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**Thursday,
December 11, 2003**

Part V

**Department of
Defense**

**General Services
Administration**

**National Aeronautics
and Space
Administration**

**48 CFR Chapter 1, et al.
Federal Acquisition Circular 2001-18;
Final Rules**

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

48 CFR Chapter 1

**Federal Acquisition Circular 2001–18;
Introduction**

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

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

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2001–18. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at <http://www.arnet.gov/far>.

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

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2001–18 and specific FAR case number(s). Interested parties may also visit our Web site at <http://www.arnet.gov/far>.

Item	Subject	FAR case	Analyst
I	New Consolidated Form for Selection of Architect-Engineer Contractors	2000–608	Davis.
II	Depreciation Cost Principle	2001–026	Loeb.
III	Federal Procurement Data System	2003–019	Zaffos.
IV	Increased Federal Prison Industries, Inc. Waiver Threshold	2003–001	Nelson.
V	Debarment and Suspension—Order Placement and Option Exercise	2002–010	Goral.
VI	Insurance and Pension Costs	2001–037	Loeb.
VII	Debriefing—Competitive Acquisition	2002–014	Wise.
VIII	Technical Amendments.		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these

FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2001–18 amends the FAR as specified below:

Item I—New Consolidated Form for Selection of Architect-Engineer Contractors (FAR Case 2000–608)

This final rule amends the FAR to replace SF 254, Architect-Engineer and Related Services Questionnaire, and SF 255, Architect-Engineer and Related Services Questionnaire for Specific Projects, with SF 330, Architect-Engineer Qualifications. The SF 330 reflects current architect-engineer practices in a streamlined and updated format and is organized into data blocks that readily support automation. An interagency ad hoc committee developed the SF 330. It was based on the results of a joint Federal-industry survey of the existing SFs 254 and 255 conducted by the Standing Committee on Procurement and Contracting of the Federal Facilities Council (FCC) in 1995 and published in 1996 as FCC Report Number 130, entitled “Survey on the Use of SFs 254 and 255 for Architect-Engineer Qualifications.” The survey’s purpose was to evaluate the current use of the forms, which are used for the submission of qualifications by architect-engineer (A–E) firms interested in Federal contracts, and to identify

possible improvements which would enable the existing forms to better serve the needs of Federal agencies and the A–E industry.

The policies and the SF 330, Architect-Engineer Qualifications, of this final rule are effective for all agencies and their solicitations issued on or after January 12, 2004. However, agencies may delay implementation of this final rule until June 8, 2004, at which time it becomes mandatory for all agencies and their solicitations issued on or after that date. Use of the SF 330 becomes effective January 12, 2004. However, until June 8, 2004, agencies may authorize the continued use of the SFs 254 and 255 instead.

Item II—Depreciation Cost Principle (FAR Case 2001–026)

This final rule amends FAR parts 2 and 31 to revise the depreciation cost principle (FAR 31.205–11) by improving clarity and structure and removing unnecessary and duplicative language. The case was initiated at the request of the Aerospace Industries Association. The rule does not change the allowability of depreciation costs. However, changes have been made that may affect the determination of depreciable costs for tangible personal property; for example, only residual values in excess of 10 percent need be used and residual values need not be recognized when certain depreciation methods are used. This rule is of particular interest to contractors and contracting officers who use cost analysis to price contracts and

modifications, and who determine or negotiate reasonable costs in accordance with a clause of a contract, e.g., price revision of fixed-price incentive contracts, terminated contracts, or indirect cost rates.

Item III—Federal Procurement Data System (FAR Case 2003–019)

This final rule amends the FAR to revise FAR 4.602 to—

- Reflect that the information in FPDS–NG is available to the general public;
- Provide the website for FPDS–NG, which must be entered as <https://www.fpds.gov>;
- Delete the physical address for the Federal Procurement Data Center;
- Allow agencies to report all transactions between \$2,500 and \$25,000 to FPDS–NG as either individual contract actions or summary contract actions until September 30, 2004;
- Require all contract actions over \$2,500 be reported to FPDS–NG as individual contract actions after September 30, 2004;
- Require agencies to insert the provision at 52.204–6, Data Universal Numbering System (DUNS) Number, in solicitations when the expected award amount will result in the generation of an individual contract action report and the contract does not include FAR clause 52.204–7, Central Contractor Registration; and
- Eliminate the use of the SF 279, Federal Procurement Data System (FPDS)—Individual Contract Action

Report, and the SF 281, Federal Procurement Data System (FPDS)—Summary Contract Action Report (\$25,000 or Less).

Item IV—Increased Federal Prison Industries, Inc. Waiver Threshold (FAR Case 2003–001)

The interim rule published as Item V of FAC 2001–014 is adopted as final without change. The interim rule amended the FAR to increase the Federal Prison Industries, Inc.'s (FPI) clearance exception threshold at FAR 8.606(e) from \$25 to \$2,500, and deleted the criterion that delivery is required within 10 days. Federal agencies are not required to make purchases from FPI of products on FPI's Schedule that are at or below this threshold. Federal agencies, however, may continue to consider and purchase products from FPI that are at or below \$2,500.

Item V—Debarment and Suspension—Order Placement and Option Exercise (FAR Case 2002–010)

This final rule amends FAR part 9 to address the placement of orders under existing contracts and agreements with contractors that have been debarred, suspended, or proposed for debarment.

Item VI—Insurance and Pension Costs (FAR Case 2001–037)

This final rule amends the FAR to revise the Insurance and Indemnification cost principle (FAR 31.205–19), and the portion of the Compensation for Personal Services cost principle relating to pension costs (FAR 31.205–6(j)). The rule revises both cost principles by improving clarity and structure, and removing unnecessary and duplicative language. Changes to FAR 31.205–6(j) include: Use of terminology consistent with Cost Accounting Standard (CAS) 412, Measurement of Pension Costs, and CAS 413, Adjustment and Allocation of Pension Cost; how the Government receives pension cost adjustment amounts for CAS-covered and non-CAS-covered contracts; revision of the allowability limitation on employee stock ownership plan (ESOP) contributions; and removal of the requirement for the contracting officer to approve the ESOP contribution rate. Changes to FAR 31.205–19 include the elimination of the U.S. Treasury discount rate provision for computing actual losses. The case was initiated as a result of comments and recommendations received from industry and Government representatives during a series of public meetings. This rule is of particular interest to contractors and contracting

officers who use cost analysis to price contracts and modifications, and who determine or negotiate reasonable costs in accordance with a clause of a contract, e.g., price revision of fixed-price incentive contracts, terminated contracts, or indirect cost rates.

Item VII—Debriefing—Competitive Acquisition (FAR Case 2002–014)

This rule amends the FAR to include requirements for debriefing unsuccessful offerors under competitive proposals, as required by Sections 1014 and 1064 of the Federal Acquisition Streamlining Act of 1994, as amended, 10 U.S.C. 2305(b) and 41 U.S.C. 253b, respectively. Specifically, 10 U.S.C. 2305(b)(5)(D) and 41 U.S.C. 253b(e)(4) requires each solicitation for competitive proposals to include a statement that prescribes minimal information that shall be disclosed in postaward debriefings. This rule also amends FAR 52.212–1 and 52.215–1 to implement the statutory requirements, and the past performance debriefing requirement at FAR 15.506(d)(2), by listing all the prescribed minimal information that shall be disclosed in postaward debriefings.

Item VIII—Technical Amendments

This amendment makes editorial changes at FAR 1.201–1(b)(1); 6.302–7(c)(1)(i); 13.500(d); 25.701(b); 52.204–7, Alternate I; 52.211–2(a) and (b); and 52.225–13(b).

Dated: December 4, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001–18 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2001–18 are effective January 12, 2004, except for Items III, IV, and VIII which are effective December 11, 2003.

Dated: December 1, 2003.

Domenic C. Cipicchio,

Acting Director, Defense Procurement and Acquisition Policy.

Dated: December 1, 2003.

Joseph A. Neurauter,

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

Dated: November 24, 2003.

Tom Leudtke,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 03–30471 Filed 12–10–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 36, and 53

[FAC 2001–18; FAR Case 2000–608; Item I]

RIN 9000–AJ15

Federal Acquisition Regulation; New Consolidated Form for Selection of Architect-Engine Contractors

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to replace Standard Form (SF) 254, Architect-Engine and Related Services Questionnaire, and SF 255, Architect-Engine and Related Services Questionnaire for Specific Projects, with SF 330, Architect-Engineer Qualifications. The SF 330 reflects current architect-engineer practices in a streamlined and updated format, and is organized into data blocks that readily support automation.

DATES: Effective Date: January 12, 2004.

Applicability Date: The policies and the SF 330, Architect-Engineer Qualifications, of this final rule apply for all agencies and their solicitations issued on or after January 12, 2004. However, agencies may delay implementation of this final rule until June 8, 2004, at which time it becomes mandatory for all agencies and their solicitations issued on or after that date.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia Davis, Procurement Analyst, at (202) 219-0202. Please cite FAC 2001-18, FAR case 2000-608.

SUPPLEMENTARY INFORMATION:

A. Background

An interagency ad hoc committee developed the SF 330. It was based on the results of a joint Federal-industry survey of the existing Standard Forms (SFs) 254 and 255 conducted by the Standing Committee on Procurement and Contracting of the Federal Facilities Council (FCC) in 1995 and published in 1996 as FCC Report Number 130, entitled "Survey on the Use of Standard Forms 254 and 255 for Architect-Engineer Qualifications." The survey's purpose was to evaluate the current use of the forms which are used for the submission of qualifications by architect-engineer (A-E) firms interested in Federal contracts, and to identify possible improvements which would enable the existing forms to better serve the needs of Federal agencies and the A-E industry. The SFs 254 and 255 have changed little since their introduction in 1975, although the variety of A-E services has greatly expanded and new technologies have dramatically changed the way A-E firms do business. The report states that Federal agencies and A-E industry overwhelmingly support a structured format for submitting A-E qualifications, because the structured format saves time and effort and allows efficient and consistent evaluations. It also recommends many specific changes to the existing forms to enhance their effectiveness and simplify their use. Both Federal and A-E industry practitioners believe that the forms need streamlining as well as updating to facilitate electronic usage. The objectives of the SF 330 are to merge the SFs 254 and 255 into a single streamlined form, expand essential information about qualifications and experience, reflect current architect-engineer disciplines, experience types and technology, eliminate information of marginal value, permit limitations on submission length, and facilitate electronic usage. On October 19, 2001, a proposed FAR rule for a new Architect-Engineer Qualifications form was published in the **Federal Register** (66 FR 53314). The final rule replaces SFs 254 and 255 with SF 330, and makes related FAR revisions in 1.106,

36.603, 36.702, 53.236-2, 53.301-254, 53.301-255, and 53.301-330. SF 330 may be used beginning on January 12, 2004. However, until June 8, 2004, agencies may authorize the continued use of SFs 254 and 255 instead.

1. *Extension of Comment Period.* The FAR Council published this FAR case as a proposed rule in the **Federal Register** on October 19, 2001 (66 FR 53314), and later published an extension on December 20, 2001 (66 FR 65792). This extended the comment period from December 18, 2001, to January 8, 2002. One hundred and ten public comments were received from industry and Federal Government agencies.

2. *Summary of Public Comments.*

A. *General Comments:*

Comment: The new form for A-E qualifications is not necessary.

Response: SFs 254 and 255 were issued in 1975 and have changed little. However, there have been significant changes in the A-E industry since then, such as new technologies, changes in codes and standards, and new laws and regulations. Also, there have been substantial changes in Government contracting processes and agencies' requirements. The SF 330 reflects these changes and provides a more streamlined presentation of essential information required by agencies for selecting A-E firms.

Comment: Significant effort will be required to convert existing databases that have been developed for use with SFs 254 and 255, especially converting the profile codes.

Response: The SF 330 utilizes much of the same information as the SFs 254 and 255, which should minimize the effort required to convert existing databases for use with the new form. All of the existing experience categories that appear on the SF 254 have been retained (although a new alphanumeric system is used for the profile codes), and new experience categories have been added to reflect industry changes since the forms were first developed in 1975. Hence, firms do not have to change the current experience categories for example projects in their databases. Commercial software products for preparing the SF 330 should allow for easy conversion of the existing numeric profile codes to the new alphanumeric profile codes. The change to an alphanumeric code system allows for future profile code additions with minimal changes to the form.

Comment: The SF 330 overemphasizes branch offices, which will increase the cost of submissions and is not relevant for a large firm with a matrix organization.

Response: The A-E selection process is focused on the specific team proposed for the contract. Although a firm may have many branch offices, a specific office is typically assigned the lead role for the work, with possible support from one or more other offices. A Government A-E selection board is mainly concerned with the qualifications of the branch offices designated to perform the work, and not the entire firm. The form and instructions were changed to only require information on the branch offices having a key role in the contract, not all offices.

Comment: The SF 330 does not work well for indefinite delivery contracts (IDCs).

Response: The SF 330 requires submission of essentially the same information as SFs 254 and 255, and can be adapted for use with IDCs in the same manner as SFs 254 and 255. In fact, the language of the SF 330 emphasizes "contracts" instead of "projects" to reflect the Federal Government's current use of IDCs instead of project-specific contracts.

Comment: What is the implementation schedule for the SF 330?

Response: The SF 330 is effective January 12, 2004. However, the Councils have recommended that agencies may delay implementation of the SF 330 until June 8, 2004, at which time it becomes mandatory for all agencies and their solicitations issued on or after that date.

Comment: Can the SF 330 be expanded?

Response: The SF 330 can be expanded in the same manner as the SFs 254 and 255. Data elements have been realigned on the final form to allow vertical expansion and contraction, depending upon the amount of information inserted. Additional sheets can be attached to certain sections.

Comment: The page numbering system is burdensome and confusing.

Response: We eliminated the requirement for insertion of page numbers on the completed form.

Comment: Will the SF 330 be available electronically and in what format?

Response: The SF 330 will be posted electronically on the General Services Administration forms website in a screen-fillable format, Adobe Acrobat Portable Document Format, and possibly other formats. Also, commercial vendors will develop customized software products for preparation of the SF 330, similar to those currently available for the SFs 254

and 255. Individual agencies will specify if electronic submission is required and the specific format to use.

B. Comments on Part I:

Comment: The SF 330 overemphasizes the importance of previous relationships and teams, and discourages new firms and teams.

Response: The Brooks A-E Act requires that A-E firms be selected "on the basis of demonstrated competence." Hence, the proven competence of project teams is an important consideration in selecting A-E firms, which is reflected in the information on previous teaming arrangements required on the SF 330. On each contract submission, an A-E firm must decide whether to team with previous partners and subcontractors or to make new alliances.

Comment: The requirement for organizational "flowchart" in Section D is unclear and will be burdensome to show all branch offices.

Response: We have clarified the instructions to require an organizational chart of the proposed team showing the names and roles of all key personnel listed in Section E and the firms they are associated with, as listed in Section C. Also, only those branch offices having a key role in the contract need to be shown, not every office involved.

Comment: Revise Section E to allow more than 5 relevant projects for each key person.

Response: We disagree. Five projects are sufficient to demonstrate that a person has experience in the required type of work. The SF 330 actually provides more space for the experience of key persons than the SF 255.

Comment: Need instructions on the number, size, type, labeling, attachment and page numbering of photos for Section E (Resumes of Key Personnel Proposed for This Contract) and Section F.

Response: The Councils have deleted the instructions and check boxes for photos. If an agency requires photos, it will provide specific submission instructions.

Comment: What happens if a firm has less than 10 example projects to present in Section F?

Response: The requirement for 10 projects is the same as on the SF 255. A firm should present as many relevant projects as it can, up to a total of ten.

Comment: Clarify owner versus client in Section F. The user may be a better point of contact.

Response: The term "project owner" was used on the SF 255 and is used in the same manner on the SF 330. As defined in the instructions, the project owner is the agency, installation,

institution, corporation or private individual for whom the project was performed. The client may or may not be the project owner, depending on what organization awarded and managed the A-E contract. The point of contact may be a person associated with the project owner or the organization that contracted for the professional services, as long as the person is familiar with the project and the A-E firm's performance on that project.

Comment: The request for fee information on past projects in Section F violates the Brooks A-E Act on using price in A-E selections.

Response: We have eliminated the requirement for fee information on past projects.

Comment: The matrix in Section G, Key Personnel Participation in Example Projects, is redundant with other information on the SF 330.

Response: The matrix does include the names of the key personnel and their proposed roles from Section E and the titles of the example projects from Section F. But, repetition of this information is necessary to clearly portray which personnel have worked together before on the example projects, which is only partially shown in Section E and Section F. Also, Section E provides space for five relevant projects for each key person, which may or may not be any of the ten example projects for the team in Section F.

Comment: Is there a page limit on Section H—Additional Information? Can photos and graphics be included?

Response: Individual agencies may impose page limitations on the overall SF 330 and/or Section H. Photos and graphics may be inserted in Section H if they are requested by the agency.

C. Comments on Part II:

Comment: Will the Architect-Engineer Contract Administration Support System (ACASS) be changed to reflect the SF 330?

Response: Yes. ACASS, which is DoD-wide database maintained by the Portland, Oregon, District of the U.S. Army Corps of Engineers, will be changed to accommodate the SF 330, Part II, instead of the SF 254.

Comment: How are unlisted disciplines added to block 9—Employees by Discipline?

Response: The instructions indicate that any additional unlisted disciplines should be written in under column 9.b and the function code left blank. This is similar to the write-in procedure for the SF 254.

Comment: Many specific additional disciplines should be added to the List of Disciplines (Function Codes) in the instructions.

Response: Thirty commenters recommended specific additions, deletions and/or changes in the listed disciplines. Generally, we have added, deleted, and changed disciplines if suggested by three or more commenters. Specifically, we added the following disciplines: aerial photographer, archeologist, computer programmer, materials handling engineer, geographic information system specialist, hydraulic engineer, hydrographic surveyor, land surveyor, photogrammetrist, remote sensing specialist, sanitary engineer, water resources engineer, and photo interpreter. We deleted topographic surveyor, draftsman, geospatial information systems, and information systems engineer. We changed specification engineer to specifications writer, and separated electrical/electronics engineer into separate disciplines.

Comment: Firms need to be able to expand block 9 to allow for more than 20 disciplines.

Response: We disagree. The principal competencies and expertise of a firm, which is the focus of the Brooks A-E Act, can typically be covered by its 20 most prevalent disciplines.

Comment: How are unlisted profile codes added to block 10 (Profile of Firm's Experience and Annual Average Revenue for the Last 5 Years)?

Response: The instructions indicate that any additional unlisted relevant experience categories should be written in under column 10.b and the profile codes left blank. This is similar to the write-in procedure for the SF 254.

Comment: Many specific additional experience categories (profile codes) should be added to the List of Experience Categories (Profile Codes) in the instructions.

Response: We revised the experience categories of many profile codes so that they exactly matched all of the existing profile code experience categories on the SF 254, minimizing the conversion of existing project databases to the new form. Twenty-one commenters recommended specific additions, deletions, and/or changes in the listed profile code experience categories. We added and changed the profile code experience categories if suggested by two or more commenters. Specifically, we added the following profile code experience categories: Aerial Photography, Airborne Data and Imagery Collection and Analysis; Anti-Terrorism/Force Protection; Cartography; Charting; Nautical and Aeronautical; Digital Elevation and Terrain Model Development; Digital Orthophotography; Environmental and Natural Resource Mapping;

Environmental Planning; Geodetic Surveying; Ground and Airborne; Geospatial Data Conversion; Scanning, Digitizing, Compilation, Attributing, Scribing, Drafting; Intelligent Transportation Systems; Mapping Location/Addressing Systems; Navigation Structures and Locks; and Remote Sensing. Finally, we changed the following profile code experience categories: Aerial Photogrammetry to Photogrammetry; Design-Build to Design-Build—Preparation of Requests for Proposals; Geographic Information System Development/Analysis to Geographic Information System Services: Development, Analysis, and Data Collection; Land Boundary Surveying to Land Surveying; and Topographic Mapping to Topographic Surveying and Mapping.

Comment: Firms need to be able to expand block 10 to allow for more than 20 profile codes.

Response: We disagree. The principal competencies and expertise of a firm, which is the focus of the Brooks A–E Act, can typically be covered by its 20 most prevalent profile codes.

Comment: Are individual projects illustrating each profile code listed in block 10?

Response: No. The profile code description is inserted in column 10.b. Specific example projects are not required in Part II, although they were required in the SF 254 to illustrate each profile code.

Comment: Block 10—Profile of Firm's Experience, requires data for 5 years, but block 11—Annual Average Professional Services Revenues, requires data for 3 years. The same time period should be used for both blocks.

Response: We disagree. There is no reason that the time periods for these blocks must be the same. The 3-year period for revenues in block 11 was selected to be compatible with the same period used for measuring the revenues of small businesses. A 3-year basis for computing average revenues is sufficient to determine the annual workload capacity of a firm. On the other hand, 3 years is not long enough to characterize the type of work a firm does, especially since the design phase of some large projects can last 2 to 3 years. Therefore, 5 years was selected for block 10.

Comment: Include example projects in Part II as were included in the SF 254.

Response: We disagree. Selection boards rarely refer to the example projects in block 11 of the SF 254. Instead, selection boards focus on the example relevant projects in block 8 of

the SF 255, which corresponds with Section F of SF 330, Part I.

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

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this final rule does not change the current policy on how architect-engineer contracts are awarded or administered. This change deals directly with the information collection questionnaire, which is a paperwork change. This SF 330 provides a more streamlined format that reflects the current architect-engineer practices and eliminates requesting unnecessary information as requested by the current SFs 254 and 255.

Overall, the SF 330 will request less information than the SFs 254 and 255 and will take no longer to complete than the SFs 254 and 255. There was a comment period and no comments were received from small businesses complaining of any additional burden to them as a result of the SF 330.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the final rule contains information collection requirements. The final rule replaces the current SF 254, Architect-Engineer and Related Services Questionnaire, and the current SF 255, Architect-Engineer and Related Services Questionnaire for Specific Project, with a new SF 330, Architect-Engineer Qualifications. The current SF 254 approved information collection requirement states that it takes 1 hour to complete; and the current SF 255 approved information collection requirement states that it takes 1 hour to complete. Experience has shown that these hours are substantially underestimated. The SF 330, Architect-Engineer Qualifications, has been developed by an interagency ad hoc committee, based on Federal Facilities (FCC) Council Technical Report No. 130, "Joint Federal-Industry Survey on the use of SFs 254 and 255 for Architect-Engineer Qualifications," 1996.

To respond to a public comment that the reporting burden for this SF 330 is significantly underestimated, we acknowledge that additional effort will be required initially for firms to become familiar with using the new SF 330. However, after the transition, the SF 330 should take no longer to complete than SFs 254 and 255. Overall, the SF 330 requires less information than SFs 254 and 255. The following information was deleted: duplication of data on number of personnel by discipline (SF 255, block 4 and SF 254, block 8); work currently being performed for Federal agencies (SF 255, block 9); list of all offices and number of personnel in each (SF 254, block 7); revenue information for each of last 5 years (SF 254, block 9); number of projects for each profile code (SF 254, block 10); and 30 example projects (SF 254, block 11). Also, the profile of a firm's project experience is expressed in ranges on the SF 330 instead of specific dollar amounts (SF 254, block 10). The following information was added in comparison to the SF 255: organization chart of proposed team, expanded information on the firm's example projects, and matrix of key personnel participation in example projects. However, firms typically provide much or all of this information now in project submissions. Hence, there is no meaningful burden over current practices. Accordingly, the new information collection requirement for SF 330 has been submitted to the Office of Management and Budget during the proposed rule stage and has received concurrence.

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

Government procurement.

Dated: December 4, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

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

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

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

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

■ 2. Amend section 1.106 in the table following the introductory paragraph by—

■ a. Removing from FAR segment 36.603 its corresponding OMB Control Number "9000–0004 and 9000–0005" and adding "9000–0157" in its place;

- b. Removing the FAR segments “SF 254” and “SF 255” and their corresponding OMB Control Numbers “9000–0004” and “9000–0005”, respectively; and
- c. Adding FAR segment “SF 330” and its corresponding OMB Control Number “9000–0157”.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

- 3. Amend section 36.603 by—
 - a. Revising paragraph (b);
 - b. Removing “SF’s 254 and 255” from the last sentence of the introductory text of paragraph (c) and adding “SF 330” in its place; and
 - c. Removing “254” from paragraph (d)(1) and adding “330, Part II” in its place; and in paragraph (d)(2) by removing “SF’s 254 and 255” and adding “SF 330, Part II,” in its place.
- The revised text reads as follows:

36.603 Collecting data on and appraising firms’ qualifications.

* * * * *

(b) *Qualifications data.* To be considered for architect-engineer contracts, a firm must file with the

appropriate office or board the Standard Form 330, “Architect-Engineer Qualifications,” Part II, and when applicable, SF 330, Part I.

* * * * *

- 4. Amend section 36.702 by revising paragraph (b) to read as follows:

36.702 Forms for use in contracting for architect-engineer services.

* * * * *

(b) The SF 330, Architect-Engineer Qualifications, shall be used to evaluate firms before awarding a contract for architect-engineer services:

(1) Use the SF 330, Part I—Contract-Specific Qualifications, to obtain information from an architect-engineer firm about its qualifications for a specific contract when the contract amount is expected to exceed the simplified acquisition threshold. Part I may be used when the contract amount is expected to be at or below the simplified acquisition threshold, if the contracting officer determines that its use is appropriate.

(2) Use the SF 330, Part II—General Qualifications, to obtain information

from an architect-engineer firm about its general professional qualifications.

* * * * *

PART 53—FORMS

- 5. Amend section 53.236–2 by revising the section heading; removing paragraphs (b) and (c); redesignating paragraph (d) as paragraph (c); and adding a new paragraph (b) to read as follows:

53.236–2 Architect-engineer services (SF’s 252, 330, and 1421).

* * * * *

(b) *SF 330 (1/04), Architect-Engineer Qualifications.* SF 330 is prescribed for use in obtaining information from architect-engineer firms regarding their professional qualifications, as specified in 36.702(b)(1) and (b)(2).

* * * * *

- 6. Add section 53.301–330 to read as follows:

53.301–330 Architect-Engineer Qualifications.

BILLING CODE 6820–EP–P

ARCHITECT-ENGINEER QUALIFICATIONSOMB No.: 9000-0157
Expires: 12/31/2003

Public reporting burden for this collection of information is estimated to average a total of 29 hours per response (25 hours for Part 1 and 4 hours for Part 2), 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 FAR Secretariat (MVA), Regulatory and Federal Assistance Publications Division, GSA, Washington, DC 20405.

PURPOSE

Federal agencies use this form to obtain information from architect-engineer (A-E) firms about their professional qualifications. Federal agencies select firms for A-E contracts on the basis of professional qualifications as required by the Brooks A-E Act (40 U.S.C. 1101 - 1104) and Part 36 of the Federal Acquisition Regulation (FAR).

The Brooks A-E Act requires the public announcement of requirements for A-E services (with some exceptions provided by other statutes), and the selection of at least three of the most highly qualified firms based on demonstrated competence and professional qualifications according to specific criteria published in the announcement. The Act then requires the negotiation of a contract at a fair and reasonable price starting first with the most highly qualified firm.

The information used to evaluate firms is from this form and other sources, including performance evaluations, any additional data requested by the agency, and interviews with the most highly qualified firms and their references.

GENERAL INSTRUCTIONS

Part I presents the qualifications for a specific contract.

Part II presents the general qualifications of a firm or a specific branch office of a firm. Part II has two uses:

1. An A-E firm may submit Part II to the appropriate central, regional or local office of each Federal agency to be kept on file. A public announcement is not required for certain contracts, and agencies may use Part II as a basis for selecting at least three of the most highly qualified firms for discussions prior to requesting submission of Part I. Firms are encouraged to update Part II on file with agency offices, as appropriate, according to FAR Part 36. If a firm has branch offices, submit a separate Part II for each branch office seeking work.

2. Prepare a separate Part II for each firm that will be part of the team proposed for a specific contract and submitted with Part I. If a firm has branch offices, submit a separate Part II for each branch office that has a key role on the team.

INDIVIDUAL AGENCY INSTRUCTIONS

Individual agencies may supplement these instructions. For example, they may limit the number of projects or number of

pages submitted in Part I in response to a public announcement for a particular project. Carefully comply with any agency instructions when preparing and submitting this form. Be as concise as possible and provide only the information requested by the agency.

DEFINITIONS

Architect-Engineer Services: Defined in FAR 2.101.

Branch Office: A geographically distinct place of business or subsidiary office of a firm that has a key role on the team.

Discipline: Primary technical capabilities of key personnel, as evidenced by academic degree, professional registration, certification, and/or extensive experience.

Firm: Defined in FAR 36.102.

Key Personnel: Individuals who will have major contract responsibilities and/or provide unusual or unique expertise.

SPECIFIC INSTRUCTIONS**Part I - Contract-Specific Qualifications****Section A. Contract Information.**

1. **Title and Location.** Enter the title and location of the contract for which this form is being submitted, exactly as shown in the public announcement or agency request.

2. **Public Notice Date.** Enter the posted date of the agency's notice on the Federal Business Opportunity website (FedBizOpps), other form of public announcement or agency request for this contract.

3. **Solicitation or Project Number.** Enter the agency's solicitation number and/or project number, if applicable, exactly as shown in the public announcement or agency request for this contract.

Section B. Architect-Engineer Point of Contact.

4-8. **Name, Title, Name of Firm, Telephone Number, Fax (Facsimile) Number and E-mail (Electronic Mail) Address.** Provide information for a representative of the prime contractor or joint venture that the agency can contact for additional information.

Section C. Proposed Team.

9-11. Firm Name, Address, and Role in This Contract. Provide the contractual relationship, name, full mailing address, and a brief description of the role of each firm that will be involved in performance of this contract. List the prime contractor or joint venture partners first. If a firm has branch offices, indicate each individual branch office that will have a key role on the team. The named subcontractors and outside associates or consultants must be used, and any change must be approved by the contracting officer. (See FAR Part 52 Clause "Subcontractors and Outside Associates and Consultants (Architect-Engineer Services)".) Attach an additional sheet in the same format as Section C if needed.

Section D. Organizational Chart of Proposed Team.

As an attachment after Section C, present an organizational chart of the proposed team showing the names and roles of all key personnel listed in Section E and the firm they are associated with as listed in Section C.

Section E. Resumes of Key Personnel Proposed for This Contract.

Complete this section for each key person who will participate in this contract. Group by firm, with personnel of the prime contractor or joint venture partner firms first. The following blocks must be completed for each resume:

12. Name. Self-explanatory.

13. Role in This Contract. Self-explanatory.

14. Years Experience. Total years of relevant experience (block 14a), and years of relevant experience with current firm, but not necessarily the same branch office (block 14b).

15. Firm Name and Location. Name, city and state of the firm where the person currently works, which must correspond with one of the firms (or branch office of a firm, if appropriate) listed in Section C.

16. Education. Provide information on the highest relevant academic degree(s) received. Indicate the area(s) of specialization for each degree.

17. Current Professional Registration. Provide information on current relevant professional registration(s) in a State or possession of the United States, Puerto Rico, or the District of Columbia according to FAR Part 36.

18. Other Professional Qualifications. Provide information on any other professional qualifications relating to this contract, such as education, professional registration, publications, organizational memberships, certifications, training, awards, and foreign language capabilities.

19. Relevant Projects. Provide information on up to five projects in which the person had a significant role that demonstrates the person's capability relevant to her/his proposed role in this contract. These projects do not necessarily have to be any of the projects presented in Section F for the project team if the person was not involved in any of those projects or the person worked on other projects that were more relevant than the team projects in Section F. Use the check box provided to indicate if the project was performed with any office of the current firm. If any of the professional services or construction projects are not complete, leave Year Completed blank and indicate the status in Brief Description and Specific Role (block (3)).

Section F. Example Projects Which Best Illustrate Proposed Team's Qualifications for This Contract.

Select projects where multiple team members worked together, if possible, that demonstrate the team's capability to perform work similar to that required for this contract. Complete one Section F for each project. Present ten projects, unless otherwise specified by the agency. Complete the following blocks for each project:

20. Example Project Key Number. Start with "1" for the first project and number consecutively.

21. Title and Location. Title and location of project or contract. For an indefinite delivery contract, the location is the geographic scope of the contract.

22. Year Completed. Enter the year completed of the professional services (such as planning, engineering study, design, or surveying), and/or the year completed of construction, if applicable. If any of the professional services or the construction projects are not complete, leave Year Completed blank and indicate the status in Brief Description of Project and Relevance to This Contract (block 24).

23a. Project Owner. Project owner or user, such as a government agency or installation, an institution, a corporation or private individual.

23b. Point of Contact Name. Provide name of a person associated with the project owner or the organization which contracted for the professional services, who is very familiar with the project and the firm's (or firms') performance.

23c. Point of Contract Telephone Number. Self-explanatory.

24. Brief Description of Project and Relevance to This Contract. Indicate scope, size, cost, principal elements and special features of the project. Discuss the relevance of the example project to this contract. Enter any other information requested by the agency for each example project.

25. Firms from Section C Involved with This Project. Indicate which firms (or branch offices, if appropriate) on the project team were involved in the example project, and their roles. List in the same order as Section C.

Section G. Key Personnel Participation in Example Projects.

This matrix is intended to graphically depict which key personnel identified in Section E worked on the example projects listed in Section F. Complete the following blocks (see example below).

26. and 27. Names of Key Personnel and Role in This Contract. List the names of the key personnel and their proposed roles in this contract in the same order as they appear in Section E.

28. Example Projects Listed in Section F. In the column under each project key number (see block 29) and for each key person, place an "X" under the project key number for participation in the same or similar role.

29. Example Projects Key. List the key numbers and titles of the example projects in the same order as they appear in Section F.

Section H. Additional Information.

30. Use this section to provide additional information specifically requested by the agency or to address selection criteria that are not covered by the information provided in Sections A-G.

Section I. Authorized Representative.

31. and 32. Signature of Authorized Representative and Date. An authorized representative of a joint venture or the prime contractor must sign and date the completed form. Signing attests that the information provided is current and factual, and that all firms on the proposed team agree to work on the project. Joint ventures selected for negotiations must make available a statement of participation by a principal of each member of the joint venture.

33. Name and Title. Self-explanatory.

SAMPLE ENTRIES FOR SECTION G (MATRIX)

26. NAMES OF KEY PERSONNEL (From Section E, Block 12)	27. ROLE IN THIS CONTRACT (From Section E, Block 13)	28. EXAMPLE PROJECTS LISTED IN SECTION F (Fill in "Example Projects Key" section below first, before completing table. Place "X" under project key number for participation in same or similar role.)									
		1	2	3	4	5	6	7	8	9	10
Jane A. Smith	Chief Architect	X		X							
Joseph B. Williams	Chief Mech. Engineer	X	X	X	X						
Tara C. Donovan	Chief Elec. Engineer	X	X		X						

29. EXAMPLE PROJECTS KEY

NO.	TITLE OF EXAMPLE PROJECT (FROM SECTION F)	NO.	TITLE OF EXAMPLE PROJECT (FROM SECTION F)
1	Federal Courthouse, Denver, CO	6	XYZ Corporation Headquarters, Boston, MA
2	Justin J. Wilson Federal Building, Baton Rouge, LA	7	Founder's Museum, Newport RI

Part II - General Qualifications

See the "General Instructions" on page 1 for firms with branch offices. Prepare Part II for the specific branch office seeking work if the firm has branch offices.

1. Solicitation Number. If Part II is submitted for a specific contract, insert the agency's solicitation number and/or project number, if applicable, exactly as shown in the public announcement or agency request.

2a-2e. Firm (or Branch Office) Name and Address. Self-explanatory.

3. Year Established. Enter the year the firm (or branch office, if appropriate) was established under the current name.

4. DUNS Number. Insert the Data Universal Numbering System number issued by Dun and Bradstreet Information Services. Firms must have a DUNS number. See FAR Part 4.6.

5. Ownership.

a. Type. Enter the type of ownership or legal structure of the firm (sole proprietor, partnership, corporation, joint venture, etc.).

b. Small Business Status. Refer to the North American Industry Classification System (NAICS) code in the public announcement, and indicate if the firm is a small business according to the current size standard for that NAICS code (for example, Engineering Services (part of NAICS 541330), Architectural Services (NAICS 541310), Surveying and Mapping Services (NAICS 541370)). The small business categories and the internet website for the NAICS codes appear in FAR Part 19. Contact the requesting agency for any questions. Contact your local U.S. Small Business Administration office for any questions regarding Business Status.

6a-6c. Point of Contact. Provide this information for a representative of the firm that the agency can contact for additional information. The representative must be empowered to speak on contractual and policy matters.

7. Name of Firm. Enter the name of the firm if Part II is prepared for a branch office.

8a-8c. Former Firm Names. Indicate any other previous names for the firm (or branch office) during the last six years. Insert the year that this corporate name change was

effective and the associated DUNS Number. This information is used to review past performance on Federal contracts.

9. Employees by Discipline. Use the relevant disciplines and associated function codes shown at the end of these instructions and list in the same numerical order. After the listed disciplines, write in any additional disciplines and leave the function code blank. List no more than 20 disciplines. Group remaining employees under "Other Employees" in column b. Each person can be counted only once according to his/her primary function. If Part II is prepared for a firm (including all branch offices), enter the number of employees by disciplines in column c(1). If Part II is prepared for a branch office, enter the number of employees by discipline in column c(2) and for the firm in column c(1).

10. Profile of Firm's Experience and Annual Average Revenue for Last 5 Years. Complete this block for the firm or branch office for which this Part II is prepared. Enter the experience categories which most accurately reflect the firm's technical capabilities and project experience. Use the relevant experience categories and associated profile codes shown at the end of these instructions, and list in the same numerical order. After the listed experience categories, write in any unlisted relevant project experience categories and leave the profile codes blank. For each type of experience, enter the appropriate revenue index number to reflect the professional services revenues received annually (averaged over the last 5 years) by the firm or branch office for performing that type of work. A particular project may be identified with one experience category or it may be broken into components, as best reflects the capabilities and types of work performed by the firm. However, do not double count the revenues received on a particular project.

11. Annual Average Professional Services Revenues of Firm for Last 3 Years. Complete this block for the firm or branch office for which this Part II is prepared. Enter the appropriate revenue index numbers to reflect the professional services revenues received annually (averaged over the last 3 years) by the firm or branch office. Indicate Federal work (performed directly for the Federal Government, either as the prime contractor or subcontractor), non-Federal work (all other domestic and foreign work, including Federally-assisted projects), and the total. If the firm has been in existence for less than 3 years, see the definition for "Annual Receipts" under FAR 19.101.

12. Authorized Representative. An authorized representative of the firm or branch office must sign and date the completed form. Signing attests that the information provided is current and factual. Provide the name and title of the authorized representative who signed the form.

List of Disciplines (Function Codes)

Code	Description	Code	Description
01	Acoustical Engineer	32	Hydraulic Engineer
02	Administrative	33	Hydrographic Surveyor
03	Aerial Photographer	34	Hydrologist
04	Aeronautical Engineer	35	Industrial Engineer
05	Archeologist	36	Industrial Hygienist
06	Architect	37	Interior Designer
07	Biologist	38	Land Surveyor
08	CADD Technician	39	Landscape Architect
09	Cartographer	40	Materials Engineer
10	Chemical Engineer	41	Materials Handling Engineer
11	Chemist	42	Mechanical Engineer
12	Civil Engineer	43	Mining Engineer
13	Communications Engineer	44	Oceanographer
14	Computer Programmer	45	Photo Interpreter
15	Construction Inspector	46	Photogrammetrist
16	Construction Manager	47	Planner: Urban/Regional
17	Corrosion Engineer	48	Project Manager
18	Cost Engineer/Estimator	49	Remote Sensing Specialist
19	Ecologist	50	Risk Assessor
20	Economist	51	Safety/Occupational Health Engineer
21	Electrical Engineer	52	Sanitary Engineer
22	Electronics Engineer	53	Scheduler
23	Environmental Engineer	54	Security Specialist
24	Environmental Scientist	55	Soils Engineer
25	Fire Protection Engineer	56	Specifications Writer
26	Forensic Engineer	57	Structural Engineer
27	Foundation/Geotechnical Engineer	58	Technician/Analyst
28	Geodetic Surveyor	59	Toxicologist
29	Geographic Information System Specialist	60	Transportation Engineer
30	Geologist	61	Value Engineer
31	Health Facility Planner	62	Water Resources Engineer

List of Experience Categories (Profile Codes)

Code	Description	Code	Description
A01	Acoustics, Noise Abatement	E01	Ecological & Archeological Investigations
A02	Aerial Photography; Airborne Data and Imagery Collection and Analysis	E02	Educational Facilities; Classrooms
A03	Agricultural Development; Grain Storage; Farm Mechanization	E03	Electrical Studies and Design
A04	Air Pollution Control	E04	Electronics
A05	Airports; Navais; Airport Lighting; Aircraft Fueling	E05	Elevators; Escalators; People-Movers
A06	Airports; Terminals and Hangars; Freight Handling	E06	Embassies and Chanceries
A07	Arctic Facilities	E07	Energy Conservation; New Energy Sources
A08	Animal Facilities	E08	Engineering Economics
A09	Anti-Terrorism/Force Protection	E09	Environmental Impact Studies, Assessments or Statements
A10	Asbestos Abatement	E10	Environmental and Natural Resource Mapping
A11	Auditoriums & Theaters	E11	Environmental Planning
A12	Automation; Controls; Instrumentation	E12	Environmental Remediation
B01	Barracks; Dormitories	E13	Environmental Testing and Analysis
B02	Bridges	F01	Fallout Shelters; Blast-Resistant Design
C01	Cartography	F02	Field Houses; Gyms; Stadiums
C02	Cemeteries (<i>Planning & Relocation</i>)	F03	Fire Protection
C03	Charting: Nautical and Aeronautical	F04	Fisheries; Fish ladders
C04	Chemical Processing & Storage	F05	Forensic Engineering
C05	Child Care/Development Facilities	F06	Forestry & Forest products
C06	Churches; Chapels	G01	Garages; Vehicle Maintenance Facilities; Parking Decks
C07	Coastal Engineering	G02	Gas Systems (Propane; Natural, Etc.)
C08	Codes; Standards; Ordinances	G03	Geodetic Surveying: Ground and Airborne
C09	Cold Storage; Refrigeration and Fast Freeze	G04	Geographic Information System Services: Development, Analysis, and Data Collection
C10	Commercial Building (<i>low rise</i>); Shopping Centers	G05	Geospatial Data Conversion: Scanning, Digitizing, Compilation, Attributing, Scribing, Drafting
C11	Community Facilities	G06	Graphic Design
C12	Communications Systems; TV; Microwave	H01	Harbors; Jetties; Piers, Ship Terminal Facilities
C13	Computer Facilities; Computer Service	H02	Hazardous Materials Handling and Storage
C14	Conservation and Resource Management	H03	Hazardous, Toxic, Radioactive Waste Remediation
C15	Construction Management	H04	Heating; Ventilating; Air Conditioning
C16	Construction Surveying	H05	Health Systems Planning
C17	Corrosion Control; Cathodic Protection; Electrolysis	H06	Highrise; Air-Rights-Type Buildings
C18	Cost Estimating; Cost Engineering and Analysis; Parametric Costing; Forecasting	H07	Highways; Streets; Airfield Paving; Parking Lots
C19	Cryogenic Facilities	H08	Historical Preservation
D01	Dams (<i>Concrete; Arch</i>)	H09	Hospital & Medical Facilities
D02	Dams (<i>Earth; Rock</i>); Dikes; Levees	H10	Hotels; Motels
D03	Desalinization (<i>Process & Facilities</i>)	H11	Housing (<i>Residential, Multi-Family; Apartments; Condominiums</i>)
D04	Design-Build - Preparation of Requests for Proposals	H12	Hydraulics & Pneumatics
D05	Digital Elevation and Terrain Model Development	H13	Hydrographic Surveying
D06	Digital Orthophotography		
D07	Dining Halls; Clubs; Restaurants		
D08	Dredging Studies and Design		

List of Experience Categories (Profile Codes)

Code	Description	Code	Description
I01	Industrial Buildings; Manufacturing Plants	P10	Product, Machine Equipment Design
I02	Industrial Processes; Quality Control	P11	Pneumatic Structures, Air-Support Buildings
I03	Industrial Waste Treatment	P12	Postal Facilities
I04	Intelligent Transportation Systems	P13	Power Generation, Transmission, Distribution
I05	Interior Design; Space Planning	P14	Public Safety Facilities
I06	Irrigation; Drainage		
J01	Judicial and Courtroom Facilities	R01	Radar; Sonar; Radio & Radar Telescopes
L01	Laboratories; Medical Research Facilities	R02	Radio Frequency Systems & Shieldings
L02	Land Surveying	R03	Railroad; Rapid Transit
L03	Landscape Architecture	R04	Recreation Facilities (Parks, Marinas, Etc.)
L04	Libraries; Museums; Galleries	R05	Refrigeration Plants/Systems
L05	Lighting (Interior; Display; Theater, Etc.)	R06	Rehabilitation (Buildings; Structures; Facilities)
L06	Lighting (Exteriors; Streets; Memorials; Athletic Fields, Etc.)	R07	Remote Sensing
		R08	Research Facilities
M01	Mapping Location/Addressing Systems	R09	Resources Recovery; Recycling
M02	Materials Handling Systems; Conveyors; Sorters	R10	Risk Analysis
M03	Metallurgy	R11	Rivers; Canals; Waterways; Flood Control
M04	Microclimatology; Tropical Engineering	R12	Roofing
M05	Military Design Standards	S01	Safety Engineering; Accident Studies; OSHA Studies
M06	Mining & Mineralogy	S02	Security Systems; Intruder & Smoke Detection
M07	Missile Facilities (Silos; Fuels; Transport)	S03	Seismic Designs & Studies
M08	Modular Systems Design; Pre-Fabricated Structures or Components	S04	Sewage Collection, Treatment and Disposal
		S05	Soils & Geologic Studies; Foundations
N01	Naval Architecture; Off-Shore Platforms	S06	Solar Energy Utilization
N02	Navigation Structures; Locks	S07	Solid Wastes; Incineration; Landfill
N03	Nuclear Facilities; Nuclear Shielding	S08	Special Environments; Clean Rooms, Etc.
		S09	Structural Design; Special Structures
O01	Office Buildings; Industrial Parks	S10	Surveying; Platting; Mapping; Flood Plain Studies
O02	Oceanographic Engineering	S11	Sustainable Design
O03	Ordnance; Munitions; Special Weapons	S12	Swimming Pools
		S13	Storm Water Handling & Facilities
P01	Petroleum Exploration; Refining	T01	Telephone Systems (<i>Rural; Mobile; Intercom, Etc.</i>)
P02	Petroleum and Fuel (Storage and Distribution)	T02	Testing & Inspection Services
P03	Photogrammetry	T03	Traffic & Transportation Engineering
P04	Pipelines (Cross-Country - Liquid & Gas)	T04	Topographic Surveying and Mapping
P05	Planning (Community, Regional, Areawide and State)	T05	Towers (<i>Self-Supporting & Guyed Systems</i>)
P06	Planning (Site, Installation, and Project)	T06	Tunnels & Subways
P07	Planning (Site, Installation, and Project)		
P08	Plumbing & Piping Design		
P09	Prisons & Correctional Facilities		

List of Experience Categories (Profile Codes)

Code	Description
U01	Unexploded Ordnance Remediation
U02	Urban Renewals; Community Development
U03	Utilities (Gas and Steam)
V01	Value Analysis; Life-Cycle Costing
W01	Warehouses & Depots
W02	Water Resources; Hydrology; Ground Water
W03	Water Supply; Treatment and Distribution
W04	Wind Tunnels; Research/Testing Facilities Design
Z01	Zoning; Land Use Studies

ARCHITECT - ENGINEER QUALIFICATIONS

PART I - CONTRACT-SPECIFIC QUALIFICATIONS

A. CONTRACT INFORMATION

1. TITLE AND LOCATION *(City and State)*

2. PUBLIC NOTICE DATE

3. SOLICITATION OR PROJECT NUMBER

B. ARCHITECT-ENGINEER POINT OF CONTACT

4. NAME AND TITLE

5. NAME OF FIRM

6. TELEPHONE NUMBER

7. FAX NUMBER

8. E-MAIL ADDRESS

C. PROPOSED TEAM

(Complete this section for the prime contractor and all key subcontractors.)

	<i>(Check)</i>				9. FIRM NAME	10. ADDRESS	11. ROLE IN THIS CONTRACT
	PRIME	J.V.	PARTNER	SUBCONTRACTOR			
a.							
				<input type="checkbox"/> CHECK IF BRANCH OFFICE			
b.							
				<input type="checkbox"/> CHECK IF BRANCH OFFICE			
c.							
				<input type="checkbox"/> CHECK IF BRANCH OFFICE			
d.							
				<input type="checkbox"/> CHECK IF BRANCH OFFICE			
e.							
				<input type="checkbox"/> CHECK IF BRANCH OFFICE			
f.							
				<input type="checkbox"/> CHECK IF BRANCH OFFICE			

D. ORGANIZATIONAL CHART OF PROPOSED TEAM

(Attached)

E. RESUMES OF KEY PERSONNEL PROPOSED FOR THIS CONTRACT
(Complete one Section E for each key person.)

12. NAME	13. ROLE IN THIS CONTRACT	14. YEARS EXPERIENCE	
		a. TOTAL	b. WITH CURRENT FIRM
15. FIRM NAME AND LOCATION <i>(City and State)</i>			
16. EDUCATION <i>(DEGREE AND SPECIALIZATION)</i>		17. CURRENT PROFESSIONAL REGISTRATION <i>(STATE AND DISCIPLINE)</i>	
18. OTHER PROFESSIONAL QUALIFICATIONS <i>(Publications, Organizations, Training, Awards, etc.)</i>			

19. RELEVANT PROJECTS

a.	(1) TITLE AND LOCATION <i>(City and State)</i>	(2) YEAR COMPLETED	
		PROFESSIONAL SERVICES	CONSTRUCTION <i>(If applicable)</i>
	(3) BRIEF DESCRIPTION <i>(Brief scope, size, cost, etc.)</i> AND SPECIFIC ROLE	<input type="checkbox"/> Check if project performed with current firm	
b.	(1) TITLE AND LOCATION <i>(City and State)</i>	(2) YEAR COMPLETED	
		PROFESSIONAL SERVICES	CONSTRUCTION <i>(If applicable)</i>
	(3) BRIEF DESCRIPTION <i>(Brief scope, size, cost, etc.)</i> AND SPECIFIC ROLE	<input type="checkbox"/> Check if project performed with current firm	
c.	(1) TITLE AND LOCATION <i>(City and State)</i>	(2) YEAR COMPLETED	
		PROFESSIONAL SERVICES	CONSTRUCTION <i>(If applicable)</i>
	(3) BRIEF DESCRIPTION <i>(Brief scope, size, cost, etc.)</i> AND SPECIFIC ROLE	<input type="checkbox"/> Check if project performed with current firm	
d.	(1) TITLE AND LOCATION <i>(City and State)</i>	(2) YEAR COMPLETED	
		PROFESSIONAL SERVICES	CONSTRUCTION <i>(If applicable)</i>
	(3) BRIEF DESCRIPTION <i>(Brief scope, size, cost, etc.)</i> AND SPECIFIC ROLE	<input type="checkbox"/> Check if project performed with current firm	
e.	(1) TITLE AND LOCATION <i>(City and State)</i>	(2) YEAR COMPLETED	
		PROFESSIONAL SERVICES	CONSTRUCTION <i>(If applicable)</i>
	(3) BRIEF DESCRIPTION <i>(Brief scope, size, cost, etc.)</i> AND SPECIFIC ROLE	<input type="checkbox"/> Check if project performed with current firm	

F. EXAMPLE PROJECTS WHICH BEST ILLUSTRATE PROPOSED TEAM'S QUALIFICATIONS FOR THIS CONTRACT <i>(Present as many projects as requested by the agency, or 10 projects, if not specified. Complete one Section F for each project.)</i>		20. EXAMPLE PROJECT KEY NUMBER
21. TITLE AND LOCATION <i>(City and State)</i>	22. YEAR COMPLETED	
	PROFESSIONAL SERVICES	CONSTRUCTION <i>(If applicable)</i>
23. PROJECT OWNER'S INFORMATION		
a. PROJECT OWNER	b. POINT OF CONTACT NAME	c. POINT OF CONTACT TELEPHONE NUMBER
24. BRIEF DESCRIPTION OF PROJECT AND RELEVANCE TO THIS CONTRACT <i>(Include scope, size, and cost)</i>		

25. FIRMS FROM SECTION C INVOLVED WITH THIS PROJECT		
(1) FIRM NAME	(2) FIRM LOCATION <i>(City and State)</i>	(3) ROLE
a.		
b.		
c.		
d.		
e.		
f.		

H. ADDITIONAL INFORMATION

30. PROVIDE ANY ADDITIONAL INFORMATION REQUESTED BY THE AGENCY. ATTACH ADDITIONAL SHEETS AS NEEDED.

I. AUTHORIZED REPRESENTATIVE
The foregoing is a statement of facts.

31. SIGNATURE

32. DATE

33. NAME AND TITLE

[FR Doc. 03-30472 Filed 12-10-03; 8:45 am]

BILLING CODE 6820-EP-C

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 2 and 31**

[FAC 2001-18; FAR Case 2001-026; Item II]

RIN 9000-AJ56

**Federal Acquisition Regulation;
Depreciation Cost Principle**

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to revise the depreciation cost principle to improve clarity and structure, and remove unnecessary and duplicative language.

DATES: *Effective Date:* January 12, 2004.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, at (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Edward Loeb, Policy Advisor, at (202) 501-0650. Please cite FAC 2001-18, FAR case 2001-026.

SUPPLEMENTARY INFORMATION:**A. Background**

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 68 FR 4876, January 30, 2003, with request for comments. Two respondents submitted public comments; a discussion of the major comments is provided below. The Councils considered all comments and concluded that the proposed rule should be converted to a final rule with changes. Differences between the proposed rule and final rule are discussed below.

B. Public Comments*FAR 31.205-11, Depreciation**FAR 31.205-11(a)*

Comment 1: Both respondents suggested that the cost principle should allow flexibility in the use of residual values less than 10 percent and,

therefore, the word "shall" in the second sentence of proposed FAR 31.205-11(a) should be changed.

Councils' response: Concur. The Councils changed the word "shall" in sentence two of FAR 31.205-11(a) to "need," which conforms with the wording of Cost Accounting Standard (CAS) 409-50(h).

Comment 2: Respondent believes that for clarification and consistency purposes in this area, language in CAS 409-50(h) should be added to the cost principle. Respondent recommended adding the statement regarding the recognition of residual values when certain depreciation methods are used, and the term "significantly" when referring to the allowability of depreciation costs that reduce assets below their residual value.

Councils' response: Concur. The Councils believe the FAR should not be more restrictive than the CAS in this area. Therefore, the Councils added the following sentence as the third sentence of proposed FAR 31.205-11(a): "Where either the declining balance method of depreciation or the class life asset depreciation range system is used, the residual value need not be deducted from capitalized cost to determine depreciable costs." In addition, the Councils added the term "significantly" to the last sentence of proposed FAR 31.205-11(a).

Comment 3: Respondent suggested deleting the last sentence of FAR 31.205-11(a) since it appears to be contradictory to the previous sentence and this requirement is already covered in the definition of "depreciation."

Councils' response: Do not concur. The Councils believe that the sentence does not contradict the previous sentence, and the definition of "depreciation" does not adequately cover this requirement.

FAR 31.205-11(d)

Comment 4: Both respondents suggested deleting the entire proposed paragraph 31.205-11(d). One respondent stated, "Depreciation, by definition, requires a 'cost.' If there is no cost, there is no depreciation. Comments on rental or use charges are already covered in Part 45 and should be covered under 31.205-36, Rental Costs, if considered necessary, and not under the Depreciation Cost Principle."

Councils' response: Do not concur. The Councils believe that in those instances where contractors might put an asset on their books without incurring a cost, *i.e.*, a donated asset, it must be clear that any costs associated with that asset are unallowable.

FAR 31.205-11(f)

Comment 5: Both respondents suggested deleting the third sentence of the proposed FAR 31.205-11(f). They believe the requirements in the sentence are overly prescriptive and instructional. One respondent stated, "FAR 31.109 already provides guidance on how to arrive at advance agreements."

Councils' response: Do not concur. The Councils believe that while FAR 31.109 provides information on advance agreements, it does not address items that should be considered in determining a reasonable amount for a use charge. The Councils believe the guidance is helpful in determining a reasonable charge. However, the last sentence of proposed FAR 31.205-11(f) inappropriately limited the scope of this provision with the words, "the contractor shall consider * * *." Therefore, the Councils have replaced this language with broader guidance, "consideration shall be given to * * *."

FAR 31.205-11(g)

Comment 6: Both respondents recommended revising proposed FAR 31.205-11(g) to more closely reflect the requirements of FAR 31.205-52, Asset valuations resulting from business combinations. They maintain that FAR 31.205-52 does not necessarily "limit" allowability as stated in the proposed words.

Councils' response: Partially concur. It is not necessary to characterize FAR 31.205-52 here as limiting allowability. Therefore, the Councils deleted the words "which limit the allowability of depreciation" from FAR 31.205-11(g). However, the proposed rule inappropriately limited the scope of this provision with the words, "the contractor shall comply with the requirements of 31.205-52." Therefore, the Councils replaced this language with broader guidance, "the requirements of 31.205-52 shall be observed."

FAR 31.205-11(i)

Comment 7: Both respondents recommended deleting the third sentence of FAR 31.205-11(i) as redundant. They also recommended deleting the fourth sentence, as well as paragraph (i)(1), because operating leases and sale and lease back arrangements are already covered under FAR 31.205-36, Rental costs, and need not be repeated in the depreciation cost principle. Finally, they recommended deleting the fifth sentence as repetitive of the first two sentences.

Councils' response: Partially concur. The Councils agree with the

recommendation to delete the redundant third sentence: "Capital leases under FAR 13 are subject to the requirements of 31.205-11." The Councils also agree that operating leases are covered in FAR 31.205-36, and, therefore, deleted the fourth sentence: "Operating leases are subject to the requirements of 31.205-36." However, the Councils believe a cross-reference in this cost principle is helpful because of the interchange of the two cost principles and, therefore, inserted a cross-reference after sentence one: "(See 31.205-36 for Operating Leases.)" The Councils disagree with deleting the language relative to sale and leaseback in paragraph (i)(1) since this language is closely related to depreciation costs, but changed the first word from "Rental" to "Lease." Finally, the Councils deleted most of the fifth sentence as duplicative, but changed "except as follows:" to "except that:"

FAR 31.205-11(j)

Comment 8: One respondent suggested revising proposed paragraph (j) in FAR 31.205-11, and asserted that the second sentence of the proposed rule would require contractors to change their depreciation method if different. The other respondent recommended deleting the entire paragraph and stated, "It is obsolete in that it only applies to assets acquired before the effective date of this cost principle (i.e., pre-ASPR time frame)."

Councils' response: Partially concur. The Councils deleted paragraph (j) since the grandfather provision benefits industry and it is no longer needed.

FAR 31.205-36, Rental Costs

FAR 31.205-36(a)

Comment 9: Both respondents recommended deleting the second sentence of FAR 31.205-36(a) since depreciation issues are already covered under 31.205-11, Depreciation, and need not be repeated in FAR 31.205-36.

Councils' response: Concur. The Councils agree that the detailed language does not need to be repeated in FAR 31.205-36, but believe a cross-reference is useful to the users of the cost principles because of the interchange of the two cost principles. Therefore, the second sentence of FAR 31.205-36(a) is deleted and a cross-reference, "(See 31.205-11 for Capital Leases.)," is inserted.

FAR 31.205-36(b)(1)(iv)

Comment 9: Respondent recommended retaining the language at FAR 31.205-36(b)(1)(iv). They stated that no explanation was given for deleting the language.

Councils' response: Do not concur. The respondent appears to have misread the changes made. FAR 31.205-36(b)(4) was deleted, not FAR 31.205-36(b)(1)(iv).

C. Regulatory Planning and Review

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

D. Regulatory Flexibility Act

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

E. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 2 and 31

Government procurement.

Dated: December 4, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2 and 31 as set forth below:

■ 1. The authority citation for 48 CFR parts 2 and 31 is revised to read as follows:

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

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 in paragraph (b) by adding, in alphabetical order, the definition "Depreciation" to read as follows:

2.101 Definitions.

* * * * *
Depreciation means a charge to current operations that distributes the cost of a tangible capital asset, less estimated residual value, over the

estimated useful life of the asset in a systematic and logical manner. It does not involve a process of valuation. Useful life refers to the prospective period of economic usefulness in a particular contractor's operations as distinguished from physical life; it is evidenced by the actual or estimated retirement and replacement practice of the contractor.

* * * * *

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 3. Revise section 31.205-11 to read as follows:

31.205-11 Depreciation.

(a) Depreciation on a contractor's plant, equipment, and other capital facilities is an allowable contract cost, subject to the limitations contained in this cost principle. For tangible personal property, only estimated residual values that exceed 10 percent of the capitalized cost of the asset need be used in establishing depreciable costs. Where either the declining balance method of depreciation or the class life asset depreciation range system is used, the residual value need not be deducted from capitalized cost to determine depreciable costs. Depreciation cost that would significantly reduce the book value of a tangible capital asset below its residual value is unallowable.

(b) Contractors having contracts subject to 48 CFR 9904.409, Depreciation of Tangible Capital Assets, shall adhere to the requirement of that standard for all fully CAS-covered contracts and may elect to adopt the standard for all other contracts. All requirements of 48 CFR 9904.409 are applicable if the election is made, and contractors must continue to follow it until notification of final acceptance of all deliverable items on all open negotiated Government contracts.

(c) For contracts to which 48 CFR 9904.409 is not applied, except as indicated in paragraphs (g) and (h) of this subsection, allowable depreciation shall not exceed the amount used for financial accounting purposes, and shall be determined in a manner consistent with the depreciation policies and procedures followed in the same segment on non-Government business.

(d) Depreciation, rental, or use charges are unallowable on property acquired from the Government at no cost by the contractor or by any division, subsidiary, or affiliate of the contractor under common control.

(e) The depreciation on any item which meets the criteria for allowance at price under 31.205-26(e) may be

based on that price, provided the same policies and procedures are used for costing all business of the using division, subsidiary, or organization under common control.

(f) No depreciation or rental is allowed on property fully depreciated by the contractor or by any division, subsidiary, or affiliate of the contractor under common control. However, a reasonable charge for using fully depreciated property may be agreed upon and allowed (but, see 31.109(h)(2)). In determining the charge, consideration shall be given to cost, total estimated useful life at the time of negotiations, effect of any increased maintenance charges or decreased efficiency due to age, and the amount of depreciation previously charged to Government contracts or subcontracts.

(g) Whether or not the contract is otherwise subject to CAS, the requirements of 31.205-52 shall be observed.

(h) In the event of a write-down from carrying value to fair value as a result of impairments caused by events or changes in circumstances, allowable depreciation of the impaired assets is limited to the amounts that would have been allowed had the assets not been written down (see 31.205-16(g)). However, this does not preclude a change in depreciation resulting from other causes such as permissible changes in estimates of service life, consumption of services, or residual value.

(i) A "capital lease," as defined in Statement of Financial Accounting Standard No. 13 (FAS-13), Accounting for Leases, is subject to the requirements of this cost principle. (See 31.205-36 for Operating Leases.) FAS-13 requires that capital leases be treated as purchased assets, *i.e.*, be capitalized, and the capitalized value of such assets be distributed over their useful lives as depreciation charges or over the leased life as amortization charges, as appropriate, except that—

(1) Lease costs under a sale and leaseback arrangement are allowable up to the amount that would have been allowed had the contractor retained title to the asset; and

(2) If it is determined that the terms of the capital lease have been significantly affected by the fact that the lessee and lessor are related, depreciation charges are not allowable in excess of those that would have occurred if the lease contained terms consistent with those found in a lease between unrelated parties.

31.205-16 [Amended]

■ 4. Amend section 31.205-16 in the first sentence of paragraph (b) by removing "31.205-11(m)" and adding "31.205-11(i)" in its place.

■ 5. Amend section 31.205-36 by revising paragraph (a); and removing paragraph (b)(4) to read as follows:

31.205-36 Rental costs.

(a) This subsection is applicable to the cost of renting or leasing real or personal property acquired under "operating leases" as defined in Statement of Financial Accounting Standards No. 13 (FAS-13), Accounting for Leases. (See 31.205-11 for Capital Leases.)

* * * * *

[FR Doc. 03-30473 Filed 12-10-03; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4 and 53

[FAC 2001-18; FAR Case 2003-019; Item III]

RIN 9000-AJ76

Federal Acquisition Regulation; Federal Procurement Data System

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to reflect changes in contract action reporting to the Federal Procurement Data System—Next Generation (FPDS-NG).

DATES: *Effective Date:* December 11, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Gerald Zaffos, Procurement Analyst, at (202) 208-6091. Please cite FAC 2001-18, FAR case 2003-019.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Government is modernizing its procurement data collection system, the Federal Procurement Data System (FPDS). The new system, the Federal Procurement Data System—Next Generation (FPDS-NG), became operational on October 1, 2003, for transactions awarded after that date. FPDS captured data on individual contract actions over \$25,000 and summary data on contract actions below \$25,000. FPDS-NG allows the Government to capture data on individual transactions regardless of dollar value. As a result, FPDS-NG provides more information to agencies for managing their programs and to the public for better understanding of how taxpayer funds are spent. The capabilities of FPDS-NG provide an efficient means of satisfying the statutory requirement of 41 U.S.C. 417, that each Executive agency maintain a computer file containing the information at FAR 4.601.

Consequently, submitting contract action data to FPDS-NG will be considered compliance with the requirements of FAR 4.601.

Therefore, the FAR is being amended to revise 4.602 to—

- Reflect that the information in FPDS-NG is available to the general public;
- Provide the Web site for FPDS-NG, which must be entered as *https://www.fpds.gov*;
- Delete the physical address for the Federal Procurement Data Center;
- Allow agencies to report all transactions between \$2,500 and \$25,000 to FPDS-NG as either individual contract actions or summary contract actions until September 30, 2004;
- Require all contract actions over \$2,500 be reported to FPDS-NG as individual contract actions after September 30, 2004;
- Require agencies to insert the provision at 52.204-6, Data Universal Numbering System (DUNS) Number, in solicitations when the expected award amount will result in the generation of an individual contract action report and the contract does not include FAR clause 52.204-7, Central Contractor Registration; and
- Eliminate the use of the SF 279, Federal Procurement Data System (FPDS)—Individual Contract Action Report, and the SF 281, Federal Procurement Data System (FPDS)—Summary Contract Action Report (\$25,000 or Less).

This is not a significant regulatory action and, therefore, was not subject to

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

B. Regulatory Flexibility Act

The Regulatory Flexibility Act 5 U.S.C. 601, *et seq.*, does not apply because the rule applies to the internal process of Federal agencies and is not a significant revision of the FAR. A Final Regulatory Flexibility Analysis has, therefore, not been prepared.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 4 and 53

Government procurement.

Dated: December 4, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 4 and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 4 and 53 is revised to read as follows:

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

PART 4—ADMINISTRATIVE MATTERS

■ 2. Amend section 4.601 by adding a sentence to the end of paragraph (a); and removing “from the computer file” from the introductory text of paragraphs (c) and (d). The added text reads as follows:

4.601 Record requirements.

(a) * * * This file shall be accessible to the public using FPDS-NG.

* * * * *

■ 3. Amend section 4.602 by revising paragraphs (a), (b), (c), and (d) to read as follows:

4.602 Federal Procurement Data System.

(a) The FPDS provides a comprehensive mechanism for assembling, organizing, and presenting contract placement data for the Federal Government. Federal agencies will now report data directly to the Federal Procurement Data System—Next Generation (FPDS-NG), which collects, processes, and disseminates official statistical data on Federal contracting. The data provide—

(1) A basis for recurring and special reports to the President, the Congress,

the General Accounting Office, Federal executive agencies, and the general public;

(2) A means of measuring and assessing the impact of Federal contracting on the Nation’s economy and the extent to which small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business concerns are sharing in Federal contracts; and

(3) Information for other policy and management control purposes, and for public access.

(b) The FPDS Web site, *https://www.fpds.gov*, provides instructions for submitting data. It also provides a complete list of departments, agencies, and other entities that submit data to the FPDS, as well as technical and end-user guidance, and a computer-based tutorial.

(c)(1) Data collection points in each agency shall submit FPDS-required data on contract actions directly to FPDS-NG. Agencies must report all transactions over \$2,500 and modifications to those transactions regardless of dollar value.

(2) Agencies participating under the Small Business Competitiveness Demonstration Program (see Subpart 19.10) shall report as an individual contract action all awards, regardless of dollar value, in the designated industry groups.

(3) Agencies may choose to report transactions at or below \$2,500, including those made using the Governmentwide commercial purchase card, except as provided in paragraph (c)(2) of this section.

(4) Until September 30, 2004, agencies shall report contract actions between \$2,500 and \$25,000 either in individual or summary form. After September 30, 2004, agencies shall submit only individual contract action reports.

(d) The contracting officer must identify and report (if it is not pre-populated by the Central Contractor Registration (CCR) database), a Contractor Identification Number for each successful offeror. A Data Universal Numbering System (DUNS) number, which is a nine-digit number assigned by Dun and Bradstreet Information Services to an establishment, is the Contractor Identification Number for Federal contractors. The DUNS number reported must identify the successful offeror’s name and address exactly as stated in the offer and resultant contract. The contracting officer must ask the offeror to provide its DUNS number by using either the provision prescribed in paragraph (a) of 4.603 or the FAR clause

prescribed at 4.1104. If the successful offeror does not provide its number, the contracting officer must contact the offeror and assist them in obtaining the DUNS number.

* * * * *

■ 4. Amend section 4.603 by revising paragraph (a)(1) to read as follows:

4.603 Solicitation provisions.

(a) * * *

(1) Are expected to result in a requirement for the generation of an individual contract action report (see 4.602(c)); and

* * * * *

PART 53—FORMS

53.204-2 [Reserved]

■ 5. Remove and reserve section 53.204-2.

53.301-279 and 53.301-281 [Removed]

■ 6. Remove sections 53.301-279 and 53.301-281.

[FR Doc. 03-30474 Filed 12-10-03; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 8

[FAC 2001-18; FAR Case 2003-001; Item IV]

RIN 9000-AJ62

Federal Acquisition Regulation; Increased Federal Prison Industries, Inc. Waiver Threshold

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have adopted as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to increase the blanket waiver threshold for small dollar value purchases from Federal Prison Industries, Inc. (FPI) by Federal agencies. By increasing this threshold to \$2,500, Federal agencies are not required to make purchases from FPI of products on FPI’s Schedule that are at or below this threshold.

DATES: *Effective Date:* December 11, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 2001-18, FAR case 2003-001.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils have agreed to a final rule increasing the FPI clearance exception threshold at FAR 8.606(e) from \$25 to \$2,500 and eliminating the criterion that delivery is required within 10 days. The objective of the rule is to increase the dollar threshold necessary to obtain a clearance from FPI. By increasing this threshold to \$2,500, Federal agencies are not required to make purchases from FPI of products on FPI's Schedule that are at or below this threshold. Federal agencies, however, may continue to consider and purchase products from FPI that are at or below \$2,500. FPI is a mandatory acquisition program established under 18 U.S.C. 4124. Agencies are still required to purchase products on FPI's Schedule from FPI above the \$2,500 threshold unless a clearance is obtained pursuant to FAR 8.605.

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 68 FR 28094, May 22, 2003. Three respondents submitted public comments. These comments are discussed below. The Councils concluded that the interim rule should be converted to a final rule without change.

Comment 1: Respondent concurred with the rule.

Comment 2: Respondent wanted assurance that there are no other conflicts with existing wording of the FAR (e.g., FAR 8.603) as a result of the increase in the blanket waiver threshold to \$2,500. The respondent believes that the FAR should explicitly state that agencies are not required to make purchases from FPI that are at or below \$2,500, if that is the intent. In addition, the Defense FAR Supplement (DFARS) should state that the requirement for a comparability determination does not apply to purchases at or below \$2,500.

Councils' response: This rule has created no conflicts with other wording of the FAR. The rule merely increased the dollar threshold for an existing exception to FPI clearance requirements. As was previously the case, Federal agencies are not required (but are permitted) to purchase products

from FPI if the dollar value of the purchase is at or below the threshold specified in FAR 8.606(e). The purchase priorities specified in FAR 8.603 have not changed, and apply only in situations where FPI and JWOD agencies produce identical supplies or services.

The recommended DFARS change is outside the scope of this case. DoD published a final DFARS rule on November 14, 2003 (68 FR 64559), to address DoD-unique requirements for purchase of products from FPI.

Comment 3: Respondent stated that language should be included in the rule to make it clear that DoD activities are now governed by the changes legislated in Section 811 of Public Law 107-107 and Section 819 of Public Law 107-314, the National Defense Authorization Acts for Fiscal Years 2002 and 2003, respectively. Under these laws, the UNICOR waiver process has been effectively eliminated for DoD activities. If a DoD contracting officer determines that UNICOR products are not comparable in terms of quality, price, and delivery time, the activity is not required to seek a UNICOR waiver, regardless of the dollar amount of the acquisition. The concern is that DoD contracting officers and UNICOR private sector commissioned sales representatives may interpret this FAR change to mean that DoD must request a UNICOR waiver when the acquisition is over \$2,500. To prevent such a misunderstanding, it is vital that references to the above public laws and/or the ensuring DFARS regulations be included in the language that announces this change to the waiver limit of FAR 8.606(e).

Councils' response: The Councils recognize that DoD is governed by separate statutory requirements with regard to purchase of products from FPI (UNICOR), but do not believe additional clarification is required for the FAR. Existing DoD policy on this subject can be found in DFARS Subpart 208.6 (48 CFR Chapter 2, Subpart 208.6). As stated in the response to Comment 2 above, DoD published revisions to DFARS Subpart 208.6 (48 CFR Chapter 2, Subpart 208.6) on November 14, 2003 (68 FR 64559).

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

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule

does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Part 8, in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2001-18, FAR case 2003-001), in correspondence. No comments were received on the Regulatory Flexibility Act Statement in the interim rule.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 8

Government procurement.

Dated: December 4, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

Interim Rule Adopted as Final Without Change

■ Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR part 8 which was published in the **Federal Register** at 68 FR 28094, May 22, 2003, as a final rule without change.

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

[FR Doc. 03-30475 Filed 12-10-03; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 9

[FAC 2001-18; FAR Case 2002-010; Item V]

RIN 9000-AJ48

Federal Acquisition Regulation; Debarment and Suspension—Order Placement and Option Exercise

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to address the placement of orders under existing contracts and agreements with contractors that have been debarred, suspended, or proposed for debarment.

DATES: *Effective Date:* January 12, 2004.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Craig R. Goral, Procurement Analyst, at (202) 501-3856. Please cite FAC 2001-18, FAR case 2002-010.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 67 FR 67282, November 4, 2002, to require that discretionary actions on the part of agencies meet the same standards as agencies would have to meet in awarding new contracts. The rule prohibited agencies from placing orders exceeding the guaranteed minimum against existing contracts, placing orders against optional Federal Supply Schedule contracts, adding new work, exercising options or otherwise extending the duration of contracts with contractors that are debarred, suspended or proposed for debarment unless the agency head makes a determination that there are compelling reasons for doing so.

Two comments from two commenters were received in response to the proposed rule. The first commenter strongly supported the rule. The second commenter suggested that the rule be clarified to indicate whether it applies to credit card purchases or blanket purchase agreements (BPAs), Memorandums of Agreement (MOAs), Military Interdepartmental Purchase Requests (MIPRs), or Governmentwide acquisition contracts (GWACs). A change was made to the rule to address BPAs and Basic Ordering Agreements (BOAs) based on this recommendation. It was not appropriate to address MOAs or MIPRs because they are not entered into under the FAR. GWACs are indefinite delivery contracts and are, therefore, already covered by the rule. BPAs and BOAs are agreements rather than contracts. However, they should contain the basic clauses that will apply to orders placed under them. Therefore, the Councils revised the rule to address BPAs and BOAs. The requirement that contractors must be responsible is

statutory. Contractors debarred, suspended, or proposed for debarment are excluded from doing business with the Government unless there is a compelling reason to conduct business with such a contractor.

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

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it only affects orders placed by civilian agencies against existing contracts with contractors that are debarred, suspended or proposed for debarment. The Defense FAR Supplement already prohibits the placement of such orders.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 9

Government procurement.

Dated: December 4, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 9 as set forth below:

PART 9—CONTRACTOR QUALIFICATIONS

■ 1. The authority citation for 48 CFR part 9 is revised to read as follows:

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

■ 2. Amend section 9.405 by revising paragraph (a); and removing from paragraphs (d)(2) and (d)(3) the words “or a designee”. The revised text reads as follows:

9.405 Effect of listing.

(a) Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the agency head determines that there is a

compelling reason for such action (*see* 9.405-1(b), 9.405-2, 9.406-1(c), 9.407-1(d), and 23.506(e)). Contractors debarred, suspended, or proposed for debarment are also excluded from conducting business with the Government as agents or representatives of other contractors.

* * * * *

■ 3. Amend section 9.405-1 by removing from the first sentence of paragraph (a) the words “or a designee”; revising paragraph (b); and removing paragraph (c). The revised text reads as follows:

9.405-1 Continuation of current contracts.

* * * * *

(b) For contractors debarred, suspended, or proposed for debarment, unless the agency head makes a written determination of the compelling reasons for doing so, ordering activities shall not—

(1) Place orders exceeding the guaranteed minimum under indefinite quantity contracts;

(2) Place orders under optional use Federal Supply Schedule contracts, blanket purchase agreements, or basic ordering agreements; or

(3) Add new work, exercise options, or otherwise extend the duration of current contracts or orders.

9.405-2 [Amended]

■ 4. Amend section 9.405-2 by removing from the first sentence of paragraph (a) the words “or a designee”.

[FR Doc. 03-30476 Filed 12-10-03; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 31 and 52

[FAC 2001-18; FAR Case 2001-037; Item VI]

RIN 9000-AJ57

Federal Acquisition Regulation; Insurance and Pension Costs

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule

amending the Federal Acquisition Regulation (FAR) to revise the insurance and indemnification cost principle, and the portion of the compensation for personal services cost principle relating to pension costs. The rule revises both cost principles by improving clarity and structure and removing unnecessary and duplicative language. The revisions are intended to revise contract cost principles and procedures, in light of the evolution of Generally Accepted Accounting Principles (GAAP), the advent of Acquisition Reform, and experience gained from implementation pertaining to contract cost principles and procedures.

DATES: *Effective Date:* January 12, 2004.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Edward Loeb, Policy Advisor, at (202) 501-0650. Please cite FAC 2001-18, FAR case 2001-037.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 68 FR 4880, January 30, 2003, with a request for comments. Four respondents submitted comments. A discussion of the comments is provided below. The Councils considered all comments and concluded that the proposed rule should be converted to a final rule, with changes to the proposed rule. Differences between the proposed rule and final rule are discussed below:

B. Public Comments

General Reformatting of FAR 31.205

Comment 1: In addition to specific comments regarding the subject case, a respondent also recommended reformatting this cost principle as part of a general reformat effort of FAR Part 31, Contract Cost Principles and Procedures. The respondent advocates establishing a common format for the selected costs detailed in FAR 31.205 will increase the clarity of the cost principles and reduce misinterpretation.

Councils' response: Nonconcur. The Councils are unaware of any significant clarity problems with the current FAR cost principles and see no benefit in this recommendation. While it is true that the cost principles do not all share an identical format, it does not follow that this makes them difficult to understand. Moreover, such a comprehensive revision of the cost principles could actually increase disputes by substituting new wording for longstanding, court-tested language.

Of the 48 current FAR cost principles, 16 are only one paragraph long, and 11 more are only two or three paragraphs long. The Councils question the need to "force-fit" such short cost principles into a uniform format, particularly in the absence of any significant clarity problems. Not only would the recommended general reformatting of the cost principles be difficult to accomplish, but it would also offer no obvious benefit to either industry or the Government.

The Councils recommend instead that industry continue to identify those individual cost principles which it views as problematic and to provide specific proposals for appropriate revisions. It should be noted that the continuing Defense Procurement and Acquisition Policy initiative to reduce accounting and administrative burdens in the cost principles, without jeopardizing the Government's interests, has resulted in significant changes or deletions involving more than 20 different cost principles to date. The Councils continue to believe that such a case-by-case cooperative effort with industry offers the best opportunity for meaningful change in this often controversial area.

Incorporating CAS Provisions in FAR Cost Principles

Comment 2: A respondent asserted that the proposed rule incorporates substantial cost accounting standard (CAS) provisions into the FAR cost principles. The respondent believes this creates *de facto* CAS coverage when, by law, promulgations covering the measurement, assignment, and allocation of costs to cost objectives is assigned to the CAS Board, including the thresholds for which contracts will and will not include CAS provisions. The respondent further states that if the FAR includes CAS concepts, the inclusion should be done using direct quotes or references.

Councils' response: Nonconcur. The Councils considered this proposal, but believe that eliminating all CAS from the FAR would create significant problems.

It is the responsibility of the Councils, not the CAS Board, to promulgate rules for the measurement, assignment, and allocation of costs for non-CAS covered contracts. The CAS Board does not have jurisdiction over non-CAS covered contracts. For some costs, particularly deferred compensation including pension costs (CAS 412, 413, and 415), cost of money (CAS 414/417), and self-insurance (CAS 416), the Councils have chosen to use the same requirements for non-CAS covered contracts as the CAS

Board has chosen to use for CAS-covered contracts. To eliminate all CAS from the FAR would require removal of these key FAR Part 31 provisions.

As for the subject rule, the issue of an alternative to CAS 412/413 for non-CAS covered contracts was discussed at the public meetings during the spring of 2001. None of the attendees proposed an alternative to the use of CAS 412/413. In fact, most of the attendees supported the application of CAS 412/413 to non-CAS covered contracts. As such, the Councils do not believe there is currently a viable alternative to applying CAS 412/413 to non-CAS covered contracts.

In regard to CAS 416, the proposed rule included the CAS requirements for self-insurance. Without this provision, insurance costs for non-CAS covered contracts would be subject to Generally Accepted Accounting Principles (GAAP), which do not permit a self-insurance charge. The Councils believe it would be inequitable to permit contractors with CAS-covered contracts to charge self-insurance costs while denying such charges for contractors with non-CAS covered contracts. In addition, a contractor with both CAS and non-CAS covered contracts would need two sets of accounting practices if it wanted to charge self-insurance for CAS-covered contracts. Such a requirement would result in an unnecessary administrative burden to both the contractor and the Government.

As for the incorporation of the CAS provisions into the FAR, the respondent did not specify any particular language that it believes has been paraphrased. Nevertheless, the Councils reviewed the proposed rule to see if any such paraphrasing existed and found that the proposed rule references the specific CAS standards (412, 413, and 416); it does not paraphrase any CAS requirements.

FAR 31.205-6—Compensation for Personal Services

FAR 31.205-6(j)—Definition of Pension Plan

Comment 3: A respondent recommends that the current language at FAR 31.205-6(j)(1) be retained and asserts that the current language includes allowability criteria that would be eliminated if the definition is removed. The language currently reads as follows:

(1) A pension plan, as defined in 31.001, is a deferred compensation plan. Additional benefits such as permanent and total disability and death payments and survivorship payments to beneficiaries of deceased employees *may be treated as*

pension costs, provided the benefits are an integral part of the pension plan and meet all the criteria pertaining to pension costs. (Emphasis added.)

Councils' response: Nonconcur. The Councils do not believe the above-italicized language provides allowability criteria. It simply states when additional benefits "may be treated as pension costs." In defining a pension plan, FAR 31.001, Definitions, reads in part:

* * * Additional benefits such as permanent and total disability and death payments, and survivorship payments to beneficiaries of deceased employees, may be an integral part of a pension plan.

The Councils believe this definition, which is identical to that used in CAS 412, should not be supplemented by the language currently at FAR 31.205-6(j)(1). Under the language at FAR 31.205-6(j)(1), additional benefits that are an integral part of a pension plan "may be treated as pension costs." This phrase could be misinterpreted to mean that a contractor has the right to subjectively choose when such benefits will be pension costs and when they will not. Conversely, the definition at FAR 31.001 and CAS 412 simply states that such benefits may be an integral part of the pension plan.

FAR 31.205-6(j)(3)(i)(C) and FAR Clause 52.215-15(b)(3)—Segment Closings

Comment 4: Two respondents stated that the language at FAR 31.205-6(j) regarding segment closings is more restrictive than the CAS requirements. One respondent asserts there are optional settlement methods provided for in CAS 413, specifically amortization, and that the proposed FAR language does not address underfunding as does the CAS.

Councils' response: Concur in part. Upon further review, the Councils determined that the proposed language on settlement should be deleted. The current language in CAS 413, which is incorporated into FAR 31.205-6(j) by reference, adequately addresses the issue of settlement. Thus, there is no need to include the specific language in the FAR. The Councils, therefore, deleted the proposed language at FAR 31.205-6(j)(3)(C) and the FAR clause at 52.215-5(b)(3).

FAR 31.205-6(j)(6)—Early Retirement Incentive Plans

Comment 5: A respondent asserts that current FAR language clearly states that plans based on life income settlements are not treated as early retirement incentives plans and recommends retaining that language.

Councils' response: Nonconcur. Based on a review of the original promulgation

documents, it is clear that the drafters intended to include early retirement incentive payments made from within, as well as outside, the pension trust. Although the drafters believed it would be rare for a pension plan to include an early retirement incentive with a life income settlement, they intended that such amendments be included as early retirement incentives and be subject to the conditions outlined in the cost principle. There was no intention by the drafters to exclude such settlements.

The Councils believe this continues to be an appropriate policy. Early retirement incentive plans include any incentive given to an employee to retire early, regardless of whether payment is made in the form of a life income settlement or a lump sum. The method of payment should not determine whether the cost is allowable. The limitation should apply regardless of whether the contractor decides to make the payment over a period of years or in a single payment.

FAR 31.205-6(q)—Defer Revision to Employee Stock Ownership Plans (ESOPs)

Comment 6: Two respondents recommend that further FAR action be deferred until the CAS Board proposal on ESOPs can be reviewed for consistency.

Councils' response: Nonconcur. The proposed rule does not add any new measurement, assignment, or allocation provisions for ESOPs. Under both the existing and proposed rules, ESOPs that meet the definition of a pension plan are covered by CAS 412, and those that do not are covered by CAS 415. While the proposed rule consolidates the allowability requirements for ESOP costs into a single provision, it does not change the measurement, assignment, or allocability requirements for such costs. Since this FAR provision does not revise existing measurement, assignment, or allocation requirements, the Councils do not believe it should be delayed in anticipation of actions by the CAS Board. The Councils recognize that this FAR provision may require further modification as a result of the current ESOP project being pursued by the CAS Board.

FAR 31.205-6(q)(2)(iii)—Allowability Limitation on ESOP Contributions

Comment 7: A respondent asserts that the proposed provision that limits ESOP contributions in any one year to 25 percent of compensation is inconsistent with the IRS Code and should be revised accordingly.

Councils' response: Concur in part. The fact that the cost is deductible by

the IRS does not necessarily mean that it is reasonable or allowable for Government contract costing purposes. Nevertheless, since ESOP costs are included in determining the overall reasonableness of compensation costs, the Councils revised the specific allowability ceiling for ESOP costs to only require that they be deductible under the IRS Code.

FAR 31.205-6(q)(2)(v)—ESOP Stock in Excess of Fair Market Value.

Comment 8: A respondent expressed concern regarding the "new" provision that disallows purchases in excess of fair market value. The respondent believes that this provision could be interpreted as either (a) requiring that valuation be based on the value of the stock immediately after a leveraged ESOP transaction occurs (the "Farnum Theory", which the respondent states has been discredited), or (b) measurement of the value of the stock based on its annual value, rather than the value at the time the shares were acquired by the ESOP trust.

Councils' response: Nonconcur. The Councils have not added a new provision. The provision in the proposed rule currently exists in FAR 31.205-6(j)(8)(i)(E), which applies to ESOPs that meet the definition of a pension plan. The proposed rule merely extends the application of that provision to all ESOPs. The Councils believe that purchases in excess of fair market value should not be allowable costs. The words in the proposed FAR 31.205-6(q) are identical to those currently at FAR 31.205-6(j)(8). As such, the Councils do not agree that this change could be interpreted as an endorsement of any new valuation technique.

FAR 31.205-6(q)(2)(iv)—Valuation of ESOP Stock Using IRS Guidelines

Comment 9: A respondent expressed concern regarding the new language that requires valuation of ESOP stock using IRS guidelines on a "case-by-case basis." The respondent recommends that, if the valuation has been done by a competent independent valuation expert, there is no need for the auditing agency to start with a valuation from "scratch."

Councils' response: Nonconcur. The Councils have not added a new provision. The provision in the proposed rule currently exists in FAR 31.205-6(j)(8)(i)(E), which applies to ESOPs that meet the definition of a pension plan. The proposed rule merely extends the application of that provision to all ESOPs. In addition, the Councils believe that deleting the words "case-by-case basis" would cause potential

confusion. The IRS guidelines must be applied based on the particular facts and circumstances of each case, *i.e.*, on a “case-by-case basis.” Furthermore, the concerns of the respondent focus on the extent to which the auditor is required to rely upon the work of others, in this case the valuation expert. An independent audit requires that the auditor determine the scope of the audit, including the extent of reliance on the work of others. This issue is properly addressed in Generally Accepted Government Auditing Standards. It is not something that should be addressed in the FAR.

FAR 31.205–19—Insurance and Indemnification

FAR 31.205–19(c)(4)—Definition of Catastrophic Losses

Comment 10: One respondent asserts that self-insurance charges for catastrophic losses should be allowable, and that the definition in the proposed rule could be interpreted to include deductibles or over ceiling amounts for property insurance policies and other high dollar policies. Another respondent states that the new definition of catastrophic losses may cause contention and uncertainty in the field because it does not account for the relatively large losses among different sized contractors. The respondent also believes “very low frequency of loss” adds confusion. The respondent further contends that the definition should be deleted and existing practices that rely upon individual circumstances and general reasonableness should continue to be used.

Councils’ response: Concur in part. Upon further review, the Councils deleted the definition of catastrophic losses from the final rule. The Councils continue to believe that the proposed definition is consistent with the intent of the promulgators of the current language, as evidenced by the March 19, 1979, report underlying DAR case 78–400–7.

The intent of the proposed coverage was to distinguish catastrophic losses as used in the cost principle from the type of catastrophic loss anticipated by the illustration at CAS 416.60(h). In that illustration, motor vehicle liability losses in excess of a specified amount were absorbed by the home office and reallocated to all segments. In the particular case described, the specified amount was too low based on loss experience to be considered catastrophic under the provisions of CAS 416. However, the illustration appears to anticipate losses that may be catastrophic to a particular segment of a

company but not necessarily catastrophic in a more general sense. The Councils do not believe the drafters of the cost principle intended to disallow self-insurance charges for the type of loss anticipated by the CAS illustration. However, since CAS does not include a definition of catastrophic loss, defining the term in the FAR could cause confusion by the users of these regulations.

As to the respondent’s recommendation that self-insurance charges for catastrophic losses should be allowable, the Councils disagree. As was noted in the report on DAR case 78–400–7, the Government should not allow self-insurance charges for catastrophic losses, such as earthquakes, which have a very small likelihood of occurring for any particular contractor.

C. Regulatory Planning and Review

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

D. Regulatory Flexibility Act

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

E. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 31 and 52

Government procurement.

Dated: December 4, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 31 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 31 and 52 is revised to read as follows:

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

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

- 2. Amend section 31.205–6 by—
- a. Removing from the second sentence of paragraph (g)(1) “(j)(7)” and adding “(j)(6)” in its place;
- b. Revising paragraph (j);
- c. Removing from the second parenthetical in paragraph (p)(2)(i) “paragraphs (j)(5) and (j)(8)” and adding “paragraphs (j)(4) and (q)” in its place; and
- d. Adding paragraph (q) to read as follows:

31.205–6 Compensation for personal services.

* * * * *

(j) *Pension costs.* (1) Pension plans are normally segregated into two types of plans: defined-benefit and defined-contribution pension plans. The contractor shall measure, assign, and allocate the costs of all defined-benefit pension plans and the costs of all defined-contribution pension plans in compliance with 48 CFR 9904.412—Cost Accounting Standard for Composition and Measurement of Pension Cost, and 48 CFR 9904.413—Adjustment and Allocation of Pension Cost. Pension costs are allowable subject to the referenced standards and the cost limitations and exclusions set forth in paragraph (j)(1)(i) and in paragraphs (j)(2) through (j)(6) of this subsection.

(i) Except for nonqualified pension plans using the pay-as-you-go cost method, to be allowable in the current year, the contractor shall fund pension costs by the time set for filing of the Federal income tax return or any extension. Pension costs assigned to the current year, but not funded by the tax return time, are not allowable in any subsequent year. For nonqualified pension plans using the pay-as-you-go method, to be allowable in the current year, the contractor shall allocate pension costs in the cost accounting period that the pension costs are assigned.

(ii) Pension payments must be paid pursuant to an agreement entered into in good faith between the contractor and employees before the work or services are performed and to the terms and conditions of the established plan. The cost of changes in pension plans are not allowable if the changes are discriminatory to the Government or are not intended to be applied consistently for all employees under similar circumstances in the future.

(iii) Except as provided for early retirement benefits in paragraph (j)(6) of

this subsection, one-time-only pension supplements not available to all participants of the basic plan are not allowable as pension costs, unless the supplemental benefits represent a separate pension plan and the benefits are payable for life at the option of the employee.

(iv) Increases in payments to previously retired plan participants covering cost-of-living adjustments are allowable if paid in accordance with a policy or practice consistently followed.

(2) *Defined-benefit pension plans.* The cost limitations and exclusions pertaining to defined-benefit plans are as follows:

(i)(A) Except for nonqualified pension plans, pension costs (see 48 CFR 9904.412–40(a)(1)) assigned to the current accounting period, but not funded during it, are not allowable in subsequent years (except that a payment made to a fund by the time set for filing the Federal income tax return or any extension thereof is considered to have been made during such taxable year). However, any portion of pension cost computed for a cost accounting period, that exceeds the amount required to be funded pursuant to a waiver granted under the provisions of the Employee Retirement Income Security Act of 1974 (ERISA), will be allowable in those future accounting periods in which the funding of such excess amounts occurs (see 48 CFR 9904.412–50(c)(5)).

(B) For nonqualified pension plans, except those using the pay-as-you-go cost method, allowable costs are limited to the amount allocable in accordance with 48 CFR 9904.412–50(d)(2).

(C) For nonqualified pension plans using the pay-as-you-go cost method, allowable costs are limited to the amounts allocable in accordance with 48 CFR 9904.412–50(d)(3).

(ii) Any amount funded in excess of the pension cost assigned to a cost accounting period is not allowable in that period and shall be accounted for as set forth at 48 CFR 9904.412–50(a)(4). The excess amount is allowable in the future period to which it is assigned, to the extent it is not otherwise unallowable.

(iii) Increased pension costs are unallowable if the increase is caused by a delay in funding beyond 30 days after each quarter of the year to which they are assignable. If a composite rate is used for allocating pension costs between the segments of a company and if, because of differences in the timing of the funding by the segments, an inequity exists, allowable pension costs for each segment will be limited to that particular segment's calculation of pension costs as provided for in 48 CFR

9904.413–50(c). The contractor shall make determinations of unallowable costs in accordance with the actuarial method used in calculating pension costs.

(iv) The contracting officer will consider the allowability of the cost of indemnifying the Pension Benefit Guaranty Corporation (PBGC) under ERISA section 4062 or 4064 arising from terminating an employee deferred compensation plan on a case-by-case basis, provided that if insurance was required by the PBGC under ERISA section 4023, it was so obtained and the indemnification payment is not recoverable under the insurance. Consideration under the foregoing circumstances will be primarily for the purpose of appraising the extent to which the indemnification payment is allocable to Government work. If a beneficial or other equitable relationship exists, the Government will participate, despite the requirements of 31.205–19(c)(3) and (d)(3), in the indemnification payment to the extent of its fair share.

(v) Increased pension costs resulting from the withdrawal of assets from a pension fund and transfer to another employee benefit plan fund, or transfer of assets to another account within the same fund, are unallowable except to the extent authorized by an advance agreement. If the withdrawal of assets from a pension fund is a plan termination under ERISA, the provisions of paragraph (j)(3) of this subsection apply. The advance agreement shall—

(A) State the amount of the Government's equitable share in the gross amount withdrawn or transferred; and

(B) Provide that the Government receives a credit equal to the amount of the Government's equitable share of the gross withdrawal or transfer.

(3) *Pension adjustments and asset reversions.* (i) For segment closings, pension plan terminations, or curtailment of benefits, the amount of the adjustment shall be—

(A) For contracts and subcontracts that are subject to full coverage under the Cost Accounting Standards (CAS) Board rules and regulations, the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413–50(c)(12); and

(B) For contracts and subcontracts that are not subject to full coverage under the CAS, the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413–50(c)(12), except the numerator of the fraction at 48 CFR 9904.413–50(c)(12)(vi) is the sum of the pension plan costs allocated to all non-

CAS-covered contracts and subcontracts that are subject to Subpart 31.2 or for which cost or pricing data were submitted.

(ii) For all other situations where assets revert to the contractor, or such assets are constructively received by it for any reason, the contractor shall, at the Government's option, make a refund or give a credit to the Government for its equitable share of the gross amount withdrawn. The Government's equitable share shall reflect the Government's participation in pension costs through those contracts for which cost or pricing data were submitted or that are subject to Subpart 31.2. Excise taxes on pension plan asset reversions or withdrawals under this paragraph (j)(3)(ii) are unallowable in accordance with 31.205–41(b)(6).

(4) *Defined-contribution pension plans.* In addition to defined-contribution pension plans, this paragraph also covers profit sharing, savings plans, and other such plans, provided the plans fall within the definition of a pension plan at 31.001.

(i) Allowable pension cost is limited to the net contribution required to be made for a cost accounting period after taking into account dividends and other credits, where applicable. However, any portion of pension cost computed for a cost accounting period that exceeds the amount required to be funded pursuant to a waiver granted under the provisions of ERISA will be allowable in those future accounting periods in which the funding of such excess amounts occurs (see 48 CFR 9904.412–50(c)(5)).

(ii) The provisions of paragraphs (j)(2)(ii) and (iv) of this subsection apply to defined-contribution plans.

(5) *Pension plans using the pay-as-you-go cost method.* When using the pay-as-you-go cost method, the contractor shall measure, assign, and allocate the cost of pension plans in accordance with 48 CFR 9904.412 and 9904.413. Pension costs for a pension plan using the pay-as-you-go cost method are allowable to the extent they are not otherwise unallowable.

(6) *Early retirement incentives.* An early retirement incentive is an incentive given to an employee to retire early. For contract costing purposes, costs of early retirement incentives are allowable subject to the pension cost criteria contained in paragraphs (j)(2)(i) through (iv) of this subsection provided—

(i) The contractor measures, assigns, and allocates the costs in accordance with the contractor's accounting practices for pension costs;

(ii) The incentives are in accordance with the terms and conditions of an early retirement incentive plan;

(iii) The contractor applies the plan only to active employees. The cost of extending the plan to employees who retired or were terminated before the adoption of the plan is unallowable; and

(iv) The present value of the total incentives given to any employee in excess of the amount of the employee's annual salary for the previous fiscal year before the employee's retirement is unallowable. The contractor shall compute the present value in accordance with its accounting practices for pension costs. The contractor shall account for any unallowable costs in accordance with 48 CFR 9904.412-50(a)(2).

* * * * *

(q) *Employee stock ownership plans (ESOP)*. (1) An ESOP is a stock bonus plan designed to invest primarily in the stock of the employer corporation. The contractor's contributions to an Employee Stock Ownership Trust (ESOT) may be in the form of cash, stock, or property.

(2) Costs of ESOPs are allowable subject to the following conditions:

(i) For ESOPs that meet the definition of a pension plan at 31.001, the contractor—

(A) Measures, assigns, and allocates the costs in accordance with 48 CFR 9904.412;

(B) Funds the pension costs by the time set for filing of the Federal income tax return or any extension. Pension costs assigned to the current year, but not funded by the tax return time, are not allowable in any subsequent year; and

(C) Meets the requirements of paragraph (j)(2)(ii) of this subsection.

(ii) For ESOPs that do not meet the definition of a pension plan at 31.001, the contractor measures, assigns, and allocates costs in accordance with 48 CFR 9904.415.

(iii) Contributions by the contractor in any one year that exceed the deductibility limits of the Internal Revenue Code for that year are unallowable.

(iv) When the contribution is in the form of stock, the value of the stock contribution is limited to the fair market value of the stock on the date that title is effectively transferred to the trust.

(v) When the contribution is in the form of cash—

(A) Stock purchases by the ESOT in excess of fair market value are unallowable; and

(B) When stock purchases are in excess of fair market value, the

contractor shall credit the amount of the excess to the same indirect cost pools that were charged for the ESOP contributions in the year in which the stock purchase occurs. However, when the trust purchases the stock with borrowed funds which will be repaid over a period of years by cash contributions from the contractor to the trust, the contractor shall credit the excess price over fair market value to the indirect cost pools pro rata over the period of years during which the contractor contributes the cash used by the trust to repay the loan.

(vi) When the fair market value of unissued stock or stock of a closely held corporation is not readily determinable, the valuation will be made on a case-by-case basis taking into consideration the guidelines for valuation used by the IRS.

* * * * *

■ 3. Revise section 31.205-19 to read as follows:

31.205-19 Insurance and indemnification.

(a) Insurance by purchase or by self-insuring includes—

(1) Coverage the contractor is required to carry or to have approved, under the terms of the contract; and

(2) Any other coverage the contractor maintains in connection with the general conduct of its business.

(b) For purposes of applying the provisions of this subsection, the Government considers insurance provided by captive insurers (insurers owned by or under control of the contractor) as self-insurance, and charges for it shall comply with the provisions applicable to self-insurance costs in this subsection. However, if the captive insurer also sells insurance to the general public in substantial quantities and it can be demonstrated that the charge to the contractor is based on competitive market forces, the Government will consider the insurance as purchased insurance.

(c) Whether or not the contract is subject to CAS, self-insurance charges are allowable subject to paragraph (e) of this subsection and the following limitations:

(1) The contractor shall measure, assign, and allocate costs in accordance with 48 CFR 9904.416, Accounting for Insurance Costs.

(2) The contractor shall comply with (48 CFR) part 28. However, approval of a contractor's insurance program in accordance with part 28 does not constitute a determination as to the allowability of the program's cost.

(3) If purchased insurance is available, any self-insurance charge plus insurance administration expenses in

excess of the cost of comparable purchased insurance plus associated insurance administration expenses is unallowable.

(4) Self-insurance charges for risks of catastrophic losses are unallowable (see 28.308(e)).

(d) Purchased insurance costs are allowable, subject to paragraph (e) of this subsection and the following limitations:

(1) For contracts subject to full CAS coverage, the contractor shall measure, assign, and allocate costs in accordance with 48 CFR 9904.416.

(2) For all contracts, premiums for insurance purchased from fronting insurance companies (insurance companies not related to the contractor but who reinsure with a captive insurer of the contractor) are unallowable to the extent they exceed the sum of—

(i) The amount that would have been allowed had the contractor insured directly with the captive insurer; and

(ii) Reasonable fronting company charges for services rendered.

(3) Actual losses are unallowable unless expressly provided for in the contract, except—

(i) Losses incurred under the nominal deductible provisions of purchased insurance, in keeping with sound business practice, are allowable; and

(ii) Minor losses, such as spoilage, breakage, and disappearance of small hand tools that occur in the ordinary course of business and that are not covered by insurance, are allowable.

(e) Self-insurance and purchased insurance costs are subject to the cost limitations in the following paragraphs:

(1) Costs of insurance required or approved pursuant to the contract are allowable.

(2) Costs of insurance maintained by the contractor in connection with the general conduct of its business are allowable subject to the following limitations:

(i) Types and extent of coverage shall follow sound business practice, and the rates and premiums shall be reasonable.

(ii) Costs allowed for business interruption or other similar insurance shall be limited to exclude coverage of profit.

(iii) The cost of property insurance premiums for insurance coverage in excess of the acquisition cost of the insured assets is allowable only when the contractor has a formal written policy assuring that in the event the insured property is involuntarily converted, the new asset shall be valued at the book value of the replaced asset plus or minus adjustments for differences between insurance proceeds and actual replacement cost. If the

contractor does not have such a formal written policy, the cost of premiums for insurance coverage in excess of the acquisition cost of the insured asset is unallowable.

(iv) Costs of insurance for the risk of loss of, or damage to, Government property are allowable only to the extent that the contractor is liable for such loss or damage and such insurance does not cover loss or damage which results from willful misconduct or lack of good faith on the part of any of the contractor's directors or officers, or other equivalent representatives.

(v) Costs of insurance on the lives of officers, partners, proprietors, or employees are allowable only to the extent that the insurance represents additional compensation (see 31.205-6).

(3) The cost of insurance to protect the contractor against the costs of correcting its own defects in materials and workmanship is unallowable. However, insurance costs to cover fortuitous or casualty losses resulting from defects in materials or workmanship are allowable as a normal business expense.

(4) Premiums for retroactive or backdated insurance written to cover losses that have occurred and are known are unallowable.

(5) The Government is obligated to indemnify the contractor only to the extent authorized by law, as expressly provided for in the contract, except as provided in paragraph (d)(3) of this subsection.

(6) Late premium payment charges related to employee deferred compensation plan insurance incurred pursuant to section 4007 (29 U.S.C. 1307) or section 4023 (29 U.S.C. 1323) of the Employee Retirement Income Security Act of 1974 are unallowable.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend section 52.215-15 by revising the date of the clause and paragraph (b) to read as follows:

52.215-15 Pension Adjustments and Asset Reversions.

* * * * *

Pension Adjustments and Asset Reversions (Jan 2004)

* * * * *

(b) For segment closings, pension plan terminations, or curtailment of benefits, the amount of the adjustment shall be—

(1) For contracts and subcontracts that are subject to full coverage under the Cost Accounting Standards (CAS) Board rules and regulations (48 CFR Chapter 99), the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12); and

(2) For contracts and subcontracts that are not subject to full coverage under the CAS, the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12), except the numerator of the fraction at 48 CFR 904.413-50(c)(12)(vi) shall be the sum of the pension plan costs allocated to all non-CAS covered contracts and subcontracts that are subject to Federal Acquisition Regulation (FAR) Subpart 31.2 or for which cost or pricing data were submitted.

* * * * *

(End of clause)

[FR Doc. 03-30477 Filed 12-10-03; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 2001-18; FAR Case 2002-014; Item VII]

RIN 9000-AJ59

Federal Acquisition Regulation; Debriefing—Competitive Acquisition

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement sections 1014 and 1064 of the Federal Acquisition Streamlining Act of 1994 on requirements for debriefing unsuccessful offerors under competitive proposals.

DATES: *Effective Date:* January 12, 2004.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, at (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Julia Wise, Procurement Analyst, at (202) 208-1168. Please cite FAC 2001-18, FAR case 2002-014.

SUPPLEMENTARY INFORMATION:

A. Background

This rule amends the FAR to include requirements for debriefing unsuccessful offerors under competitive proposals, as required by sections 1014 and 1064 of the Federal Acquisition Streamlining Act of 1994 which

amended 10 U.S.C. 2305(b) and 41 U.S.C. 253b, respectively. Specifically, 10 U.S.C. 2305(b)(5)(D) and 41 U.S.C. 253b(e)(4) require each solicitation for competitive proposals to include a statement that prescribes minimal information that shall be disclosed in postaward debriefings. Some of the requirements were already incorporated into the clause at FAR 52.215-1, Instructions to Offerors—Competitive Acquisitions, but the notification for debriefings was overlooked during the drafting of the clause at 52.212-1, Instruction to Offerors—Commercial Items. This rule amends FAR 52.212-1 and 52.215-1 to implement the statutory requirements, and the past performance debriefing requirement at FAR 15.506(d)(2), by listing all the prescribed minimal information that shall be disclosed in postaward debriefings.

DoD, GSA, and NASA published a proposed rule in the *Federal Register* at 68 FR 5778, February 4, 2003. Two respondents submitted public comments. The Councils considered the comments before agreeing to publish the proposed rule as final without change. A summary of the comments and their disposition follows:

Comment: The revised FAR clauses should include a debriefing requirement to reveal the number of “points” an offeror received under the evaluation of its past performance.

Response: The Councils do not concur. The clauses, as revised by this final rule, establish a clear requirement for agencies to provide the results of its evaluation of an offeror's past performance. However, agencies successfully use different methods (e.g., adjectival, color coding, and point scoring) to evaluate proposals. Specifying a particular method would limit agency discretion with no apparent associated benefit.

Comment: The revised FAR clauses should include a debriefing requirement to reveal the sources, other than the offeror, of any past performance information received.

Response: The Councils do not concur. FAR 15.506(e) prohibits the identification of individuals providing reference information about an offeror's past performance.

Comment: The rule should be revised to address the requirement to release unit price information clearly and consistently within the FAR.

Response: The Councils appreciate that, as a result of recent court cases, especially *MCI WorldCom v. GSA*, 163 F. Supp. 2d 28, the treatment of unit prices under exemption no. 4 of the Freedom of Information Act (5 U.S.C. 552(b)(4)) is in a state of flux which may

ultimately require that FAR 15.503(b)(1)(iv) addressing the release of unit prices be clarified. The Councils will continue to evaluate this issue and will consider whether a case needs to be opened to address this issue.

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

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule primarily clarifies language pertaining to disclosure of information in post-award debriefings currently authorized by statute and does not change existing policy.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: December 4, 2003.

Laura Auletta,
Director, Acquisition Policy Division.

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

PART 52—SOLICITATIONS PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 52 is revised to read as follows:

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

■ 2. Amend section 52.212–1 by revising the date of the provision; and adding paragraph (l) to read as follows:

52.212–1 Instructions to Offerors—Commercial Items.

* * * * *

Instructions to Offerors—Commercial Items (JAN 2004)

* * * * *

(l) *Debriefing.* If a post-award debriefing is given to requesting offerors, the Government

shall disclose the following information, if applicable:

(1) The agency’s evaluation of the significant weak or deficient factors in the debriefed offeror’s offer.

(2) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror.

(3) The overall ranking of all offerors, when any ranking was developed by the agency during source selection.

(4) A summary of the rationale for award;

(5) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.

(6) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

(End of provision)

■ 3. Amend section 52.215–1 by revising the date of the provision and paragraph (f)(11) to read as follows:

52.215–1 Instructions to Offerors—Competitive Acquisition.

* * * * *

Instructions to Offerors—Competitive Acquisition (Jan 2004)

* * * * *

(f) * * *

(11) If a post-award debriefing is given to requesting offerors, the Government shall disclose the following information, if applicable:

(i) The agency’s evaluation of the significant weak or deficient factors in the debriefed offeror’s offer.

(ii) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror.

(iii) The overall ranking of all offerors, when any ranking was developed by the agency during source selection.

(iv) A summary of the rationale for award.

(v) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.

(vi) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

(End of provision)

* * * * *

[FR Doc. 03–30478 Filed 12–10–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 6, 13, 25, and 52

[FAC 2001–18; Item VIII]

Federal Acquisition Regulation; Technical Amendments

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

ACTION: Final rule.

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

DATES: *Effective Date:* December 11, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. Please cite FAC 2001–18, Technical Amendments.

List of Subjects in 48 CFR Parts 1, 6, 13, 25, and 52

Government procurement.

Dated: December 4, 2003.

Laura Auletta,
Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 6, 13, 25, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 6, 13, 25, and 52 is revised to read as follows:

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

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.201–1 [Amended]

■ 2. Amend section 1.201–1 in paragraph (b)(1) by adding “Homeland Security,” after “Health and Human Services,”.

PART 6—COMPETITION REQUIREMENTS

6.302–7 [Amended]

■ 3. Amend section 6.302–7 in paragraph (c)(1)(i) by removing “Transportation” and adding “Homeland Security” in its place.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.500 [Amended]

■ 4. Amend section 13.500 in the first sentence of paragraph (d) by removing “2004” and adding “2006” in its place.

PART 25—FOREIGN ACQUISITION

25.701 [Amended]

■ 5. Amend section 25.701 in the second sentence of paragraph (b) by removing “<http://www.epls.gov/Terlist1.html>” and adding “<http://www.epls.gov/TerList1.html>” in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.204-7 [Amended]

■ 6. Amend section 52.204-7 in Alternate I by removing “4.1104(a)” and adding “4.1104” in its place.

52.211-2 [Amended]

■ 7. Amend section 52.211-2 in the provision heading by removing “(Dec 1999)” and adding “(Jan 2004)” in its place; in paragraph (a) by removing “<http://assist.daps.mil>” and adding “<http://assist.daps.dla.mil>” in its place;

and in paragraph (b) by removing “(215) 697-2667/2179” and adding “(215) 697-2179” in its place.

52.225-13 [Amended]

■ 8. Amend section 52.225-13 in the clause heading by removing “(Oct 2003)” and adding “(Jan 2004)” in its place; and in the second sentence of paragraph (b) of the clause by removing “<http://www.epls.gov/Terlist1.html>” and adding “<http://www.epls.gov/TerList1.html>” in its place.

[FR Doc. 03-30479 Filed 12-10-03; 8:45 am]
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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2001-18 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2001-18 which precedes this document. These documents are also available via the Internet at <http://www.arnet.gov/far>.

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

LIST OF RULES IN FAC 2001-18

Item	Subject	FAR case	Analyst
I	New Consolidated Form for Selection of Architect-Engine Contractors	2000-608	Davis.
II	Depreciation Cost Principle	2001-026	Loeb.
III	Federal Procurement Data System	2003-019	Zaffos.
IV	Increased Federal Prison Industries, Inc. Waiver Threshold	2003-001	Nelson.
V	Debarment and Suspension—Order Placement and Option Exercise	2002-010	Goral.
VI	Insurance and Pension Costs	2001-037	Loeb.
VII	Debriefing—Competitive Acquisition	2002-014	Wise.
VIII	Technical Amendments.		

Item I—New Consolidated Form for Selection of Architect-Engine Contractors (FAR Case 2000-608)

This final rule amends the FAR to replace SF 254, Architect-Engine and Related Services Questionnaire, and SF 255, Architect-Engine and Related Services Questionnaire for Specific Projects, with SF 330, Architect-Engine Qualifications. The SF 330 reflects current architect-engineer practices in a streamlined and updated format and is organized into data blocks that readily support automation. An interagency *ad hoc* committee developed the SF 330. It was based on the results of a joint Federal-industry survey of the existing SFs 254 and 255 conducted by the Standing Committee on Procurement and Contracting of the Federal Facilities Council (FCC) in 1995 and published in 1996 as FCC Report Number 130, entitled “Survey on the

Use of SFs 254 and 255 for Architect-Engineer Qualifications.” The survey’s purpose was to evaluate the current use of the forms, which are used for the submission of qualifications by architect-engineer (A-E) firms interested in Federal contracts, and to identify possible improvements which would enable the existing forms to better serve the needs of Federal agencies and the A-E industry.

The policies and the SF 330, Architect-Engineer Qualifications, of this final rule are effective for all agencies and their solicitations issued on or after January 12, 2004. However, agencies may delay implementation of this final rule until June 8, 2004, at which time it becomes mandatory for all agencies and their solicitations issued on or after that date. Use of the SF 330 becomes effective January 12, 2004. However, until June 8, 2004, agencies

may authorize the continued use of the SFs 254 and 255 instead.

Item II—Depreciation Cost Principle (FAR Case 2001-026)

This final rule amends FAR parts 2 and 31 to revise the depreciation cost principle (FAR 31.205-11) by improving clarity and structure and removing unnecessary and duplicative language. The case was initiated at the request of the Aerospace Industries Association. The rule does not change the allowability of depreciation costs. However, changes have been made that may effect the determination of depreciable costs for tangible personal property; for example, only residual values in excess of 10 percent need be used and residual values need not be recognized when certain depreciation methods are used. This rule is of particular interest to contractors and contracting officers who use cost

analysis to price contracts and modifications, and who determine or negotiate reasonable costs in accordance with a clause of a contract, *e.g.*, price revision of fixed-price incentive contracts, terminated contracts, or indirect cost rates.

Item III—Federal Procurement Data System (FAR Case 2003–019)

This final rule amends the FAR to revise FAR 4.602 to—

- Reflect that the information in FPDS–NG is available to the general public;
- Provide the Web site for FPDS–NG, which must be entered as *https://www.fpds.gov*;
- Delete the physical address for the Federal Procurement Data Center;
- Allow agencies to report all transactions between \$2,500 and \$25,000 to FPDS–NG as either individual contract actions or summary contract actions until September 30, 2004;
- Require all contract actions over \$2,500 be reported to FPDS–NG as individual contract actions after September 30, 2004;
- Require agencies to insert the provision at 52.204–6, Data Universal Numbering System (DUNS) Number, in solicitations when the expected award amount will result in the generation of an individual contract action report and the contract does not include FAR clause 52.204–7, Central Contractor Registration; and
- Eliminate the use of the SF 279, Federal Procurement Data System (FPDS)—Individual Contract Action Report, and the SF 281, Federal Procurement Data System (FPDS)—Summary Contract Action Report (\$25,000 or Less).

Item IV—Increased Federal Prison Industries, Inc. Waiver Threshold (FAR Case 2003–001)

The interim rule published as Item V of FAC 2001–014 is adopted as final

without change. The interim rule amended the FAR to increase the Federal Prison Industries, Inc.'s (FPI) clearance exception threshold at FAR 8.606(e) from \$25 to \$2,500, and deleted the criterion that delivery is required within 10 days. Federal agencies are not required to make purchases from FPI of products on FPI's Schedule that are at or below this threshold. Federal agencies, however, may continue to consider and purchase products from FPI that are at or below \$2,500.

Item V—Debarment and Suspension—Order Placement and Option Exercise (FAR Case 2002–010)

This final rule amends FAR part 9 to address the placement of orders under existing contracts and agreements with contractors that have been debarred, suspended, or proposed for debarment.

Item VI—Insurance and Pension Costs (FAR Case 2001–037)

This final rule amends the FAR to revise the Insurance and Indemnification cost principle (FAR 31.205–19), and the portion of the Compensation for Personal Services cost principle relating to pension costs (FAR 31.205–6(j)). The rule revises both cost principles by improving clarity and structure, and removing unnecessary and duplicative language. Changes to FAR 31.205–6(j) include: Use of terminology consistent with Cost Accounting Standard (CAS) 412, Measurement of Pension Costs, and CAS 413, Adjustment and Allocation of Pension Cost; how the government receives pension cost adjustment amounts for CAS-covered and non-CAS-covered contracts; revision of the allowability limitation on employee stock ownership plan (ESOP) contributions; and removal of the requirement for the contracting officer to approve the ESOP contribution rate. Changes to FAR 31.205–19 include the elimination of the U.S. Treasury discount rate provision for computing

actual losses. The case was initiated as a result of comments and recommendations received from industry and government representatives during a series of public meetings. This rule is of particular interest to contractors and contracting officers who use cost analysis to price contracts and modifications, and who determine or negotiate reasonable costs in accordance with a clause of a contract, *e.g.*, price revision of fixed-price incentive contracts, terminated contracts, or indirect cost rates.

Item VII—Debriefing—Competitive Acquisition (FAR Case 2002–014)

This rule amends the FAR to include requirements for debriefing unsuccessful offerors under competitive proposals, as required by sections 1014 and 1064 of the Federal Acquisition Streamlining Act of 1994, as amended, 10 U.S.C. 2305(b) and 41 U.S.C. 253b, respectively. Specifically, 10 U.S.C. 2305(b)(5)(D) and 41 U.S.C. 253b(e)(4) requires each solicitation for competitive proposals to include a statement that prescribes minimal information that shall be disclosed in postaward debriefings. This rule also amends FAR 52.212–1 and 52.215–1 to implement the statutory requirements, and the past performance debriefing requirement at FAR 15.506(d)(2), by listing all the prescribed minimal information that shall be disclosed in postaward debriefings.

Item VIII—Technical Amendments

This amendment makes editorial changes at FAR 1.201–1(b)(1); 6.302–7(c)(1)(i); 13.500(d); 25.701(b); 52.204–7, Alternate I; 52.211–2(a) and (b); and 52.225–13(b).

Dated: December 4, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

[FR Doc. 03–30480 Filed 12–10–03; 8:45 am]

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