the final date of the

billing period or on the date of receipt of invoices for all deliveries accepted during the billing period, whichever is later.

(D) An invoice for subscriptions or other charges for newspapers, magazines, or other periodicals shall show the starting and ending dates and shall state either that ordered subscriptions have been placed in effect or will be placed in effect upon receipt of payment.

(2) If the fast payment procedure is used, the requirements stated in 13.303 shall be included.

13.203 and 13.203-1 [Removed]

13.203-2 [Redesignated as 13.203]

40. Sections 13.203 and 13.203-1 are removed, and section 13.203-2 is redesignated as 13.203 and amended in paragraph (b) by revising the citation "22.305(a)(1)" to read "22.305(a)".

41. Section 13.204 is amended by revising paragraph (b) and the second sentence of paragraph (c); and in paragraphs (e) introductory text, (e)(1), and (e)(4) by removing the words "under BPAs". The revised text reads as follows:

13.204 Purchases under Blanket Purchase Agreements.

* * * * *

(b) Unless otherwise specified in agency regulations, individual purchases under BPAs, except those BPAs established in accordance with 13.202(c)(3), shall not exceed \$100,000.

(c) * * * The requirements of 13.105, 13.106-2, and subpart 19.5 also apply to each order.

* * * * *

42. Section 13.302 is amended by revising paragraph (a); and in paragraph (b) by removing the second sentence to read as follows:

13.302 Conditions for use.

* * * * *

(a) Individual purchasing instruments do not exceed \$25,000, except that executive agencies may permit higher dollar limitations for specified activities or items on a case-by-case basis.

* * * * *

13.303 [Amended]

43. Section 13.303 is amended by removing paragraphs (a) and (b)(4); by removing the designation of paragraph (b), and redesignating paragraphs (b)(1), (b)(2), and (b)(3) as paragraphs (a), (b), and (c).

44. Subpart 13.4, consisting of sections 13.401, 13.402, 13.403, and 13.404, is revised to read as follows:

Subpart 13.4—Imprest Fund

13.401 General.

This subpart prescribes policies and procedures for using imprest funds and third party drafts to acquire and pay for supplies or services. Related policies and regulations concerning the establishment of and accounting for imprest funds and third party drafts, including the responsibilities of designated cashiers and alternates, are contained in Part IV of the Treasury Financial Manual for Guidance of Departments and Agencies, Title 7 of the General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies, and the agency implementing regulations. Agencies shall also be guided by the Manual of Procedures and Instructions for Cashiers, issued by the Financial Management Service, Department of the Treasury.

13.402 Agency responsibilities.

Each agency using imprest funds and third party drafts shall—

(a) Periodically review and determine whether there is a continuing need for each fund or third party draft account established, and that amounts of those funds or accounts are not in excess of actual needs;

(b) Take prompt action to have imprest funds or third party draft accounts adjusted to a level commensurate with demonstrated needs whenever circumstances warrant such action; and

(c) Develop and issue appropriate implementing regulations. These regulations shall include (but are not limited to) procedures covering—

- (1) Designation of personnel authorized to make purchases using imprest funds or third party drafts; and
- (2) Documentation of purchases using imprest funds or third party drafts, including documentation of—
 - (i) Receipt and acceptance of supplies and services by the Government;
 - (ii) Receipt of cash or third party draft payments by the suppliers; and
 - (iii) Cash advances and reimbursements.

13.403 Conditions for use.

Imprest funds or third party drafts may be used for purchases when—

(a) The imprest fund transaction does not exceed \$500 or such other limits as have been approved by the agency head;

(b) The third party draft transaction does not exceed \$2,500, unless authorized at a higher level in accordance with Treasury restrictions;

(c) The use of imprest funds or third party drafts is considered to be advantageous to the Government; and

(d) The use of imprest funds or third party drafts for the transaction otherwise complies with any additional conditions established by agencies and with the policies and regulations referenced in 13.401.

13.404 Procedures.

(a) Each purchase using imprest funds or third party drafts shall be based upon an authorized purchase requisition, contracting officer verification statement, or other agency approved method of ensuring adequate funds are available for the purchase.

(b) Normally, purchases should be placed orally and without soliciting competition if prices are considered reasonable.

(c) Purchases shall be distributed equitably among qualified suppliers.

(d) Prompt payment discounts shall be solicited.

(e) Any agency-authorized purchase order form or Standard Form 1165, Receipt for Cash-Subvoucher, may be used if a written order is considered necessary (e.g., if required by the supplier for discount, tax exemption, or other reasons). If a purchase order is used for this purpose, it shall be endorsed "Payment to be made from Imprest Fund" (or "payment to be made from third-party draft," as appropriate).

(f) The individual authorized to make purchases using imprest funds or third party drafts shall—

(1) Furnish to the imprest fund or third party draft cashier a copy of the document required under 13.404(a) annotated to reflect—

(i) That an imprest fund or third party draft purchase has been made;

(ii) The unit prices and extensions;

(iii) The supplier's name and address; and

(iv) The date of anticipated delivery.

(2) Require the supplier to include with delivery of the supplies an invoice, packing slip, or other sales instrument giving—

(i) The supplier's name and address;

(ii) List and quantity of items;

(iii) Unit prices and extensions; and

(iv) Cash discount, if any.

45. Section 13.501 is amended by revising paragraphs (a), (c), (d), and (g) to read as follows:

13.501 General.

(a) Except as provided under the unpriced purchase order method (see 13.502), purchase orders generally are issued on a fixed-price basis. See part 12 for acquisition of commercial items.

* * * * *

(c) Purchase orders shall specify the quantity of supplies or scope of services ordered.

(d) Inspections under simplified acquisition procedures shall be as prescribed in part 46. Orders generally will provide that inspection and acceptance will be at destination, and source inspection should be specified only if required by part 46. If inspection and acceptance are to be performed at destination, advance copies of the purchase order, or equivalent notice, shall be furnished to consignee(s) for material receipt purposes. Receiving reports shall be accomplished immediately upon receipt and acceptance of material.

* * * * *

(g) The contracting officer's signature (see 2.101) on purchase orders shall be in accordance with 4.101. Facsimile and electronic signature may be used in the production of purchase orders by automated methods.

* * * * *

13.502 [Amended]

46. Section 13.502 is amended by removing paragraph (b)(1) and redesignating paragraphs (b)(2) and (b)(3) as (b)(1) and (b)(2), respectively; in paragraph (c) by removing the parenthetical at the end of the first sentence; and at the end of the last sentence of paragraph (c) by removing the parenthetical "(see 13.106-2(a))" and inserting "(see 13.106-2(d))."

47. Section 13.503 is amended by revising paragraph (a) to read as follows:

13.503 Obtaining contractor acceptance and modifying purchase orders.

(a) When it is desired to consummate a binding contract between the parties before the contractor undertakes performance, the contracting officer shall require written (see 2.101) acceptance of the purchase order by the contractor.

* * * * *

48. Section 13.505 is revised to read as follows:

13.505 Purchase order and related forms.

(a) The following are multipurpose forms used for negotiated purchases of supplies or services, delivery or task orders, inspection and receiving reports, and invoices:

(1) SF 1449 shall be used for commercial items.

(2) For other than commercial items, SF 1449, OF 347, or an agency form/automated format may be used. Agencies may print on the latter forms the clauses considered to be generally suitable for purchases.

(3) OF 348 or an agency form/automated format may be used when additional space is needed.

(b) SF 44 is a pocket-size purchase order form designed primarily for on-the-spot, over-the-counter purchases of supplies and nonpersonal services while away from the purchasing office or at isolated activities. It is a multipurpose form that can be used as a purchase order, receiving report, invoice, and public voucher.

(1) SF 44 may be used if all of the following conditions are satisfied:

(i) The amount of the purchase is at or below the micro-purchase threshold, except for purchases made under unusual and compelling urgency or in support of contingency operations. Agencies may establish higher dollar limitations for specific activities or items.

(ii) The supplies or services are immediately available.

(iii) One delivery and one payment will be made.

(iv) Its use is determined to be more economical and efficient than use of other simplified acquisition methods.

(2) General procedural instructions governing the use of SF 44 are printed on the form and on the inside front cover of each book of forms.

(3) Since there is, for all practical purposes, simultaneous placing of purchase orders on SF 44 and delivery of the items ordered, clauses are not required for purchases using this form.

(4) Agencies shall provide adequate safeguards regarding the control of forms and accounting for purchases.

13.505-1 through 13.505-3, and 13.506 [Removed]

49. Sections 13.505-1, 13.505-2, 13.505-3, and 13.506 are removed.

13.507 [Redesignated as 13.506]

50. Section 13.507 is redesignated as 13.506.

Subpart 13.6—[Removed]

51. Subpart 13.6, Micro-Purchase, consisting of 13.601, 13.602, and 13.603, is removed.

PART 15—CONTRACTING BY NEGOTIATION

15.401 [Amended]

52. Section 15.401 is amended in paragraph (a) by deleting the parenthetical "(see Part 13)".

15.602 [Amended]

53. Section 15.602 is amended in paragraph (b) by removing the parenthetical "(see Part 13)".

PART 16—TYPES OF CONTRACTS

54. Section 16.000 is amended by revising the first sentence to read as follows:

16.000 Scope of part.

This part describes types of contracts that may be used in acquisitions. * * *

55. Section 16.103 is amended by revising paragraph (d)(1) to read as follows:

16.103 Negotiating contract type.

* * * * *

(d) * * * (1) fixed-price acquisitions made under simplified acquisition procedures, * * *

16.105 [Amended]

56. Section 16.105 is amended in paragraph (a) by removing the parenthetical "(see Part 13)".

16.703 [Amended]

57. Section 16.703 is amended at the end of paragraph (c)(1)(vi) by removing "(b)" from the reference "13.303(b)".

PART 19—SMALL BUSINESS PROGRAMS**19.303 [Amended]**

58. Section 19.303 is amended in paragraph (a) by removing "in 13.101".

19.501 [Amended]

59. Section 19.501 is amended in paragraph (d) by removing "in 13.101".

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT AGENCIES**22.1003-4 [Amended]**

60. Section 22.1003-4 is amended in paragraph (b)(4)(iii)(B) by removing "22.1005 and" in the first parenthetical.

22.1005 [Removed]

61. Section 22.1005 is removed and reserved.

22.1022 [Amended]

62. Section 22.1022 is amended in the first sentence by removing the words "52.222-40, Service Contract Act of 1965, as amended—Contracts of \$2,500 or Less, or the clause at".

PART 23—ENVIRONMENT CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

63. Section 23.405 is amended to revise paragraph (b)(1), and to amend paragraphs (b)(2) and (b)(3) by adding "exceeding the simplified acquisition threshold" following the word "solicitations". The revised text reads as follows:

23.405 Solicitation provisions and contract clause.

* * * * *

(b)(1) The contracting officer shall insert the provision at 52.223-8,

Estimate of Percentage of Recovered Material for Designated Items to be Used in the Performance of the Contract, in solicitations exceeding the simplified acquisition threshold that contain a requirement for an EPA designated item.
* * * * *

PART 25—FOREIGN ACQUISITION

64. Section 25.302 is amended by revising paragraph (b)(1) to read as follows:

§ 25.302 Policy.

* * * * *

(b) * * *

(1) The estimated cost of the product or service is at or below the simplified acquisition threshold.
* * * * *

PART 29—TAXES**§ 29.402-1 [Amended]**

65. Section 29.402-1 is amended in paragraphs (a) and (b) by removing the phrase "dollar amount in 13.000" and inserting in their place "simplified acquisition threshold".

PART 32—CONTRACT FINANCING**§ 32.901 [Amended]**

66. Section 32.901 is amended by removing from the first parenthetical "as defined in Subpart 13.1".

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEERING CONTRACTS**§ 36.701 [Amended]**

67. Section 36.701 is amended in paragraph (c) by removing the phrase "small purchases documents (see Part 13, Small Purchases and Other Simplified Purchase Procedures)" and inserting in its place "simplified acquisitions (see part 13)".

PART 47—TRANSPORTATION**§ 47.205 [Amended]**

68. Section 47.205 is amended in paragraph (b) by removing the words "at 13.101".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**§ 52.203-6 [Amended]**

69. Section 52.203-6 is amended by revising the clause date to read "[JUL 1995]".

§ 52.213-2 [Amended]

70. Section 52.213-2 is amended in the introductory text by revising the citation "13.507(b)" to read "13.506(b)".

§ 52.213-3 [Amended]

71. Section 52.213-3 is amended in the introductory text by revising the citation "13.507(c)" to read "13.506(c)".

§ 52.215-2 [Amended]

72. Section 52.215-2 is amended in the clause heading by removing "(OCT 1995)" and inserting (AUG 1996); and in the introductory text of paragraph (g) by removing the words "in FAR Part 13."

§ 52.222-40 [Removed]

73. Section 52.222-40 is removed and reserved.

§ 52.227-2 [Amended]

74. Section 52.227-2 is amended by revising the date of the clause to read "(AUG 1996)"; and in paragraph (c) by removing the phrase "dollar amount set forth in 13.000 of the Federal Acquisition Regulation (FAR)." and inserting in its place "simplified acquisition threshold at FAR 2.101."

§ 52.244-2 [Amended]

75. Section 52.244-2 is amended in Alternate I of the clause by removing (JUL 1995)" and inserting "(AUG 1996)"; and in paragraph (a)(2) of Alternate I by removing the words "in Part 13 of the Federal Acquisition Regulation."

§ 52.247-64 [Amended]

76. Section 52.247-64 is amended in the clause heading by removing "(JUL 1995)" and inserting "(AUG 1996)"; in paragraph (d) by removing the words "as described in FAR Part 13"; and in paragraph (e)(1) by removing the words "as defined in FAR Part 13."

PART 53—FORMS

77. Section 53.205-1 is revised to read as follows:

§ 53.205-1 Paid advertisements.

SF 1449, prescribed in 53.212, shall be used to place orders for paid advertisements as specified in 5.503.

78. Section 53.213 is revised to read as follows:

§ 53.213 Simplified acquisition procedures (SF's 18, 30, 44, 1165, 1449, OF's 336, 347, 348).

The following forms are prescribed as stated in this section for use in simplified acquisition procedures, orders under existing contracts or agreements, and orders from required sources of supplies and services:

(a) *SF 18 (REV. 6/95), Request for Quotations*, or *SF 1449, (10/95 Ed.) Solicitation/Contract/Order for Commercial Items*. SF 18 prescribed in 53.215-1(a) or SF 1449 prescribed in 53.212 (or approved agency forms/

automated formats) shall be used in obtaining price, cost, delivery, and related information from suppliers as specified in 13.107.

(b) *SF 30 (REV. 10/83), Amendment of Solicitation/Modification of Contract.* SF 30, prescribed in 53.243, may be used for modifying purchase orders, as specified in 13.503(b).

(c) *SF 44 (REV. 10/83), Purchase Order Invoice Voucher.* SF 44 is prescribed for use in simplified acquisition procedures, as specified in 13.505(b).

(d) *SF 1165 (6/83 Ed.), Receipt for Cash-Subvoucher.* SF 1165 (GAO) may be used for imprest fund purchases, as specified in 13.404(e).

(e) *OF 336 (4/86 Ed.), Continuation Sheet.* OF 336, prescribed in 53.214(h), may be used as a continuation sheet in solicitations, as specified in 13.107(c).

(f) *SF 1449, (10/95 Ed.) Solicitation/Contract/Order for Commercial Items* prescribed in 53.212, *OF 347 (REV. 6/95), Order for Supplies or Services*, and *OF 348 (10/83 Ed.), Order for Supplies or Services-Schedule Continuation.* SF 1449, OF's 347 and 348 (or approved agency forms/automated formats) may be used as follows:

(1) To accomplish acquisitions under simplified acquisition procedures, as specified in 13.505.

(2) To establish blanket purchase agreements (BPA's), as specified in 13.202, and to make purchases under BPA's, as specified in 13.204(e).

(3) To issue orders under basic ordering agreements, as specified in 16.703(d)(2)(i).

(4) As otherwise specified in this chapter (e.g., see 5.503(a)(2), 8.405-2, 36.701(c), and 51.102(e)(3)(ii)).

§ 53.216-1, 53.236-1, and 53.251
[Amended]

79. The following sections are amended by removing the reference "53.213(e)" and inserting "53.213(f)":

- a. 53.216-1;
- b. 53.236-1(f); and
- c. 53.251.

[FR Doc. 96-18499 Filed 7-25-96; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Parts 3 and 52

[FAC 90-40; FAR Case 96-300; Item III]

RIN 9000-AH11

**Federal Acquisition Regulation;
Gratuities**

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

ACTION: Interim rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 801 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104-106), which amended 10 U.S.C. 2207, generally referred to as the Gratuities Act, to make it applicable only to contracts exceeding the simplified acquisition threshold. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

DATES: *Effective Date:* July 26, 1996.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before September 24, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 18th & F Streets, NW., Room 4037, Washington, DC 20405.

Please cite FAC 90-40, FAR case 96-300, in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph DeStefano at (202) 501-1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-40, FAR case 96-300.

SUPPLEMENTARY INFORMATION:

A. Background

Section 801 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104-106), added a

subsection (b) to 10 U.S.C. 2207, Expenditure of appropriations: limitation. Prior to its amendment, 10 U.S.C. 2207 prohibited the spending of DoD appropriated money (other than under a contract for personal services) unless the Government had an express right to terminate the contract if the contractor offered or gave a gratuity to a Government employee to obtain the contract or to receive favorable treatment under the contract. Subsection (b) of 10 U.S.C. 2207 exempts contracts which do not exceed the simplified acquisition threshold from this prohibition.

FAR Subpart 3.2, Contractor Gratuities to Government Personnel, implements 10 U.S.C. 2207 and applies to all executive agencies except for that portion concerning exemplary damages, which applies only to DOD. FAR Subpart 3.2 prescribed the use of FAR clause 52.203-3, Gratuities, in solicitations and contracts, except those for personal services and those between military departments or defense agencies and foreign governments that do not obligate DOD appropriated funds. This interim rule amends FAR Subpart 3.2 to exempt solicitations and contracts which do not exceed the simplified acquisition threshold from the prescribed use of the clause.

B. Regulatory Flexibility Act

This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because only a small number of Federal contractors have been subject to action under the Gratuities clause. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601 *et seq.* (FAC 90-40, FAR case 96-300), in correspondence.

C. Paperwork Reduction Act

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

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to implement Section 801 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104-106), which was effective upon enactment (February 10, 1996). However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 3 and 52

Government procurement.

Dated: July 16, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 3 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 3 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 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. Section 3.202 is revised to read as follows:

3.202 Contract clause.

The contracting officer shall insert the clause at 52.203-3, Gratuities, in solicitations and contracts with a value exceeding the simplified acquisition threshold, except those for personal services and those between military departments or defense agencies and foreign governments that do not obligate any funds appropriated to the Department of Defense.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.203-3 is amended by revising the introductory text to read as follows:

52.203-3 Gratuities.

As prescribed in 3.202, insert the following clause:

* * * * *

[FR Doc. 96-18500 Filed 7-25-96; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 6 and 26

[FAC 90-40; FAR Case 93-303; Item IV]

RIN 9000-AG77

Federal Acquisition Regulation; Disaster Relief Act

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to provide a preference for local sources in the award of contracts for major disaster or emergency assistance activities. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: September 24, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501-3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-40, FAR case 93-303.

SUPPLEMENTARY INFORMATION:

A. Background

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121, *et seq.*) establishes a preference for local sources in the award of Federal contracts for major disaster or emergency assistance activities. This final rule amends FAR 6.302-5, and adds FAR Subpart 26.2 to implement the requirements of Section 5150.

A proposed rule was published in the Federal Register at 60 FR 63876, December 12, 1995. No comments were received in response to the proposed rule.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial

number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule only applies to acquisitions conducted during the term of a Presidential declaration of major disaster or emergency.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 6 and 26

Government procurement.

Dated: July 16, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 6 and 26 are amended as set forth below:

1. The authority citation for 48 CFR Parts 6 and 26 continues to read as follows:

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

PART 6—COMPETITION REQUIREMENTS

2. Section 6.302-5 is amended by removing "or" from the end of paragraph (b)(3); removing the period from the end of paragraph (b)(4) and inserting "; or"; and adding paragraph (b)(5) to read as follows:

6.302-5 Authorized or required by statute.

* * * * *

(b) * * *

(5) The Robert T. Stafford Disaster Relief and Emergency Assistance Act—42 U.S.C. 5150 (see subpart 26.2).

* * * * *

PART 26—OTHER SOCIOECONOMIC PROGRAMS

3. Subpart 26.2 is added to read as follows:

Subpart 26.2—Disaster or Emergency Assistance Activities

Sec.

26.200 Scope of subpart.

26.201 Policy.

26.200 Scope of subpart.

This subpart implements 42 U.S.C. 5150, which provides a preference for local organizations, firms, and individuals when contracting for major disaster or emergency assistance activities (see 6.302-5).

26.201 Policy.

(a) When contracting under this subpart for major disaster or emergency assistance activities, such as debris clearance, distribution of supplies, or reconstruction, preference shall be given, to the extent feasible and practicable, to those organizations, firms, or individuals residing or doing business primarily in the area affected by such major disaster or emergency.

(b) The authority to provide preference under this subpart applies only to those acquisitions, including those which do not exceed the simplified acquisition threshold, conducted during the term of a major disaster or emergency declaration made by the President of the United States under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*).

[FR Doc. 96-18501 Filed 7-25-96; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Part 9**

[FAC 90-40; FAR Case 95-007; Item V]

RIN 9000-AG66

**Federal Acquisition Regulation;
Responsibility Determinations**

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to emphasize the use of commercial sources of information in determining the responsibility of prospective contractors. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: September 24, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph DeStefano at (202) 501-1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755.

Please cite FAC 90-40, FAR case 95-007.

SUPPLEMENTARY INFORMATION:**A. Background**

This final rule implements a recommendation of the Department of Defense Procurement Process Reform Process Action Team. The rule amends FAR Subpart 9.1, Responsible Prospective Contractors, to state that contracting officers should use commercial sources of supplier information in making determinations of responsibility, and to clarify that preaward surveys should be requested only if sufficient relevant information is unavailable from other sources.

A proposed rule was published in the Federal Register at 60 FR 55960, November 3, 1995, and amended at 60 FR 62806, December 7, 1995. Three comments were received and were considered in the development of the final rule.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely emphasizes the use of commercial sources of information in determining the responsibility of prospective contractors.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 9

Government procurement.

Dated: July 16, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 9 is amended as set forth below:

**PART 9—CONTRACTOR
QUALIFICATIONS**

1. The authority citation for 48 CFR Part 9 continues to read as follows:

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

2. Section 9.105-1 is amended in the introductory text of paragraph (c) by removing from the parenthetical “48 CFR Part 42”; by redesignating paragraphs (c)(4) through (c)(6) as (c)(5) through (c)(7), and adding a new paragraph (c)(4) to read as follows:

9.105-1 Obtaining information.

* * * * *

(c) * * *

(4) Commercial sources of supplier information of a type offered to buyers in the private sector.

* * * * *

3. Section 9.106-1 is amended by revising paragraph (a) to read as follows:

9.106-1 Conditions for preaward surveys.

(a) A preaward survey is normally required only when the information on hand or readily available to the contracting officer, including information from commercial sources, is not sufficient to make a determination regarding responsibility. In addition, if the contemplated contract will have a fixed price at or below the simplified acquisition threshold or will involve the acquisition of commercial items (see part 12), the contracting officer should not request a preaward survey unless circumstances justify its cost.

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[FR Doc. 96-18502 Filed 7-25-96; 8:45 am]

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DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Part 16**

[FAC 90-40; FAR Case 94-711; Item VI]

RIN 9000-AG50

**Federal Acquisition Regulation; Task
and Delivery Orders**

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

ACTION: Interim rule adopted as final with changes.

SUMMARY: This final rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994, Public Law 103-355 (the Act). The Federal Acquisition Regulatory Council is amending the Federal Acquisition Regulation (FAR) regarding the scope of a multiple award preference for

indefinite-quantity contracts. This final rule provides that the multiple award preference established by the FAR does not apply to architect-engineer contracts subject to the procedures of the FAR. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, but is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: July 26, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Edward McAndrew at (202) 501-1474 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-40, FAR case 94-711.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule amending FAR Subpart 16.5 was published in the Federal Register at 60 FR 14346, March 16, 1995. The proposed rule reflected changes brought about by sections 1004 and 1054 of the Act. Sections 1004 and 1054 of the Act created a multiple award preference for indefinite-quantity contracts. The proposed rule published in the Federal Register excluded contracts subject to FAR Parts 36, 38, 39, and 41 from the multiple award preference. With respect to Parts 36 and 39, the exclusions were based upon the "Provisions Not Affected" subsection in sections 1004 and 1054 of the Act. The Special Contracting Team intended to give these provisions meaning by exempting acquisitions under the Brooks Architect-Engineers Act and the Brooks Automatic Data Processing Equipment Act from the multiple award preference. Contracts subject to Part 38 were exempted from the coverage because the Act specifically exempted GSA's Federal Supply Schedule program. Contracts subject to Part 41 were exempted because the Team believed that multiple awards were inconsistent with the monopolistic nature of some utility services.

A final rule implementing sections 1004 and 1054 of the Act was published in the Federal Register at 60 FR 49723, September 26, 1995. However, an interim rule was published along with the final rule which modified the scope of the multiple award preference. The interim rule added a new FAR section 16.500 to provide that the multiple award preference established by Subpart 16.5 could be used to acquire: (1) Architect-engineer services, provided the selection of contractors and placement of orders is consistent with Subpart 36.6; and (2) Federal

Information Processing resource requirements that are not satisfied under the Federal Supply Schedule program, provided the selection of contractors and placement of orders is consistent with Part 39. The interim rule also extended the multiple award preference to Part 36 construction contracts and Part 41 utility services. Although the change was not considered a significant revision within the meaning of FAR 1.501 and Public Law 98-577, the FAR Council made a determination to solicit public comments before finalizing this amendment to FAR Subpart 16.5.

As a result of public comments on the interim rule, the FAR Council has revised the scope of the rule to clarify that the multiple award preference established by FAR Subpart 16.5 does not apply to architect-engineer contracts subject to the procedures of FAR Subpart 36.6. However, this revision to the rule does not prohibit agencies from making multiple awards for architect-engineer services, provided the selection of contractors and placement of orders is consistent with Subpart 36.6. This final rule also provides that the procedures contained in Subpart 16.5 may be used to acquire Federal Information Processing resource requirements that are not satisfied under the Federal Supply Schedule program, provided the selection of contractors and placement of orders is consistent with Part 39. The final rule retains the multiple award preference with respect to construction contracts subject to Part 36 and utility services subject to Part 41. However, the final rule recognizes that there may be circumstances when multiple awards would not be appropriate and, thus, provides contracting officers the discretion to determine whether multiple awards should be made.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, applies to this final rule and a Final Regulatory Flexibility Analysis (FRFA) has been performed. A copy of the FRFA may be obtained from the FAR Secretariat.

C. Paperwork Reduction Act

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

D. Public Comments

On September 26, 1995, an interim rule was published in the Federal Register at 60 FR 49723. In response to the interim rule, 22 comments were received. The comments of all respondents were considered in developing the final rule.

A significant number of comments recommended that certain types of fixed-price construction contracts, commonly known as "Job Order Contracts" and "Simplified Acquisition of Base Engineer Requirements" (SABER) contracts should be excluded from the scope of the multiple award preference. These types of contracts typically include Government-established unit prices for specific line items needed to complete the requirements of the delivery order. Award determinations are made by selecting the mix of line items to be used for a project and multiplying the mix of line items by the coefficient bid by the offeror. Several comments argued that the application of the multiple award preference to Job Order and SABER contracts could result in higher overall prices to the Government. These comments argued that if multiple Job Order or SABER contracts are made, offerors may be inclined to raise their bidding coefficient to take into consideration the fact that potential delivery order awards may be spread out among several firms rather than one firm receiving all the delivery orders. The comments further argue that multiple awards may cause a duplication of contract overhead costs (site managers, offices, equipment, etc.) and that any economies resulting from a single award would be lost, thus resulting in higher costs to the Government.

It is recognized that there may be circumstances when multiple awards under a Job Order or SABER contract may not be appropriate. In such cases, the rule recognizes that multiple awards should not be made. For example, the rule provides that multiple awards should not be made when the contracting officer determines, based on the contracting officer's knowledge of the market, that more favorable terms and conditions, including pricing, may be provided if a single award is made.

The rule has also been revised to clarify that agencies may make class determinations in accordance with FAR Subpart 1.7 to make single awards for any class of contracts (including Job Order or SABER contracts). However, such a class determination would not preclude the contracting officer from making a determination to solicit for

multiple awards if the contracting officer determines that multiple awards may be advantageous to the Government for a particular solicitation.

A significant number of comments were also received regarding the application of the multiple award preference to architect-engineer services subject to FAR Subpart 36.6. The Team believes that it is good public policy to use the multiple award preference to promote price competition in Government contracting. However, the Brooks Architect-Engineers Act precludes price competition by establishing qualification-based source selection procedures. Because price competition is not applicable to architect-engineer services, the rule has been revised to clarify that the multiple award preference does not apply to architect-engineer services subject to FAR Subpart 36.6.

Although the rule does not extend the multiple award preference to architect-engineer services subject to FAR Subpart 36.6, it is important to note that the rule does not prohibit an agency from making multiple awards (if an agency chooses to do so) provided the selection of contractors and placement of orders is consistent with FAR Subpart 36.6. Some Federal agencies have awarded multiple award contracts for architect-engineer services that are consistent with the Brooks Architect-Engineers Act qualification-based source selection procedures. For example, one agency utilized Brooks Architect-Engineers Act procedures to award multiple contracts for architect-engineer services to six firms from a single solicitation. As described in the solicitation, each task order is technically competed among the multiple awardees. Each firm's response to the task order is technically ranked based on the evaluation factors for that task. The most technically qualified firm is determined as a result of the responses received and a cost proposal is required from that firm. Negotiations take place and, in most cases, the task order is awarded.

List of Subjects in 48 CFR Part 16

Government procurement.

Dated: July 16, 1996.

Edward C. Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR Part 16 and published at 60 FR 49723, September 26, 1995, is

adopted as a final rule with the following changes:

1. The authority citation for 48 CFR Part 16 continues to read as follows:

PART 16—TYPES OF CONTRACTS

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

2. Section 16.500 is revised to read as follows:

16.500 Scope of subpart.

This subpart prescribes policies and procedures for making awards of indefinite-delivery contracts and establishes a preference scheme for making multiple awards of indefinite-quantity contracts. This subpart does not limit the use of other than competitive procedures authorized by part 6. Nothing in this subpart shall be construed to limit, impair, or restrict 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 subpart 8.4, part 38, or part 39 for the Federal Supply Schedule program (including contracts for Federal Information Processing resources) take precedence over this subpart. This subpart may be used to acquire Federal Information Processing resource requirements that are not satisfied under the Federal Supply Schedule program, provided the selection of contractors and placement of orders is consistent with part 39. The multiple award preference scheme established 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 is consistent with subpart 36.6.

3. Section 16.504 is amended in paragraph (c)(1) by revising the third and fourth sentences; and by revising paragraphs (c)(1)(iv) and (vi) to read as follows:

16.504 Indefinite-quantity contracts.

(c) * * *

(1) * * * No separate written

determination to make a single award is necessary when the determination is contained in a written acquisition plan or when a class determination has been made in accordance with subpart 1.7. Multiple awards should not be made if the contracting officer determines that—

* * * * *

(iv) The tasks likely to be ordered are so integrally related that only a single

contractor can reasonably perform the work;

* * * * *

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

* * * * *

4. Section 16.505 is amended by removing the second sentence of paragraph (b) and inserting the following three sentences in its place to read as follows:

16.505 Ordering.

* * * * *

(b) * * * In determining the procedures for providing awardees a fair opportunity to be considered for each order, contracting officers shall exercise broad discretion. The contracting officer, in making decisions in the award of any individual task order, should consider factors such as past performance on earlier tasks under the multiple award contract, quality of deliverables, cost control, price, cost, or other factors that the contracting officer believes are relevant to the award of a task order to an awardee under the contract. In evaluating past performance on individual orders, the procedural requirements in subpart 42.15 are not mandatory. * * *

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 17, 22, and 52

[FAC 90-40; FAR Case 94-712; Item VII]

RIN 9000-AG72

Federal Acquisition Regulation; Multiyear Contracting

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

ACTION: Final rule.

SUMMARY: This rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994, Public Law 103-355 (the Act). The Federal Acquisition Regulatory Council has agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to implement sections 1022 and 1072 of the Act regarding Multiyear Contracting. This regulatory action was subject to Office of

Management and Budget (OMB) review under Executive Order 12866, dated September 30, 1993, but is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: July 26, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Edward McAndrew at (202) 501-1474 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, 18th & F Streets, N.W., Washington, DC 20405 (202) 501-4755. Please cite FAC 90-40, FAR case 94-712.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed rule covering implementation of sections 1022 and 1072 of Public Law 103-355 regarding Multiyear Contracting was published as part of FAR case 94-710, Special Contracting Methods, in the Federal Register at 60 FR 14340, March 16, 1995. The rule permitted agencies to enter into multiyear contracts under certain circumstances. After disposition of public comments, coverage on multiyear contracting was extracted from the 94-710 final rule because several issues remained unresolved at the time of publication (60 FR 49720, September 26, 1995). All remaining issues have now been resolved and this separate final rule represents completion of the Special Contracting Methods implementation.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule and a Final Regulatory Flexibility Analysis (FRFA) has been performed. A copy of the FRFA may be obtained from the FAR Secretariat.

C. Paperwork Reduction Act

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

D. Public Comments

The proposed rule was published in the Federal Register on March 16, 1995. Eight comments were received, the most significant of which raised the issue of "bundling" of requirements and its effect on small businesses. All comments were considered in the formulation of this final rule.

List of Subjects in 48 CFR Parts 17, 22 and 52

Government procurement.

Dated: July 16, 1996.

Edward C. Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, 48 CFR Parts 17, 22, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 17, 22, 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 17—SPECIAL CONTRACTING METHODS

2. Subpart 17.1 is revised to read as follows:

Subpart 17.1—Multiyear Contracting

Sec.

- 17.101 Authority.
- 17.102 Applicability.
- 17.103 Definitions.
- 17.104 General.
- 17.105 Policy.
- 17.105-1 Uses.
- 17.105-2 Objectives.
- 17.106 Procedures.
- 17.106-1 General.
- 17.106-2 Solicitations.
- 17.106-3 Special procedures applicable to DoD, NASA, and the Coast Guard.
- 17.107 Options.
- 17.108 Congressional notification.
- 17.109 Contract clauses.

17.101 Authority.

This subpart implements Section 304B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254c) and 10 U.S.C. 2306b and provides policy and procedures for the use of multiyear contracting.

17.102 Applicability.

For DoD, NASA, and the Coast Guard, the authorities cited in 17.101 do not apply to contracts for the purchase of supplies to which 40 U.S.C. 759 applies (information resource management supply contracts).

17.103 Definitions.

As used in this subpart—
Cancellation means the cancellation (within a contractually specified time) of the total requirements of all remaining program years. Cancellation results when the contracting officer

- (a) Notifies the contractor of nonavailability of funds for contract performance for any subsequent program year, or
- (b) Fails to notify the contractor that funds are available for performance of the succeeding program year requirement.

Cancellation ceiling means the maximum cancellation charge that the contractor can receive in the event of cancellation.

Cancellation charge means the amount of unrecovered costs which would have been recouped through amortization over the full term of the contract, including the term canceled.

Multiyear contract means a contract for the purchase of supplies or services for more than 1, but not more than 5, program years. A multiyear contract may provide that performance under the contract during the second and subsequent years of the contract is contingent upon the appropriation of funds, and (if it does so provide) may provide for a cancellation payment to be made to the contractor if appropriations are not made. The key distinguishing difference between multiyear contracts and multiple year contracts is that multiyear contracts, defined in the statutes cited at 17.101, buy more than 1 year's requirement (of a product or service) without establishing and having to exercise an option for each program year after the first.

Nonrecurring costs means those costs which are generally incurred on a one-time basis and include such costs as plant or equipment relocation, plant rearrangement, special tooling and special test equipment, preproduction engineering, initial spoilage and rework, and specialized work force training.

Recurring costs means costs that vary with the quantity being produced, such as labor and materials.

Termination for convenience means the procedure which 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 a partial quantity (whereas cancellation must be for all subsequent fiscal years' quantities).

17.104 General.

(a) Multiyear contracting is a special contracting method to acquire known requirements in quantities and total cost not over planned requirements for up to 5 years unless otherwise authorized by statute, even though the total funds ultimately to be obligated may not be available at the time of contract award. This method may be used in sealed bidding or contracting by negotiation.

(b) Multiyear contracting is a flexible contracting method applicable to a wide range of acquisitions. The extent to which cancellation terms are used in multiyear contracts will depend on the unique circumstances of each contracting action. Accordingly, for multiyear contracts, the agency head may authorize modification of the requirements of this subpart and the

clause at 52.217-2, Cancellation Under Multiyear Contracts.

(c) Agency funding of multiyear contracts shall conform to the policies in OMB Circulars A-11 (Preparation and Submission of Budget Estimates) and A-34 (Instructions on Budget Execution) and other applicable guidance regarding the funding of multiyear contracts. As provided by that guidance, the funds obligated for multiyear contracts must be sufficient to cover any potential cancellation and/or termination costs; and multiyear contracts for the acquisition of fixed assets should be fully funded or funded in stages that are economically or programmatically viable.

17.105 Policy.

17.105-1 Uses.

(a) Except for DoD, NASA, and the Coast Guard, the contracting officer may enter into a multiyear contract if the head of the contracting activity determines that—

(1) The need for the supplies or services is reasonably firm and continuing over the period of the contract; and

(2) A multiyear contract will serve the best interests of the United States by encouraging full and open competition or promoting economy in administration, performance, and operation of the agency's programs.

(b) For DoD, NASA, and the Coast Guard, the head of the agency may enter into a multiyear contract for supplies if—

(1) The use of such a contract will result in substantial savings of the total estimated costs of carrying out the program through annual contracts;

(2) The minimum need to be purchased is expected to remain substantially unchanged during the contemplated contract period in terms of production rate, procurement rate, and total quantities;

(3) There is a stable design for the supplies to be acquired, and the technical risks associated with such supplies are not excessive;

(4) There is a reasonable expectation that, throughout the contemplated contract period, the head of the agency will request funding for the contract at a level to avoid contract cancellation; and

(5) The estimates of both the cost of the contract and the cost avoidance through the use of a multiyear contract are realistic.

(c) The multiyear contracting method may be used for the acquisition of supplies or services.

(d) If funds are not appropriated to support the succeeding years'

requirements, the agency must cancel the contract.

17.105-2 Objectives.

Use of multiyear contracting is encouraged to take advantage of one or more of the following:

(a) Lower costs.

(b) Enhancement of standardization.

(c) Reduction of administrative burden in the placement and administration of contracts.

(d) Substantial continuity of production or performance, thus avoiding annual startup costs, preproduction testing costs, make-ready expenses, and phaseout costs.

(e) Stabilization of contractor work forces.

(f) Avoidance of the need for establishing quality control techniques and procedures for a new contractor each year.

(g) Broadening the competitive base with opportunity for participation by firms not otherwise willing or able to compete for lesser quantities, particularly in cases involving high startup costs.

(h) Providing incentives to contractors to improve productivity through investment in capital facilities, equipment, and advanced technology.

17.106 Procedures.

17.106-1 General.

(a) *Method of contracting.* The nature of the requirement should govern the selection of the method of contracting, since the multiyear procedure is compatible with sealed bidding, including two-step sealed bidding, and negotiation.

(b) *Type of contract.* Given the longer performance period associated with multiyear acquisition, consideration in pricing fixed-priced contracts should be given to the use of economic price adjustment terms and profit objectives commensurate with contractor risk and financing arrangements.

(c) *Cancellation procedures.* (1) All program years except the first are subject to cancellation. For each program year subject to cancellation, the contracting officer shall establish a cancellation ceiling. Ceilings must exclude amounts for requirements included in prior program years. The contracting officer shall reduce the cancellation ceiling for each program year in direct proportion to the remaining requirements subject to cancellation. For example, consider that the total nonrecurring costs (see 15.804-6) are estimated at 10 percent of the total multiyear price, and the percentages for each of the program year

requirements for 5 years are (i) 30 in the first year, (ii) 30 in the second, (iii) 20 in the third, (iv) 10 in the fourth, and (v) 10 in the fifth. The cancellation percentages, after deducting 3 percent for the first program year, would be 7, 4, 2, and 1 percent of the total price applicable to the second, third, fourth, and fifth program years, respectively.

(2) In determining cancellation ceilings, the contracting officer must estimate reasonable preproduction or startup, labor learning, and other nonrecurring costs to be incurred by an "average" prime contractor or subcontractor, which would be applicable to, and which normally would be amortized over, the items or services to be furnished under the multiyear requirements. Nonrecurring costs include such costs, where applicable, as plant or equipment relocation or rearrangement, special tooling and special test equipment, preproduction engineering, initial rework, initial spoilage, pilot runs, allocable portions of the costs of facilities to be acquired or established for the conduct of the work, costs incurred for the assembly, training, and transportation to and from the job site of a specialized work force, and unrealized labor learning. They shall not include any costs of labor or materials, or other expenses (except as indicated above), which might be incurred for performance of subsequent program year requirements. The total estimate of the above costs must then be compared with the best estimate of the contract cost to arrive at a reasonable percentage or dollar figure. To perform this calculation, the contracting officer should obtain in-house engineering cost estimates identifying the detailed recurring and nonrecurring costs, and the effect of labor learning.

(3) The contracting officer shall establish cancellation dates for each program year's requirements regarding production lead time and the date by which funding for these requirements can reasonably be established. The contracting officer shall include these dates in the schedule, as appropriate.

(d) *Cancellation ceilings.* Cancellation ceilings and dates may be revised after issuing the solicitation if necessary. In sealed bidding, the contracting officer shall change the ceiling by amending the solicitation before bid opening. In two-step sealed bidding, discussions conducted during the first step may indicate the need for revised ceilings and dates which may be incorporated in step two. In a negotiated acquisition, negotiations with offerors may provide information requiring a change in

cancellation ceilings and dates before final negotiation and contract award.

(e) *Payment of cancellation charges.* If cancellation occurs, the Government's liability will be determined by the terms of the applicable contract.

(f) *Presolicitation or pre-bid conferences.* To ensure that all interested sources of supply are thoroughly aware of how multiyear contracting is accomplished, use of presolicitation or pre-bid conferences may be advisable.

(g) *Payment limit.* The contracting officer shall limit the Government's payment obligation to an amount available for contract performance. The contracting officer shall insert the amount for the first program year in the contract upon award and modify it for successive program years upon availability of funds.

(h) *Termination payment.* If the contract is terminated for the convenience of the Government in whole, including requirements subject to cancellation, the Government's obligation shall not exceed the amount specified in the Schedule as available for contract performance, plus the cancellation ceiling.

17.106-2 Solicitations.

Solicitations for multiyear contracts shall reflect all the factors to be considered for evaluation, specifically including the following:

(a) The requirements, by item of supply or service, for the—

(1) First program year; and

(2) Multiyear contract including the requirements for each program year.

(b) Criteria for comparing the lowest evaluated submission on the first program year requirements to the lowest evaluated submission on the multiyear requirements.

(c) A provision that, if the Government determines before award that only the first program year requirements are needed, the Government's evaluation of the price or estimated cost and fee shall consider only the first year.

(d) A provision specifying a separate cancellation ceiling (on a percentage or dollar basis) and dates applicable to each program year subject to a cancellation (see 17.106-1 (c) and (d)).

(e) A statement that award will not be made on less than the first program year requirements.

(f) The Government's administrative costs of annual contracting may be used as a factor in the evaluation only if they can be reasonably established and are stated in the solicitation.

(g) The cancellation ceiling shall not be an evaluation factor.

17.106-3 Special procedures applicable to DoD, NASA, and the Coast Guard.

(a) *Participation by subcontractors, suppliers, and vendors.* In order to broaden the defense industrial base, to the maximum extent practicable—

(1) Multiyear contracting shall be used in such a manner as to seek, retain, and promote the use under such contracts of companies that are subcontractors, suppliers, and vendors; and

(2) Upon accrual of any payment or other benefit under such a multiyear contract to any subcontractor, supplier, or vendor company participating in such contract, such payment or benefit shall be delivered to such company in the most expeditious manner practicable.

(b) *Protection of existing authority.* To the extent practicable, multiyear contracting shall not be carried out in a manner to preclude or curtail the existing ability of the Department or agency to provide for termination of a prime contract, the performance of which is deficient with respect to cost, quality, or schedule.

(c) *Cancellation or termination for insufficient funding.* In the event funds are not made available for the continuation of a multiyear contract awarded using the procedures in this section, the contract shall be canceled or terminated.

(d) Contracts awarded under the multiyear procedure shall be firm-fixed-price, fixed-price with economic price adjustment, or fixed-price incentive.

(e) *Recurring costs in cancellation ceiling.* The inclusion of recurring costs in cancellation ceilings is an exception to normal contract financing arrangements and requires approval by the agency head.

(f) *Annual and multiyear proposals.* Obtaining both annual and multiyear offers provides reduced lead time for making an annual award in the event that the multiyear award is not in the Government's interest. Obtaining both also provides a basis for the computation of savings and other benefits. However, the preparation and evaluation of dual offers may increase administrative costs and workload for both offerors and the Government, especially for large or complex acquisitions. The head of a contracting activity may authorize the use of a solicitation requesting only multiyear prices, *provided* it is found that such a solicitation is in the Government's interest, and that dual proposals are not necessary to meet the objectives in 17.105-2.

(g) *Level unit prices.* Multiyear contract procedures provide for the

amortization of certain costs over the entire contract quantity resulting in identical (level) unit prices (except when the economic price adjustment terms apply) for all items or services under the multiyear contract. If level unit pricing is not in the Government's interest, the head of a contracting activity may approve the use of variable unit prices, provided that for competitive proposals there is a valid method of evaluation.

17.107 Options.

Benefits may accrue by including options in a multiyear contract. In that event, contracting officers must follow the requirements of subpart 17.2. Options should not include charges for plant and equipment already amortized, or other nonrecurring charges which were included in the basic contract.

17.108 Congressional notification.

(a) Except for DoD, NASA, and the Coast Guard, a multiyear contract which includes a cancellation ceiling in excess of \$10 million may not be awarded until the head of the agency gives written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the committees on appropriations of the House of Representatives and Senate and the appropriate oversight committees of the House and Senate for the agency in question. Information on such committees may not be readily available to contracting officers. Accordingly, agencies should provide such information through its internal regulations. The contract may not be awarded until the thirty-first day after the date of notification.

(b) For DoD, NASA, and the Coast guard, a multiyear contract which includes a cancellation ceiling in excess of \$100 million may not be awarded until the head of the agency gives written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the committees on armed services and on appropriations of the House of Representative and Senate. The contract may not be awarded until the thirty-first day after the date of notification.

17.109 Contract clauses.

(a) The contracting officer shall insert the clause at 52.217-2, Cancellation Under Multiyear Contracts, in solicitations and contracts when a multiyear contract is contemplated.

(b) *Economic price adjustment clauses.* Economic price adjustment clauses are adaptable to multiyear contracting needs. When the period of production is likely to warrant a labor

and material costs contingency in the contract price, the contracting officer should normally use an economic price adjustment clause (see 16.203). When contracting for services, the contracting officer—

(1) Shall add the clause at 52.222-43, Fair Labor Standards Act and Service Contract Act-Price Adjustment (Multiple Year and Option Contracts), when the contract includes the clause at 52.222-41, Service Contract Act of 1965, as amended;

(2) May modify the clause at 52.222-43 in overseas contracts when laws, regulations, or international agreements require contractors to pay higher wage rates; or

(3) May use an economic price adjustment clause authorized by 16.203, when potential fluctuations require coverage and are not included in cost contingencies provided for by the clause at 52.222-43.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1001 [Amended]

3. Section 22.1001 is amended in the second sentence of the definition of "Multiple year contracts," by removing the phrase "with a term of more than 1 year (see 17.101)" and inserting "(see 17.103)" in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.217-1 [Reserved]

4. Section 52.217-1 is removed and reserved.

5. Section 52.217-2 is revised to read as follows:

52.217-2 Cancellation Under Multiyear Contracts.

As prescribed in 17.109(a), insert the following clause:

CANCELLATION UNDER MULTIYEAR CONTRACTS (JUL 1996)

(a) *Cancellation*, as used in this clause, means that the Government is canceling its requirements for all supplies or services in program years subsequent to that in which notice of cancellation is provided. Cancellation shall occur by the date or within the time period specified in the Schedule, unless a later date is agreed to, if the Contracting Officer (1) notifies the Contractor that funds are not available for contract performance for any subsequent program year, or (2) fails to notify the Contractor that funds are available for performance of the succeeding program year requirement.

(b) Except for cancellation under this clause or termination under the Default

clause, any reduction by the Contracting Officer in the requirements of this contract shall be considered a termination under the Termination for Convenience of the Government clause.

(c) If cancellation under this clause occurs, the Contractor will be paid a cancellation charge not over the cancellation ceiling specified in the Schedule as applicable at the time of cancellation.

(d) The cancellation charge will cover only (1) costs (i) incurred by the Contractor and/or subcontractor, (ii) reasonably necessary for performance of the contract, and (iii) that would have been equitably amortized over the entire multiyear contract period but, because of the cancellation, are not so amortized, and (2) a reasonable profit or fee on the costs.

(e) The cancellation charge shall be computed and the claim made for it as if the claim were being made under the Termination for Convenience of the Government clause of this contract. The Contractor shall submit the claim promptly but no later than 1 year from the date (1) of notification of the nonavailability of funds, or (2) specified in the Schedule by which notification of the availability of additional funds for the next succeeding program year is required to be issued, whichever is earlier, unless extensions in writing are granted by the Contracting Officer.

(f) The Contractor's claim may include—

(1) Reasonable nonrecurring costs (see Subpart 15.8 of the Federal Acquisition Regulation) which are applicable to and normally would have been amortized in all supplies or services which are multiyear requirements;

(2) Allocable portions of the costs of facilities acquired or established for the conduct of the work, to the extent that it is impracticable for the Contractor to use the facilities in its commercial work, and if the costs are not charged to the contract through overhead or otherwise depreciated;

(3) Costs incurred for the assembly, training, and transportation to and from the job site of a specialized work force; and

(4) Costs not amortized solely because the cancellation had precluded anticipated benefits of Contractor or subcontractor learning.

(g) The claim shall not include—

(1) Labor, material, or other expenses incurred by the Contractor or subcontractors for performance of the canceled work;

(2) Any cost already paid to the Contractor;

(3) Anticipated profit or unearned fee on the canceled work; or

(4) For service contracts, the remaining useful commercial life of facilities. "Useful commercial life" means the commercial utility of the facilities rather than their physical life with due consideration given to such factors as location of facilities, their specialized nature, and obsolescence.

(h) This contract may include an Option clause with the period for exercising the option limited to the date in the contract for notification that funds are available for the next succeeding program year. If so, the Contractor agrees not to include in option quantities any costs of a startup or nonrecurring nature that have been fully set forth in the contract. The Contractor further agrees that the option quantities will reflect only those recurring costs and a reasonable profit or fee necessary to furnish the additional option quantities.

(i) Quantities added to the original contract through the Option clause of this contract shall be included in the quantity canceled for the purpose of computing allowable cancellation charges.

(End of clause)

[FR Doc. 96-18504 Filed 7-25-96; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 19 and 52

[FAC 90-40; FAR Case 94-782; Item VIII]

RIN 9000-AH08

Federal Acquisition Regulation; Small Business/Simplified Acquisition Threshold

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

ACTION: Final rule.

SUMMARY: This final rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994, Public Law 103-355 (the Act). The Federal Acquisition Regulatory Council has agreed to amend the Federal Acquisition Regulation (FAR) to implement section 4004 of the Act. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993,

but is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: July 26, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Victoria Moss at (202) 501-4764 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-40, FAR case 94-782.

SUPPLEMENTARY INFORMATION:

A. Background

The Small Business Team drafted FAR coverage to implement sections 4004, 7101(a), 7102 and 7106 of the Act. The proposed rule was published in the Federal Register at 60 FR 2302, January 6, 1995, and was published in the Federal Register at 60 FR 48258, September 18, 1995, as a final rule in FAR case 94-780, FAC 90-32.

In order to facilitate the issuance of the Simplified Acquisition Threshold/Federal Acquisition Computer Network (SAT/FACNET) rule (FAR Case 94-770), those portions of the Small Business Rule dealing with simplified acquisitions were included in the SAT/FACNET rule and issued as an interim rule in the Federal Register at 60 FR 34741, July 3, 1995, and finalized under that case. Those portions primarily implemented section 4004 of the Act which reserves each contract for the purchase of goods or services that has an anticipated value greater than \$2,500, but not greater than \$100,000, for exclusive small business participation, unless the contracting officer determines there is no reasonable expectation of obtaining offers from two or more small businesses that are competitive with market price, quality, and delivery.

One of the most significant issues in this case was the relationship between simplified acquisitions and the Small Business Administration's (SBA's) "nonmanufacturer rule." On January 31, 1996, SBA issued a final rule in the Federal Register at 61 FR 3280 revising its nonmanufacturer rule to provide that, where the procurement of a manufactured item processed under the procedures set forth in FAR Part 13 is set aside for small business, and where the anticipated cost of the procurement will not exceed \$25,000, the offeror need not supply the end product of a small business concern as long as the product acquired is manufactured or produced in the United States (13 CFR 121.406(d)). This final rule reflects that change.

B. Regulatory Flexibility Act

The final rule is expected to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it implements changes to the SBA's regulations pertaining to the nonmanufacturer rule. The Act created a conflict between the FAR and 13 CFR 121.906(d) which authorized a small business dealer to furnish any domestically manufactured end product under a small business/small purchase set-aside. Public Law 103-355 eliminated the procedures entitled "small business/small purchase" and created new procedures called "simplified acquisitions." However, SBA had not revised its regulations to recognize "simplified acquisitions". In preparing the interim rule, SBA advised the drafting team that the automatic waiver to the nonmanufacturer rule for small purchases did NOT extend to simplified acquisitions. Consequently, the interim rule required a small business submitting an offer on all small business set-asides to furnish the products of small businesses unless the SBA had issued a waiver. Since issuance of the interim rule, SBA has revisited this issue and has issued changes to their nonmanufacturer rule. This final rule reflects the changes issued by SBA. A Final Regulatory Flexibility Analysis (FRFA) was prepared by the Small Business Administration under its rule dated January 31, 1996 (61 FR 3280), and provided to the Chief Counsel for Advocacy for the Small Business Administration.

C. Paperwork Reduction Act

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

D. Public Comments

An interim rule was published in the Federal Register at 60 FR 34741, July 3, 1995, as FAR case 94-770. In response to the notice of proposed rulemaking, 12 responses containing 28 comments relating to the small business coverage were received. The comments of all respondents were considered in developing this final rule. As a result of public comments and changes in SBA regulations, the following significant changes have been made:

The regulation has been revised to provide that, where the procurement of a manufactured item processed under the procedures set forth in FAR Part 13 is set aside for small business, and where the anticipated cost of the procurement will not exceed \$25,000, the offeror need not supply the end product of a small business concern as long as the product acquired is manufactured or produced in the United States.

Language in FAR Part 19 concerning acquisitions reserved for small businesses was expanded.

List of Subjects in 48 CFR Parts 19 and 52

Government procurement.

Dated: July 16, 1996.

Edward C. Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, 48 CFR Parts 19 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 19 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 19—SMALL BUSINESS PROGRAMS

2. Section 19.102 is amended in the first sentence of paragraph (f)(1) by removing "(f)(2) through (f)(5)" and inserting "(f)(4) through (f)(7)" in its place; revising (f)(4); and adding (f)(7) to read as follows:

19.102 Size standards.

* * * * *

(f) * * *

(4) In the case of acquisitions set aside for small business or awarded under section 8(a) of the Small Business Act, when the acquisition is for a specific product (or a product in a class of products) for which the SBA has determined that there are no small business manufacturers or processors in the Federal market, then the SBA may grant a class waiver so that a nonmanufacturer does not have to furnish the product of a small business. For the most current listing of classes for which SBA has granted a waiver, contact an SBA Office of Government Contracting. A listing is also available in the SBA's Procurement Automated Source System (PASS) and on SBA's Internet Homepage at <http://www.sbaonline.sba.gov/GC/nonmanuf.html>. Contracting officers may request that the SBA waive the

nonmanufacturer rule for a particular class of products.

* * * * *

(7) The SBA provides for an exception to the nonmanufacturer rule where the procurement of a manufactured item processed under the procedures set forth in part 13 is set aside for small business and where the anticipated cost of the procurement will not exceed \$25,000. In those procurements, the offeror need not supply the end product of a small business concern as long as the product acquired is manufactured or produced in the United States.

* * * * *

3. Section 19.502-2 is amended by revising paragraphs (a) and (c); and in the first sentence of (b)(2) by removing the "s" in the word "awards", and in the third sentence of paragraph (b)(2) by removing "the item" and inserting "an item" in its place. The revised text reads as follows:

19.502-2 Total set-asides.

(a) Each acquisition of supplies or services that has an anticipated dollar value exceeding \$2,500, but not over \$100,000, is automatically reserved exclusively for small business concerns and shall be set aside unless the contracting officer determines there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of market prices, quality, and delivery. If the contracting officer does not proceed with the small business set-aside and purchases on an unrestricted basis, the contracting officer shall include in the contract file the reason for this unrestricted purchase. If the contracting officer receives only one acceptable offer from a responsible small business concern in response to a set-aside, the contracting officer should make an award to that firm. If the contracting officer receives no acceptable offers from responsible small business concerns, the set-aside shall be withdrawn and the requirement, if still valid, shall be resolicited on an unrestricted basis. The small business reservation does not preclude the award of a contract with a value not greater than \$100,000 under subpart 19.8, Contracting with the Small Business Administration, or under 19.1006(c), Emerging small business set-aside.

* * * * *

(c) For set-asides other than for construction or services, any concern proposing to furnish a product which it did not itself manufacture must furnish the product of a small business manufacturer unless the SBA has

granted either a waiver or exception to the nonmanufacturer rule (see 19.102(f)). In industries where the SBA finds that there are no small business manufacturers, it may issue a waiver to the nonmanufacturer rule (see 19.102(f) (4) and (5)). In addition, SBA has excepted procurements processed under simplified acquisition procedures (see part 13), where the anticipated cost of the procurement will not exceed \$25,000, from the nonmanufacturer rule. Waivers permit small businesses to provide any firm's product. The exception permits small businesses to provide any domestic firm's product. In both of these cases, the contracting officer's determination in paragraph (b)(1) of this subsection or the decision not to set aside a procurement reserved for small business under paragraph (a) of this subsection will be based on the expectation of receiving offers from at least two responsible small businesses, including nonmanufacturers, offering the products of different concerns.

* * * * *

4. Section 19.508 is amended in paragraphs (c) and (d) by revising the second sentences to read as follows:

19.508 Solicitation provisions and contract clauses.

* * * * *

(c) * * * The clause at 52.219-6 with its Alternate I will be used when the acquisition is for a product in a class for which the Small Business Administration has waived the nonmanufacturer rule (see 19.102(f) (4) and (5)).

(d) * * * The clause at 52.219-7 with its Alternate I will be used when the acquisition is for a product in a class for which the Small Business Administration has waived the nonmanufacturer rule (see 19.102(f) (4) and (5)).

* * * * *

5. Section 19.811-3 is amended by revising paragraph (d)(3) to read as follows:

19.811-3 Contract clauses.

* * * * *

(d) * * *

(3) The clause at 52.219-18 with its Alternate III will be used when the acquisition is for a product in a class for which the Small Business Administration has waived the nonmanufacturer rule (see 19.102(f) (4) and (5)).

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 52.219-6 is amended by revising the introductory text, the clause date, and paragraph (c) to read as follows:

52.219-6 Notice of Total Small Business Set-Aside.

As prescribed in 19.508(c), insert the following clause:

NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE (JUL 1996)

* * * * *

(c) *Agreement.* A small business concern submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States. The term "United States" includes its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply in connection with construction or service contracts.

* * * * *

(End of clause)

5. Section 52.219-7 is amended by revising the clause date and paragraph (c) to read as follows:

52.219-7 Notice of Partial Small Business Set-Aside.

* * * * *

NOTICE OF PARTIAL SMALL BUSINESS SET-ASIDE (JUL 1996)

* * * * *

(c) *Agreement.* For the set-aside portion of the acquisition, a small business concern submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States. The term "United States" includes its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply in connection with construction or service contracts.

* * * * *

(End of clause)

6. Section 52.219-18 is amended in the clause by revising the date and paragraph (d)(1); and in Alternate III by revising the date to read "(JUL 1996)" and removing the phrase "paragraph (d)" and inserting "subparagraph (d)(1)" in its place. The revised text reads as follows:

52.219-18 Notification of Competition Limited to Eligible 8(a) Concerns.

* * * * *

NOTIFICATION OF COMPETITION LIMITED TO ELIGIBLE 8(a) CONCERNS (JUL 1996)

* * * * *

(d)(1) *Agreement.* A small business concern submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States. The term "United States" includes its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This subparagraph does not apply in connection with construction or service contracts.

* * * * *

[FR Doc. 96-18505 Filed 7-25-96; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 26 and 52

[FAC 90-40; FAR Case 91-028; Item IX]

RIN 9000-AE52

Federal Acquisition Regulation; Indian-Owned Economic Enterprises

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

ACTION: Interim rule adopted as final with changes.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to convert the interim rule published in the Federal Register at 56 FR 41736, August 22, 1991, to a final rule with additional changes. The interim rule added FAR Subpart 26.1, Indian Incentive Program, which allows contractors to recover certain costs of subcontracting with Indian organizations and Indian-owned economic enterprises. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: September 24, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph DeStefano at (202) 501-1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-40, FAR case 91-028.

SUPPLEMENTARY INFORMATION:

A. Background

Section 7 of Public Law 100-442 amended the Indian Financing Act of 1974 by adding a new Section 504 (25 U.S.C. 1544) to encourage the use of Indian organizations and Indian-owned economic enterprises in subcontracting by allowing the prime contractor "an additional amount of compensation equal to 5 percent of the amount paid." The statute allows this "[n]otwithstanding any other provision of law."

The interim rule published on August 22, 1991, added language at FAR Subpart 26.1, Indian Incentive Program. Minor amendments to the interim rule were made at 57 FR 20376, May 12, 1992, and 60 FR 48258, September 18, 1995. All comments received on the interim rule were considered in formulation of the final rule.

The final rule makes, among other changes, one major revision to the interim rule as a result of the analysis of public comments. The principal distinction between the interim rule and the final rule is how each treats the payment language under 25 U.S.C. 1544. The interim rule allowed prime contractors to recover certain costs of subcontracting with Indian organizations and Indian-owned economic enterprises based on the difference in price between the acceptable low non-Indian subcontractor and the price, if provided, of the acceptable low Indian-owned subcontractor when the Indian-owned subcontractor's price exceeds the price of acquiring the supplies or services from a non-Indian subcontractor. The final rule permits payment of a flat 5 percent bonus to the prime contractor of the amount paid to the Indian subcontractor by the prime contractor. Also, the final rule adds the definitions of "Indian" and "Indian tribe" to FAR 26.101 and the clause at 52.226-1 and adds the definition of "Interested party" to 52.226-1. The final rule allows civilian agencies to include the clause in all contracts (FAR 26.104(b)) where certain criteria apply, regardless of whether the contract includes a subcontracting plan pursuant to FAR 52.219-9.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, applies to this final rule and a Final Regulatory Flexibility Analysis (FRFA) has been performed. A copy of the FRFA may be obtained from the FAR Secretariat

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 26 and 52

Government procurement.

Dated: July 16, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final With Change

Accordingly, the interim rule amending 48 CFR Parts 26 and 52 and published at 56 FR 41736, August 22, 1991, is adopted as a final rule with the following changes.

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

2. Section 26.101 is amended by revising the definitions of "Indian organization" and "Interested party"; and adding, in alphabetical order, the definitions for "Indian" and "Indian tribe" to read as follows:

26.101 Definitions.

* * * * *

Indian means any person who is a member of any Indian tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C. 1452(c) and any "Native" as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601).

Indian organization means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C., chapter 17.

* * * * *

Indian tribe means any Indian tribe, band, group, pueblo, or community,

including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C. 1452(c).

Interested party means a prime contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

3. Section 26.102 is revised to read as follows:

26.102 Policy.

Indian organizations and Indian-owned economic enterprises shall have the maximum practicable opportunity to participate in performing contracts awarded by Federal agencies. In fulfilling this requirement, the Indian Incentive Program allows an incentive payment equal to 5 percent of the amount paid to a subcontractor in performing the contract, if the contract so authorizes and the subcontractor is an Indian organization or Indian-owned economic enterprise.

4. Section 26.103 is amended in the first sentence of paragraph (b) by revising "1849 'C' Street" to read "1849 C Street"; and revising the ZIP Code to read "20245"; in the second sentence of paragraph (c) by removing "15" and inserting "45"; and adding paragraph (f) to read as follows:

26.103 Procedures.

* * * * *

(f) Subject to the terms and conditions of the contract and the availability of funds, contracting officers shall authorize an incentive payment of 5 percent of the amount paid to the subcontractor. Contracting officers shall seek funding in accordance with agency procedures.

4. Section 26.104 is amended by revising the introductory text of paragraph (b) to read as follows:

26.104 Contract clause.

* * * * *

(b) 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—

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 52.226-1 is amended by revising the clause date and revising paragraph (a); in paragraph (b) by

revising the definition of "Indian organization" and adding, in alphabetical order, the definitions of "Indian", "Indian tribe" and "Interested party"; and by revising paragraphs (c) and (d) to read as follows:

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

* * * * *

UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES (SEP 1996)

(a) For Department of Defense contracts, this clause applies only if the contract includes a subcontracting plan incorporated under the terms of the clause at 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan. It does not apply to contracts awarded based on a subcontracting plan submitted and approved under paragraph (g) of the clause at 52.219-9.

(b) * * *

Indian means any person who is a member of any Indian tribe, band, group, pueblo or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C. 1452(c) and any "Native" as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601).

Indian organization means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C., chapter 17.

* * * * *

Indian tribe means any Indian tribe, band, group, pueblo or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C. 1542(c).

Interested party means a prime contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

(c) The Contractor agrees to 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 self-certification 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 self-certification of a subcontractor, the Contracting Officer shall 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-

334A-SIB, Washington, DC 20245. The BIA will determine the eligibility and notify the Contracting Officer. The 5 percent incentive payment will not 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 equitable adjustment to the prime contract shall be 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.

(d) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, shall authorize an incentive payment of 5 percent of the amount paid to the subcontractor. Contracting Officers shall seek funding in accordance with agency procedures. The Contracting Officer's decision is final and not subject to the Disputes clause of this contract.

(End of clause)

[FR Doc. 96-18506 Filed 7-25-96; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 27

[FAC 90-40; FAR Case 95-308; Item X]

RIN 9000-AH09

Federal Acquisition Regulation; General Agreement on Tariffs and Trade Patent Authorization

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to provide internal Government guidance

for situations involving use of a patent without authorization from the patent holder. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: September 24, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501-3856 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-40, FAR case 95-308.

SUPPLEMENTARY INFORMATION:

A. Background

The Uruguay Round of the Multilateral Trade Negotiations of the General Agreement on Tariffs and Trade (GATT) resulted in the "Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations; Agreement Establishing the World Trade Organization; Annex 1C, Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods." Articles 30 and 31 thereof contain requirements related to use of a patent without authorization from the patent holder, including use by the Government. The rule advises contracting officers to consult with legal counsel in such situations.

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. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90-40, FAR case 95-308), in correspondence.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 27

Government procurement.

Dated: July 16, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 27 is amended as set forth below:

PART 27—PATENTS, DATA, AND COPYRIGHTS

1. The authority citation for 48 CFR Part 27 continues to read as follows:

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

2. Section 27.209 is added to read as follows:

27.209 Use of patented technology under the General Agreement on Tariffs and Trade (GATT).

(a) Article 31 of Annex 1C, Agreement on Trade-Related Aspects of Intellectual Property Rights, to GATT (Uruguay Round) addresses situations where the law of a member country allows for use of a patent without authorization from the patent holder, including use by the Government.

(b) The contracting officer should consult with legal counsel regarding questions under this section.

[FR Doc. 96-18507 Filed 7-25-96; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 28, 52, and 53

[FAC 90-40; FAR Case 91-027; Item XI]

RIN 9000-AE47

Federal Acquisition Regulation; Performance and Payment Bonds

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 (CAAC) and the Defense Acquisition Regulations Council (DARC) have agreed to a final rule amending the Federal Acquisition Regulation (FAR) to further standardize policies governing bonding. Two new standard clauses are added for use when performance or payment bonds are required, and a new Standard Form 1418, Performance and Payment Bonds—Other Than Construction, is added. This regulatory action was not

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

EFFECTIVE DATE: September 24, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Peter O'Such at (202) 501-1759 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-40, FAR Case 91-027.

SUPPLEMENTARY INFORMATION:

A. Background

FAR 28.101-1, 28.101-2, 28.101-3, 28.102-3, 28.103-2, 28.103-3, 28.103-4, 28.106-1, 28.106-2, 28.106-3, 52.228-1, and 52.228 are revised, and two new clauses are added, 52.228-15, Performance and Payment Bonds—Construction, and 52.228-16, Performance and Payment Bonds Other Than Construction, to further standardize policies governing bonding. A proposed rule was published in the Federal Register at 56 FR 31278, July 9, 1991.

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 updates, clarifies, and standardizes policy pertaining to performance and payment bonds.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Public Law 96-511) is deemed to apply because the final rule contains information collection requirements. Accordingly, a request for approval of an extension of an information collection requirement concerning Office of Management and Budget (OMB) Control Number 9000-0119, Performance and Payment Bonds, was submitted to OMB under 44 U.S.C. 3501, *et seq.*, and approved through May 31, 1999. Public comments were invited through a subsequent Federal Register notice published at 61 FR 19664, April 12, 1996.

List of Subjects in 48 CFR Parts 28, 52, and 53

Government procurement.

Dated: July 16, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR parts 28, 52, 53 are amended as set forth below:

1. The authority citation for 48 CFR parts 28 and 52, and 53 continues to read as follows:

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

PART 28—BONDS AND INSURANCE

2. Section 28.101-1 is amended by revising paragraph (c) to read as follows:

28.101-1 Policy on use.

* * * * *

(c) The chief of the contracting office may waive the requirement to obtain a bid guarantee when a performance bond or a performance and payment bond is required if it is determined that a bid guarantee is not in the best interest of the Government for a specific acquisition (e.g., overseas construction, emergency acquisitions, sole-source contracts). Class waivers may be authorized by the agency head or designee.

3. Section 28.101-2 is revised to read as follows:

28.101-2 Solicitation provision or contract clause.

(a) The contracting officer shall insert a provision or clause substantially the same as the provision at 52.228-1, Bid Guarantee, in solicitations or contracts that require a bid guarantee or similar guarantee. For example, the contracting officer may modify this provision—

(1) To set a period of time that is other than 10 days for the return of executed bonds;

(2) For use in connection with construction solicitations when the agency has specified that only separate bid bonds are acceptable in accordance with 28.101-1(b);

(3) For use in solicitations for negotiated contracts; or

(4) For use in service contracts containing options for extended performance.

(b) The contracting officer shall determine the amount of the bid guarantee for insertion in the provision at 52.228-1 (see 28.102-2(c)). The amount shall be adequate to protect the Government from loss should the successful bidder fail to execute further contractual documents and bonds as required. The bid guarantee amount shall be at least 20 percent of the bid price but shall not exceed \$3 million. When the penal sum is expressed as a percentage, a maximum dollar limitation may be stated.

28.101-3 [Removed and reserved]

4. Section 28.101-3 is removed and reserved.

5. Section 28.102-3 is amended by revising paragraph (a) to read as follows:

28.102-3 Solicitation requirements and contract clause.

(a) The contracting officer shall insert a clause substantially the same as the clause at 52.228-15, Performance and Payment Bonds—Construction, in solicitations and contracts for construction that contain a requirement for performance and payment bonds if the resultant contract is expected to exceed \$100,000. The penal amount of the performance bonds may be decreased in accordance with 28.102-2(a). Where the provision at 52.228-1 is not included in the solicitation, the contracting officer shall set a period of time for return of executed bonds.

* * * * *

28.103-2 [Amended]

6. Section 28.103-2 is amended by removing paragraph (b) and redesignating paragraphs (c) and (d) as (b) and (c), respectively.

28.103-3 [Amended]

7. Section 28.103-3 is amended by removing paragraphs (b) and (c) and redesignating paragraph (d) as (b).

8. Section 28.103-4 is added to read as follows:

28.103-4 Contract clause.

The contracting officer shall insert a clause substantially the same as the clause at 52.228-16, Performance and Payment Bonds—Other than Construction, in solicitations and contracts that contain a requirement for both payment and performance bonds. The contracting officer shall determine the amount of each bond for insertion in the clause. The amount shall be adequate to protect the interest of the Government. The contracting officer shall also set a period of time (normally 10 days) for return of executed bonds. Alternate I shall be used when only performance bonds are required.

9. Section 28.106-1 is amended by revising paragraphs (c) and (m); redesignating paragraphs (n) and (o) as (o) and (p) and adding a new paragraph (n) to read as follows:

28.106-1 Bonds and bond related forms.

* * * * *

(c) SF 25-A, Payment Bond (see 28.102-1 and 28.106-3(b)).

* * * * *

(m) SF 1416, Payment Bond for Other Than Construction Contracts (see 28.103-3 and 28.106-3(b)).

(n) SF 1418, Performance Bond for Other Than Construction Contracts (see 28.103-2 and 28.106-3(b)).

* * * * *

10. Section 28.106-2 is amended by revising paragraph (a) to read as follows:

28.106-2 Substitution of surety bonds.

(a) A new surety bond covering all or part of the obligations on a bond previously approved may be substituted for the original bond if approved by the head of the contracting activity, or as otherwise specified in agency regulation.

* * * * *

11. Section 28.106-3 is amended by revising paragraph (b) to read as follows:

28.106-3 Additional bond or security.

* * * * *

(b) When additional coverage is furnished in whole or in part by a new surety, agencies shall use Standard Form 25, Performance Bond; Standard Form 1418, Performance Bond for Other Than Construction Contracts; Standard Form 25-A, Payment Bond; or Standard Form 1416, Payment Bond for Other Than Construction Contracts.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

12. Section 52.228-1 is revised to read as follows:

52.228-1 Bid Guarantee.

As prescribed in 28.101-2, insert a provision or clause substantially as follows:

Bid Guarantee (SEP 1996)

(a) Failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids, may be cause for rejection of the bid.

(b) The bidder shall furnish a bid guarantee in the form of a firm commitment, e.g., bid bond supported by good and sufficient surety or sureties acceptable to the Government, postal money order, certified check, cashier's check, irrevocable letter of credit, or, under Treasury Department regulations, certain bonds or notes of the United States. The Contracting Officer will return bid guarantees, other than bid bonds, (1) to unsuccessful bidders as soon as practicable after the opening of bids, and (2) to the successful bidder upon execution of contractual documents and bonds (including any necessary coinsurance or reinsurance agreements), as required by the bid as accepted.

(c) The amount of the bid guarantee shall be _____ percent of the bid price or \$_____, whichever is less.

(d) If the successful bidder, upon acceptance of its bid by the Government within the period specified for acceptance, fails to execute all contractual documents or furnish executed bond(s) within 10 days after

receipt of the forms by the bidder, the Contracting Officer may terminate the contract for default.

(e) In the event the contract is terminated for default, the bidder is liable for any cost of acquiring the work that exceeds the amount of its bid, and the bid guarantee is available to offset the difference.

(End of provision)

13.–15. Sections 52.228–15 and 52.228–16 are added to read as follows:

52.228–15 Performance and Payment Bonds—Construction.

As prescribed in 28.102–3(a), insert a clause substantially as follows:

Performance and Payment Bonds—Construction (SEP 1996)

(a) *Definitions.* As used in this clause—

Contract price means the award price of the contract or, for requirements contracts, the price payable for the estimated quantity; or for indefinite-delivery type contracts, the price payable for the specified minimum quantity.

(b) Unless the resulting contract price is \$100,000 or less, the successful offeror shall be required to furnish performance and payment bonds to the Contracting Officer as follows:

(1) *Performance Bonds (Standard Form 25):* (i) The penal amount of performance bonds shall be 100 percent of the original contract price.

(ii) The Government may require additional performance bond protection when the contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price.

(iii) The Government may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(2) *Payment Bonds (Standard Form 25–A):*

(i) The penal amount of payment bonds shall equal—

(A) 50 percent of the contract price if the contract price is not more than \$1 million;

(B) 40 percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

(C) \$2.5 million if the contract price is more than \$5 million.

(ii) If the original contract price is \$5 million or less, the Government may require additional protection if the contract price is increased. The penal amount of the total protection shall meet the requirement of subparagraph (b)(2)(i) of this clause.

(iii) The Government may secure additional protection by directing the

Contractor to increase the penal sum of the existing bond or to obtain an additional bond.

(c) The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within the time period specified in the Bid Guarantee provision of the solicitation, or otherwise specified by the Contracting Officer, but in any event, before starting work.

(d) The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the Federal Register, or may be obtained from the U.S. Department of Treasury, Financial Management Service, Surety Bond Branch, 401 14th Street, NW., 2nd Floor, West Wing, Washington, DC 20227.

(End of clause)

52.228–16 Performance and Payment Bonds—Other Than Construction.

As prescribed in 28.103–4, insert a clause substantially as follows:

Performance and Payment Bonds—Other than construction (SEP 1996)

(a) *Definitions.* As used in this clause—

Contract price means the total amount of the contract for the term of the contract (excluding options, if any) or, for requirements contracts, the price payable for the estimated quantity; or for indefinite-delivery type contracts, the price payable for the specified minimum quantity.

(b) The Contractor shall furnish a performance bond (Standard Form 1418) for the protection of the Government in an amount equal to _____ percent of the contract price and a payment bond (Standard Form 1416) in an amount equal to _____ percent of the contract price.

(c) The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within _____ days, but in any event, before starting work.

(d) The Government may require additional performance bond protection when the contract price is increased. The Government may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(e) The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the Federal Register, or may be obtained from the U.S. Department of Treasury, Financial Management Service, Surety Bond Branch, 401 14th Street, NW., 2nd Floor, West Wing, Washington, DC 20227.

(End of clause)

Alternate I (SEP 1996). As prescribed in 28.103–4, substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) The Contractor shall furnish a performance bond (Standard Form 1418) for the protection of the Government in an amount equal to _____ percent of the contract price.

PART 53—FORMS

16. Section 53.228 is amended by revising paragraph (c); by redesignating paragraphs (n) and (o) as (o) and (p) and adding a new paragraph (n); in the newly designated paragraph (o) by removing the reference “28.106–1(n)” and inserting “28.106–1(o)”; and in the newly designated paragraph (p) by removing the reference “28.106–1(o)” and inserting “28.106–1(p)” in its place. The revised text reads as follows:

53.228 Bonds and insurance.

* * * * *

(c) *SF 25–A (REV. 1/90), Payment Bond.* (See 28.106–1(c).)

* * * * *

(n) *SF 1418 (10/93 Ed.), Performance Bond for Other Than Construction Contracts.* (See 28.106–1(n).)

* * * * *

53.301–1418 [Added]

17. Standard Form 1418 is added to read as follows:

53.301–1418 Performance Bond for Other Than Construction Contracts.

PERFORMANCE BOND FOR OTHER THAN CONSTRUCTION CONTRACTS <i>(See instructions on reverse)</i>	DATE BOND EXECUTED <i>(Must be same or later than date of contract or option)</i>	OMB No.: 9000-0119 Expires: 05/31/99
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Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Federal Acquisition Policy Division (MVR), GSA, Washington, D.C. 20405.

PRINCIPAL <i>(Legal name and business address)</i>	TYPE OF ORGANIZATION <i>("X" one)</i> <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> JOINT VENTURE <input type="checkbox"/> CORPORATION STATE OF INCORPORATION																												
SURETY(IES) <i>(Name(s) and business address(es))</i>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th colspan="4" style="text-align: center;">PENAL SUM OF BOND</th> </tr> <tr> <td style="width:25%;">MILLION(S)</td> <td style="width:25%;">THOUSAND(S)</td> <td style="width:25%;">HUNDRED(S)</td> <td style="width:25%;">CENTS</td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td colspan="2">CONTRACT DATE</td> <td colspan="2">CONTRACT NO.</td> </tr> <tr> <td colspan="2"> </td> <td colspan="2"> </td> </tr> <tr> <td colspan="2">OPTION DATE</td> <td colspan="2">OPTION NO.</td> </tr> <tr> <td colspan="2"> </td> <td colspan="2"> </td> </tr> </table>	PENAL SUM OF BOND				MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS					CONTRACT DATE		CONTRACT NO.						OPTION DATE		OPTION NO.					
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MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS																										
CONTRACT DATE		CONTRACT NO.																											
OPTION DATE		OPTION NO.																											

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The principal has entered into the contract identified above.

THEREFORE:

The above obligation is void if the Principal: (1) Performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of the contract during either the base term or an option term of the contract and any extensions thereof that are granted by the Government, with or without notice to the Surety(ies), and during the life of any guaranty required under the contract, and (2) performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of the contract that hereafter are made. Notice of those modifications to the Surety(ies) is waived.

The guaranty for a base term covers the initial period of performance of the contract and any extensions thereof excluding any options. The guaranty for an option term covers the period of performance for the option being exercised and any extensions thereof.

The failure of a surety to renew a bond for any option term shall not result in a default of any bond previously furnished covering any base or option term.

WITNESS:

The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date.

PRINCIPAL				
	1. SIGNATURE(S)	2. SIGNATURE(S)		
	<i>(Seal)</i>	<i>(Seal)</i>		Corporate Seal
	1. NAME(S) & TITLES(S) <i>(Typed)</i>	2. NAME(S) & TITLES(S) <i>(Typed)</i>		
INDIVIDUAL SURETY(IES)				
	1. SIGNATURE(S)	2. SIGNATURE(S)		
	<i>(Seal)</i>	<i>(Seal)</i>		
	1. NAME(S) <i>(Typed)</i>	2. NAME(S) <i>(Typed)</i>		
CORPORATE SURETY(IES)				
S U R E T Y A	NAME & ADDRESS	1. NAME & ADDRESS	STATE OF INC.	LIABILITY LIMIT \$
	SIGNATURE(S)	1. SIGNATURE(S)	2. SIGNATURE(S)	
	NAME(S) & TITLE(S) <i>(Typed)</i>	1. NAME(S) & TITLE(S) <i>(Typed)</i>	2. NAME(S) & TITLE(S) <i>(Typed)</i>	
				Corporate Seal

CORPORATE SURETY(IES) (Continued)						
S U R E T Y A	NAME & ADDRESS			STATE OF INC.	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.			
	NAME(S) & TITLE(S) (Typed)	1.	2.			
S U R E T Y B	NAME & ADDRESS			STATE OF INC.	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.			
	NAME(S) & TITLE(S) (Typed)	1.	2.			
S U R E T Y C	NAME & ADDRESS			STATE OF INC.	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.			
	NAME(S) & TITLE(S) (Typed)	1.	2.			
S U R E T Y D	NAME & ADDRESS			STATE OF INC.	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.			
	NAME(S) & TITLE(S) (Typed)	1.	2.			
S U R E T Y E	NAME & ADDRESS			STATE OF INC.	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.			
	NAME(S) & TITLE(S) (Typed)	1.	2.			
S U R E T Y F	NAME & ADDRESS			STATE OF INC.	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.			
	NAME(S) & TITLE(S) (Typed)	1.	2.			
S U R E T Y G	NAME & ADDRESS			STATE OF INC.	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.			
	NAME(S) & TITLE(S) (Typed)	1.	2.			

BOND PREMIUM	RATE PER THOUSAND \$	TOTAL \$
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INSTRUCTIONS

1. This form is authorized for use in connection with Government contracts. Any deviation from this form will require the written approval of the Administrator of General Services.
2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.
3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of the approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)". In the space designated "SURETY(IES)" on the face of the form insert only the letter identification of the sureties.

- (b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.
4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.
5. Type the name and title of each person signing this bond in the space provided.
6. Unless otherwise specified, the bond shall be submitted to the contracting office that awarded the contract.

[FR Doc. 96-18508 Filed 7-25-96; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Part 31**

[FAC 90-40; FAR Case 93-005; Item XII]

RIN 9000-AF97

**Federal Acquisition Regulation;
Employee Compensation Costs**

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify the regulations concerning the allowability of personal services compensation costs. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: September 24, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-40, FAR case 93-005.

SUPPLEMENTARY INFORMATION:**A. Background**

This final rule amends FAR 31.001, Definitions, and 31.205-6, Compensation for personal services. The Defense Contract Audit Agency has raised concerns that the language in FAR 31.205-6(b) may be susceptible to differing interpretations and that the FAR does not provide adequate guidance with regard to contractor compensation systems. This final rule adds definitions at FAR 31.001; clarifies the standard for reasonableness of labor-management compensation agreements at FAR 31.205-6 (b) and (c); removes the examples from FAR 31.205-6(b); revises FAR 31.205-6(b)(1)(i) to clearly allow offsets of allowable elements of

employees' compensation packages among jobs of the same pay grade or level; and revises FAR 31.205-6(i) to provide a general allowability rule. This final rule also makes editorial changes and adds clarifying language. Most notable of these changes is the redesignation of FAR 31.205-6(f)(2) to a restructured and renamed 31.205-6(d) to improve the flow of the cost principle and provide a more logical placement of the language.

A proposed rule was published in the Federal Register at 59 FR 51399, October 11, 1994, with corrections published at 59 FR 60686, November 25, 1994. Eighteen comments were received in response to the proposed rule. All comments were considered in the development of the final rule.

B. Regulatory Flexibility Act

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

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: July 16, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 31 is amended as set forth below:

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

1. The authority citation for 48 CFR Part 31 continues to read as follows:

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

2. Section 31.001 is amended by adding, in alphabetical order, the definitions of "Job", "Job class of employees", and "Labor market" to read as follows:

31.001 Definitions.

* * * * *

Job, as used in this part, means a homogeneous cluster of work tasks, the completion of which serves an enduring purpose for the organization. Taken as a whole, the collection of tasks, duties, and responsibilities constitutes the assignment for one or more individuals whose work is of the same nature and is performed at the same skill/responsibility level—as opposed to a position, which is a collection of tasks assigned to a specific individual. Within a job, there may be pay categories which are dependent on the degree of supervision required by the employee while performing assigned tasks which are performed by all persons with the same job.

Job class of employees, as used in this part, means employees performing in positions within the same job.

* * * * *

Labor market, as used in this part, means a place where individuals exchange their labor for compensation. Labor markets are identified and defined by a combination of the following factors:

- (1) Geography,
- (2) Education and/or technical background required,
- (3) Experience required by the job,
- (4) Licensing or certification requirements,
- (5) Occupational membership, and
- (6) Industry.

* * * * *

3. Section 31.205-6 is amended-

a. By revising the introductory text of paragraph (a) and (a)(1);

b. In paragraph (a)(5) by removing the parenthetical at the end of the paragraph;

c. By adding introductory text to paragraph (b) and revising paragraph (b)(1);

d. By revising the introductory text of paragraph (c);

e. By revising paragraph (d);

f. By removing paragraph (f)(2) and redesignating (f)(3) as (f)(2); and

g. By revising paragraph (i).

The revised text reads as follows:

31.205-6 Compensation for personal services.

(a) *General.* Compensation for personal services includes all remuneration paid currently or accrued, in whatever form and whether paid immediately or deferred, for services rendered by employees to the contractor during the period of contract performance (except as otherwise provided for in other paragraphs of this subsection). It includes, but is not

limited to, salaries; wages; directors' and executive committee members' fees; bonuses (including stock bonuses); incentive awards; employee stock options, and stock appreciation rights; employee stock ownership plans; employee insurance; fringe benefits; contributions to pension, other postretirement benefits, annuity, and employee incentive compensation plans; and allowances for off-site pay, incentive pay, location allowances, hardship pay, severance pay, and cost of living differential. Compensation for personal services is allowable subject to the following general criteria and additional requirements contained in other parts of this cost principle:

(1) Compensation for personal services must be for work performed by the employee in the current year and must not represent a retroactive adjustment of prior years' salaries or wages (but see 31.205-6 (g), (h), (j), (k), (m), and (o) of this subsection).

* * * * *

(b) *Reasonableness.* The compensation for personal services paid or accrued to each employee must be reasonable for the work performed. Compensation will be considered reasonable if each of the allowable elements making up the employee's compensation package is reasonable. This paragraph addresses the reasonableness of compensation, except when the compensation is set by provisions of a labor-management agreement under terms of the Federal Labor Relations Act or similar state statutes. The tests for reasonableness of labor-management agreements are set forth in paragraph (c) of this subsection. In addition to the provisions of 31.201-3, in testing the reasonableness of individual elements for particular employees or job classes of employees, consideration should be given to factors determined to be relevant by the contracting officer.

(1) Among others, factors which may be relevant include general conformity with the compensation practices of other firms of the same size, the compensation practices of other firms in the same industry, the compensation practices of firms in the same geographic area, the compensation practices of firms engaged in predominantly non-Government work, and the cost of comparable services obtainable from outside sources. The appropriate factors for evaluating the reasonableness of compensation depend on the degree to which those factors are representative of the labor market for the job being evaluated. The relative significance of factors will vary

according to circumstances. In administering this principle, it is recognized that not every compensation case need be subjected in detail to the tests described in this cost principle. The tests need be applied only when a general review reveals amounts or types of compensation that appear unreasonable or unjustified. Based on an initial review of the facts, contracting officers or their representatives may challenge the reasonableness of any individual element or the sum of the individual elements of compensation paid or accrued to particular employees or job classes of employees. In such cases, there is no presumption of reasonableness and, upon challenge, the contractor must demonstrate the reasonableness of the compensation item in question. In doing so, the contractor may introduce, and the contracting officer will consider, not only any circumstances surrounding the compensation item challenged, but also the magnitude of other compensation elements which may be lower than would be considered reasonable in themselves. However, the contractor's right to introduce offsetting compensation elements into consideration is subject to the following limitations:

(i) Offsets will be considered only between the allowable elements of an employee's (or a job class of employees') compensation package or between the compensation packages of employees in jobs within the same job grade or level.

(ii) Offsets will be considered only between the allowable portion of the following compensation elements of employees or job classes of employees:

- (A) Wages and salaries.
- (B) Incentive bonuses.
- (C) Deferred compensation.
- (D) Pension and savings plan benefits.
- (E) Health insurance benefits.
- (F) Life insurance benefits.

(G) Compensated personal absence benefits. However, any of the above elements or portions thereof, whose amount is not measurable, shall not be introduced or considered as an offset item.

(iii) In considering offsets, the magnitude of the compensation elements in question must be taken into account. In determining the magnitude of compensation elements, the timing of receipt by the employee must be considered.

* * * * *

(c) *Labor-management agreements.* If costs of compensation established under "arm's length" negotiated labor-management agreements are otherwise allowable, the costs are reasonable if, as

applied to work in performing Government contracts, they are not determined to be unwarranted by the character and circumstances of the work or discriminatory against the Government. The application of the provisions of a labor-management agreement designed to apply to a given set of circumstances and conditions of employment (e.g., work involving extremely hazardous activities or work not requiring recurrent use of overtime) is unwarranted when applied to a Government contract involving significantly different circumstances and conditions of employment (e.g., work involving less hazardous activities or work continually requiring use of overtime). It is discriminatory against the Government if it results in employee compensation (in whatever form or name) in excess of that being paid for similar non-Government work under comparable circumstances. Disallowance of costs will not be made under this paragraph (c) unless—

* * * * *

(d) *Form of payment.* (1) Compensation for personal services includes compensation paid or to be paid in the future to employees in the form of cash, corporate securities, such as stocks, bonds, and other financial instruments (see paragraph (d)(2) of this subsection regarding valuation), or other assets, products, or services.

(2) When compensation is paid with securities of the contractor or of an affiliate, the following additional restrictions apply:

(i) Valuation placed on the securities shall be the fair market value on the measurement date (i.e., the first date the number of shares awarded is known) determined upon the most objective basis available.

(ii) Accruals for the cost of securities before issuing the securities to the employees shall be subject to adjustment according to the possibilities that the employees will not receive the securities and that their interest in the accruals will be forfeited.

* * * * *

(i) Compensation based on changes in the prices of corporate securities or corporate security ownership, such as stock options, stock appreciation rights, phantom stock plans, and junior stock conversions.

(1) Any compensation which is calculated, or valued, based on changes in the price of corporate securities is unallowable.

(2) Any compensation represented by dividend payments or which is calculated based on dividend payments is unallowable.

(3) If a contractor pays an employee in lieu of the employee receiving or exercising a right, option, or benefit which would have been unallowable under this paragraph (i), such payments are also unallowable.

* * * * *

[FR Doc. 96-18509 Filed 7-25-96; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 33

[FAC 90-40, FAR Case 95-309, Item XIII]

RIN 9000-AH10

Federal Acquisition Regulation; Agency Procurement Protests

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

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule amending the Federal Acquisition Regulation (FAR) to provide for informal, procedurally simple, and inexpensive resolution of protests. This interim rule implements Executive Order 12979 which was signed by the President on October 25, 1995. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

DATES: *Effective Date:* July 26, 1996.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before September 24, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 18th & F Streets, NW., Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405.

Please cite FAC 90-40, FAR case 95-309, in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501-3856 in reference to this FAR case. For general information, contact the FAR

Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-40, FAR case 95-309.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule revises the agency procurement protest procedures at FAR 33.103 to implement Executive Order 12979 of October 25, 1995, Agency Procurement Protests (60 FR 55171, October 27, 1995).

B. Regulatory Flexibility Act

The interim rule may 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 it provides for a simpler, less expensive means of resolving agency protests. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90-40, FAR Case 95-309), in correspondence.

C. Paperwork Reduction Act

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

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary in order to implement Executive Order 12979, Agency Procurement Protests, which required incorporation of its policies into the Federal Acquisition Regulation by April 22, 1996. However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 33

Government procurement.

Dated: July 16, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR part 33 is amended as set forth below:

PART 33—PROTESTS, DISPUTES AND APPEALS

1. The authority citation for 48 CFR part 33 continues to read as follows:

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

2. Section 33.103 is revised to read as follows:

33.103 Protests to the agency.

(a) *Reference.* Executive Order 12979, Agency Procurement Protests, establishes policy on agency procurement protests.

(b) Prior to submission of an agency protest, all parties shall use their best efforts to resolve concerns raised by an interested party at the contracting officer level through open and frank discussions.

(c) The agency should provide for inexpensive, informal, procedurally simple, and expeditious resolution of protests. Where appropriate and permitted by law, the use of alternative dispute resolution techniques, third party neutrals, and another agency's personnel are acceptable protest resolution methods.

(d) The following procedures are established to resolve agency protests effectively, to build confidence in the Government's acquisition system, and to reduce protests outside of the agency:

(1) Protests shall be concise and logically presented to facilitate review by the agency. Failure to substantially comply with any of the requirements of paragraph (d)(2) of this section may be grounds for dismissal of the protest.

(2) Protests shall include the following information:

(i) Name, address, fax number, and telephone number of the protester.

(ii) Solicitation or contract number.

(iii) Detailed statement of the legal and factual grounds for the protest, to include a description of resulting prejudice to the protester.

(iv) Copies of relevant documents.

(v) Request for a ruling by the agency.

(vi) Statement as to the form of relief requested.

(vii) All information establishing that the protester is an interested party for the purpose of filing a protest.

(viii) All information establishing the timeliness of the protest.

(3) All protests filed directly with the agency will be addressed to the

contracting officer or other official designated to receive protests.

(4) Interested parties may request an independent review at a level above the contracting officer, of any decision by the contracting officer that is alleged to have violated a statute or regulation and thereby caused prejudice to the offeror. This independent review need not be established within the contracting officer's supervisory chain.

(e) Protests based on alleged apparent improprieties in a solicitation shall be filed before bid opening or the closing date for receipt of proposals. In all other cases, protests shall be filed no later than 14 days after the basis of protest is known or should have been known, whichever is earlier. The agency, for good cause shown, or where it determines that a protest raises issues significant to the agency's acquisition system, may consider the merits of any protest which is not timely filed.

(f) *Action upon receipt of protest.* (1) Upon receipt of a protest before award, a contract may not be awarded, pending resolution of the protest, unless contract award is justified, in writing, for urgent and compelling reasons or is determined, in writing, to be in the best interest of the Government. Such justification or determination shall be approved at a level above the contracting officer, or by another official pursuant to agency procedures.

(2) If award is withheld pending resolution of the protest, the contracting officer will inform the offerors whose offers might become eligible for award of the contract. If appropriate, the offerors should be requested, before expiration of the time for acceptance of their offers, to extend the time for acceptance to avoid the need for resolicitation. In the event of failure to obtain such extension of offers, consideration should be given to proceeding with award pursuant to paragraph (f)(1) of this section.

(3) Upon receipt of a protest within 10 days after contract award or within 5 days after a debriefing date offered to the protester under a timely debriefing request in accordance with 15.1004, whichever is later, the contracting officer shall immediately suspend performance, pending resolution of the protest within the agency, including any review by an independent higher level official, unless continued performance is justified, in writing, for urgent and compelling reasons or is determined, in writing, to be in the best interest of the Government. Such justification or determination shall be approved at a level above the contracting officer, or by another official pursuant to agency procedures.

(g) Agencies shall make their best efforts to resolve agency protests within 35 days after the protest is filed.

(h) Agency protest decisions shall be well-reasoned, and shall provide sufficient factual detail explaining the agency position. A copy of the written protest decision shall be furnished to the protester. A method that provides evidence of receipt should be used.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 48

[FAC 90-40; FAR Case 96-315; Item XIV]

RIN 9000-AH12

Federal Acquisition Regulation; Value Engineering

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to revise the definition of value engineering and to require agencies to establish and maintain cost-effective value engineering procedures and processes. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 26, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Peter O'Such (202) 501-1759 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-40, FAR case 96-315.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule implements Section 4306 of the Federal Acquisition Reform Act of 1996 (Pub. L. 104-106). Section 4306 adds Section 36 to the Office of Federal Procurement Policy Act (41 U.S.C. 401, *et seq.*) to define value

engineering and to establish Federal procurement policy that each agency shall establish and maintain cost-effective value engineering procedures and processes.

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. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90-40, FAR case 96-315), in correspondence.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 48

Government procurement.

Dated: July 16, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

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

PART 48—VALUE ENGINEERING

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

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

2. Section 48.001 is amended by revising the definition "Value engineering" to read as follows:

48.001 Definitions.

* * * * *

Value engineering, as used in this part, means an analysis of the functions of a program, project, system, product, item of equipment, building, facility, service, or supply of an executive agency, performed by qualified agency or contractor personnel, directed at improving performance, reliability, quality, safety, and life-cycle costs (Section 36 of the Office of Federal Procurement Policy Act, 41 U.S.C. 401, *et seq.*).

* * * * *

3. Section 48.102 is amended in paragraph (a) by adding a new first sentence to read as follows:

48.102 Policies.

(a) As required by Section 36 of the Office of Federal Procurement Policy Act (41 U.S.C. 401, *et seq.*), agencies shall establish and maintain cost-effective value engineering procedures and processes. * * *

* * * * *

[FR Doc. 96-18511 Filed 7-25-96; 8:45 am]

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DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 49 and 52**

[FAC 90-40; FAR Case 94-003; Item XV]

RIN 9000-AG13

**Federal Acquisition Regulation;
Termination Inventory Schedules**

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) concerning termination of contracts to preclude excessive delays in processing terminations for the convenience of the Government. The amendments will require contractors to prepare and submit termination inventory schedules within 120 days from the effective date of termination, unless otherwise extended by the Termination Contracting Officer (TCO). This will enable the TCO to initiate early inventory screening and final disposition, thereby substantially reducing the time required to achieve termination settlement. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: September 24, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501-3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-40, FAR case 94-003.

SUPPLEMENTARY INFORMATION:**A. Background**

When inventory schedules required for contracts terminated for the convenience of the Government are not submitted in a timely manner by the terminated contractor(s), unnecessary delays are experienced both in effecting redistribution and disposal of the termination inventory and in reaching final settlement of those contracts.

In an attempt to preclude excessive delays in processing terminations for the convenience of the Government, a proposed rule was published in the Federal Register at 59 FR 61734, December 1, 1994, with a request for comment. As a result of the comments received under the proposed rule, the following changes to the final rule have been made:

- The reference to “provisions” in the first sentence of both FAR 49.206-3 and 49.303-2 has been revised to read “terms”;
- The word “must” in the last sentence of FAR 49.206-3 and 49.303-2 is changed to read “shall”;
- The events described in the clauses at 52.249-2 (c) and (d), 52.249-3 (c) and (d), 52.249-6 (d) and (e), and 52.249-11 (c) and (d) have been reversed to reflect the order in which the events occur; and
- Several references have been updated.

B. Regulatory Flexibility Act

A Final Regulatory Flexibility Analysis (FRFA) has been prepared and will be provided to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subparts will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601 *et seq.* (FAC 90-40, FAR Case 94-003), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* Submission of termination inventory schedules is an existing requirement; this rule merely changes the timing for submission of those schedules.

List of Subjects in 48 CFR Parts 49 and 52

Government procurement.

Dated: July 16, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 49 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 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 49—TERMINATION OF
CONTRACTS****49.105 [Amended]**

2. Section 49.105(c)(13) is amended by adding “(see 49.206-3 and 49.303-2)” to the end of the sentence.

3. Section 49.206-3 is added to read as follows:

**49.206-3 Submission of inventory
schedules.**

Subject to the terms of the termination clause and whenever termination inventory is involved, the contractor shall submit complete inventory schedules, to the TCO, reflecting inventory that is allocable to the terminated portion of the contract. The inventory schedules shall be submitted within 120 days from the effective date of termination unless otherwise extended by the TCO based on a written justification to support the extension. The inventory schedules shall be prepared on the forms prescribed in 49.602-2 and in accordance with 45.606-5.

**49.303-2, 49.303-3, 49.303-4
[Redesignated as 49.303-3 through 49.303-5].**

4. Sections 49.303-2, 49.303-3, and 49.303-4 are redesignated as 49.303-3, 49.303-4, and 49.303-5, respectively, and a new 49.303-2 is added to read as follows:

**49.303-2 Submission of inventory
schedules.**

Subject to the terms of the termination clause and whenever termination inventory is involved, the contractor shall submit complete inventory schedules, to the TCO, reflecting inventory that is allocable to the terminated portion of the contract. The inventory schedules shall be submitted within 120 days from the effective date of termination unless otherwise extended by the TCO based on a written justification to support the extension. The inventory schedules shall be prepared on the forms prescribed in

49.602-2 and in accordance with 45.606-5.

49.403 [Amended]

5. Section 49.403 is amended in paragraph (b)(1) by removing "(g)(3)" and inserting "(h)(3)"; and in paragraph (b)(2) by removing "(g)(4)" and inserting "(h)(4)".

49.502 [Amended]

6. Section 49.502 is amended in paragraph (e)(1) by removing "paragraph (c)" and inserting "paragraph (d)"; and in paragraph (e)(2) by removing "paragraph (g)" and inserting "paragraph (h)".

49.503 [Amended]

7. Section 49.503 is amended in paragraph (c) by removing "paragraphs

(d), (i), and (m)" and inserting "paragraphs (e), (j), and (n)".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 52.249-2 is amended by revising the introductory text and clause date; by redesignating paragraphs (c) through (m) as (d) through (n), respectively, and adding a new (c); and by redesignating paragraph (f) of Alternates I and III as (g), to read as follows:

52.249-2 Termination for Convenience of the Government (Fixed-Price).

As prescribed in 49.502(b)(1)(i), insert the following clause:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SEP 1996)

* * * * *

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

* * * * *

52.249-2 [Amended]

5b. In addition to the amendments set forth above, 52.249-2 is amended in the newly designated paragraphs by revising internal references to read as follows:

Paragraph	Remove	Insert
(b)(9), 1st sentence	"subparagraph (6) above"	"subparagraph (b)(6) of this clause"
(f), 1st sentence	"paragraph (d)"	"paragraph (e)"
(f), 3rd sentence	"paragraph (e) or paragraph (f)"	"paragraph (f) or paragraph (g)"
	"subparagraph (f)(3)"	"subparagraph (g)(3)"
(f), last sentence	"Paragraph (f)"	"Paragraph (g)"
(g), introductory text	"paragraph (e) above"	"paragraph (f) of this clause"
(g)(1)	"subparagraph (b)(9) above"	"subparagraph (b)(9) of this clause"
(g)(2)(i)	"subparagraph (f)(1) above"	"subparagraph (g)(1) of this clause"
(g)(2) (ii) and (iii)	"subdivision (i) above"	"subdivision (g)(2)(i) of this clause"
(h)	"paragraph (f) above"	"paragraph (g) of this clause"
(j)	"paragraph (d), (f), or (k)"	"paragraph (e), (g), or (l)"
	"paragraph (d) or (k)"	"paragraph (e) or (l)"
Alternate I heading and introductory text	"(APR 1984)" "paragraph (f) for paragraph (f)"	"(SEP 1996)" "paragraph (g) for paragraph (g)"
Alternate I	Paragraph "(f)" designation	Paragraph "(g)" designation
Alternate I, (g) introductory paragraph	"paragraph (e) above"	"paragraph (f) of this clause"
Alternate I, (g)(1)(ii)	"subdivision (i) above"	"subdivision (g)(1)(i) of this clause"
Alternate I, (g)(1)(iii)	"(i) above"	"subdivision (g)(1)(i) of this clause"
Alternate II	"(APR 1984)"	"(SEP 1996)"
Alternate II	"subparagraph (l)(2)"	"subparagraph (m)(2)"
Alternate III heading	"(APR 1984)"	"(SEP 1996)"
Alternate III introductory text	"(f) for paragraph (f)"	"(g) for paragraph (g)"
	"Subparagraph (l)(2)"	"Subparagraph (m)(2)"
Alternate III	Paragraph "(f)" designation	Paragraph "(g)" designation
Paragraph (g) of Alternate III	"Paragraph (e) above"	"Paragraph (f) of this clause"
Alternate III, (g)(1)(ii)	"subdivision (i) above"	"subdivision (g)(1)(i) of this clause"
Alternate III, (g)(1)(iii)	"(i) above"	"subdivision (g)(1)(i) of this clause"

6. Section 52.249-3 is amended by revising the introductory text and clause date; redesignating paragraphs (c) through (m) as (d) through (n), respectively, and adding a new paragraph (c) to read as follows:

52.249-3 Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements).

As prescribed in 49.502(b)(2), insert the following clause:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (DISMANTLING, DEMOLITION, OR REMOVAL OF IMPROVEMENTS) (SEP 1996)

* * * * *

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

* * * * *

52.249-3 [Amended]

6b. In addition to the amendments set forth above, 52.249-3 is further amended in the newly designated paragraphs by revising internal references to read as follows:

Paragraph	Remove	Insert
(b)(9), 1st sentence	"subparagraph (6) above"	"subparagraph (b)(6) of this clause"
(f), 1st sentence	"paragraph (d) above"	"paragraph (e) of this clause"
(f), 3rd sentence	"paragraph (e) or paragraph (f) below"	"paragraph (f) or paragraph (g) of this clause"
(f), last sentence	"Paragraph (f) below"	"Paragraph (g) of this clause"
(g), introductory text	"paragraph (e) above"	"paragraph (f) of this clause"

Paragraph	Remove	Insert
(g)(1)(ii)	"subdivision (i) above"	"subdivision (g)(1)(i) of this clause"
(g)(1)(iii)	"subdivision (i) above"	"subdivision (g)(1)(i) of this clause"
(g)(2)(iii)	"subparagraph (b)(8) above"	"subparagraph (b)(8) of this clause"
(h)	"paragraph (f) above"	"paragraph (g) of this clause"
(j)	"paragraph (d), (f), or (k)" both times it appears. "paragraph (d) or (k)"	"paragraph (e), (g), or (l) of this clause"
Alternate I	"(APR 1984)"	"(SEP 1996)"
	"subparagraph (1)(2)"	"subparagraph (m)(2)"

7. Section 52.249-5 is amended by revising the introductory text and clause date; redesignating paragraphs (c) through (g) as (d) through (h), respectively, and adding a new paragraph (c) to read as follows:

52.249-5 Termination for Convenience of the Government (Educational and Other Nonprofit Institutions).

As prescribed in 49.502(d), insert the following clause:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (EDUCATIONAL AND OTHER NONPROFIT INSTITUTIONS) (SEP 1996)

* * * * *

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

* * * * *

52.249-5 [Amended]

7b. In addition to the amendments set forth above, 52.249-5 is further amended in the newly designated paragraphs by revising internal references to read as follows:

Paragraph	Remove	Insert
(b)(9)	"subparagraph (6) above"	"subparagraph (b)(6) of this clause"
(e)	"paragraph (c) above"	"paragraph (d) of this clause"
(h)	"paragraph (c)"	"paragraph (d) of this clause"

8. Section 52.249-6 is amended in the clause by revising the clause date; redesignating paragraphs (d) through (m) as (e) through (n), respectively; by adding a new paragraph (d); by redesignating paragraph (g) of Alternates (IV) and (V) as paragraph (h) to read as follows:

52.249-6 Termination (Cost-Reimbursement).

* * * * *

TERMINATION (COST-REIMBURSEMENT) (SEP 1996)

* * * * *

(d) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by

the Contracting Officer upon written request of the Contractor within this 120-day period.

* * * * *

52.249-6 [Amended]

8b. In addition to the amendments set forth above, 52.249-6 is further amended in the newly designated paragraphs by revising internal references to read as follows:

Paragraph	Remove	Insert
(c)(9)	"subparagraph (6) above"	"subparagraph (c)(6) of this clause"
(g)	"paragraph (e) above"	"paragraph (f) of this clause"
(h)(2)	"subparagraph (1) above"	"subparagraph (h)(1) of this clause"
(h)(5)	"subparagraph (g)(4) above"	"subparagraph (h)(4) of this clause"
(j), 1st sentence	"paragraph (e) or (g) above or paragraph (k) below". "paragraph (e)"	"paragraph (f), (h), or (l) of this clause"
(j), 2nd sentence	"paragraph (e), (g), or (k)"	"paragraph (f)"
Alternate I	"(APR 1984)" "(g)(4) for subparagraph (g)(4)"	"paragraph (f), (h), or (l) of this clause"
Alternate II	"(APR 1984)" "subparagraph (1)(2)"	"(SEP 1996)" "(h)(4) for subparagraph (h)(4)"
Alternate III, introductory heading and text	"(APR 1984)"	"(SEP 1996)" "subparagraph (m)(2)"
	"(g)(4) shall be substituted for subparagraph (g)(4)".	"(SEP 1996)"
Alternate IV introductory heading and text	"Subparagraph (1)(2)"	"(h)(4) shall be substituted for subparagraph (h)(4)"
	"(APR 1984)"	"Subparagraph (m)(2)"
Alternate IV	"(g) and (k) for paragraphs (g) and (k)"	"(SEP 1996)"
Alternate IV, (h)(1)(iv)	Paragraph "(g)" designation	"(h) and (l) for paragraphs (h) and (l)"
Alternate (IV), (h)(2) introductory text	"(g)(1)(i)"	Paragraph "(h)" designation
Alternate IV	"(g)(1)"	"subdivision (h)(1)(i)"
Alternate V introductory heading and text	Paragraph "(k)" designation	"subparagraph (h)(1)"
	"(APR 1984)"	Paragraph "(l)" designation
Alternate V	"the following paragraphs (g) and (k) for paragraphs (g) and (k)".	"(SEP 1996)"
	"Subparagraph (l)(2)"	"the following paragraphs (h) and (l) for paragraphs (h) and (l)"
Alternate V	Paragraph "(g)" designation	"Subparagraph (m)(2)"
(h)(1)(iv) of Alternate V	"(g)(1)(i)"	Paragraph "(h)" designation
Alternate V, (h)(2) introductory text	"(1) above"	"subdivision (h)(1)(i)"
		"subparagraph (h)(1) of this clause"

Paragraph	Remove	Insert
Alternate V	Paragraph "(k)" designation	Paragraph "(l)" designation

9. Section 52.249-11 is amended by revising the introductory text and clause date; redesignating paragraphs (c) through (k) as (d) through (l), respectively; and adding a new paragraph (c) to read as follows:

52.249-11 Termination of Work (Consolidated Facilities or Facilities Acquisition).

As prescribed in 49.505(a), insert the following clause:

TERMINATION OF WORK
(CONSOLIDATED FACILITIES OR FACILITIES ACQUISITION) (SEP 1996)

* * * * *

(c) The Contractor shall submit complete termination inventory schedules no later

than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

* * * * *

9b. In addition to the amendments set forth above, 52.249-11 is further amended in the newly designated paragraphs by revising internal references to read as follows:

Paragraph	Remove	Insert
(b)(9)	"subparagraph (6) above"	"subparagraph (b)(6) of this clause".
(f)	"paragraph (d) above"	"paragraph (e) of this clause".
(g)(2)	"subparagraph (1) above"	"subparagraph (g)(1) of this clause".
(i)	"paragraph (d) or (f) above" both times it appears.	"paragraph (e) or (g) of this clause".
Alternate I	"paragraph (d) above"	"paragraph (e) of this clause".
	"(APR 1984)"	"(SEP 1996)".
	"subparagraph (j)(2)"	"subparagraph (k)(2)".

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and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

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),

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 as the Federal Acquisition Regulation (FAR) Council. 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) 90-40 which amend the FAR. The rules marked with an asterisk (*) are those for which a final regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Further information regarding these rules may be obtained by referring to FAC 90-40 which precedes this notice. This document may be obtained from the Internet at <http://www.gsa.gov/far/compliance>.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, FAR Secretariat, (202) 501-4755.

LIST OF RULES IN FAC 90-40

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