



# Federal Register

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**Friday,  
February 8, 2002**

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**Part III**

**Department of  
Defense  
General Services  
Administration  
National Aeronautics  
and Space  
Administration**

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**48 CFR Chapter 1 et al.  
Federal Acquisition Regulations; Final  
Rules**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

**Federal Acquisition Circular 2001-04; Introduction**

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

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

**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) 2001-04. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at <http://www.arnet.gov/far>.

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

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2001-04 and specific FAR case number(s). Interested parties may also visit our website at <http://www.arnet.gov/far>.

Item	Subject	FAR case	Analyst
I .....	Definitions for Classified Acquisitions .....	2000-404	DeStefano.
II .....	Special Simplified Procedures for Purchases of Commercial Items in Excess of the Simplified Acquisition Threshold.	2002-002	Moss.
III .....	Notification of Noncompliance with Cost Accounting Standards .....	2001-013	Olson.
IV .....	Executive Order 13204, Revocation of Executive Order on Nondisplacement of Qualified Workers Under Certain Contracts.	2001-017	Nelson.
V .....	Caribbean Basin Country End Products .....	2000-306	Davis.
VI .....	Final Contract Voucher Submission .....	1999-026	Klein.
VII .....	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 2001-04 amends the FAR as specified below:

**Item I—Definitions for Classified Acquisitions (FAR Case 2000-404)**

This final rule amends the FAR to clarify definitions that are used for classified procurements. The final rule—

- Moves the definitions of “classified acquisition,” “classified contract,” and “classified information” from FAR 4.401 to FAR 2.101, because the definitions apply to more than one FAR part;
- Amends those definitions for clarity;
- Amends the definition of “classified information” to reflect classification of privately generated restricted data in accordance with Department of Energy regulations; and
- Amends the policy regarding bid openings for classified acquisitions at FAR 14.402-2 for clarity.

**Item II—Special Simplified Procedures for Purchases of Commercial Items in Excess of the Simplified Acquisition Threshold (FAR Case 2002-002)**

This rule amends FAR Subpart 13.5 to implement Section 823 of the National

Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107-107). Section 823 amends Section 4202(e) of the Clinger-Cohen Act of 1996 (Divisions D and E of Pub. L. 104-106; 110 Stat. 654; 10 U.S.C. 2304 note) to extend, through January 1, 2003, the expiration of the test of special simplified procedures for purchases of commercial items greater than the simplified acquisition threshold, but not exceeding \$5,000,000.

**Item III—Notification of Noncompliance With Cost Accounting Standards (FAR Case 2001-013)**

This final rule amends Table 15-2, Instructions for Submitting Cost/Price Proposals When Cost or Pricing Data are Required, located at FAR 15.4, Contract pricing. The rule removes the requirement for a contractor to notify the contracting officer when there is a noncompliance that has an immaterial cost impact. The rule affects contracting officers that require cost or pricing data on cost accounting standard-covered contracts.

**Item IV—Executive Order 13204, Revocation of Executive Order on Nondisplacement of Qualified Workers Under Certain Contracts (FAR Case 2001-017)**

The interim rule published in the **Federal Register** at 66 FR 27416, May 16, 2001, is converted to a final rule without change. This rule finalizes the implementation of Executive Order (E.O.) 13204, Revocation of Executive

Order on Nondisplacement of Qualified Workers Under Certain Contracts, signed by the President on February 17, 2001. The E.O. requires that any rules implementing E.O. 12933, Nondisplacement of Qualified Workers Under Certain Contracts, be promptly rescinded. As a result, Subpart 22.12 and the clause at 52.222-50 were removed and reserved. The clause at 52.212-5 was amended by revising the date and removing paragraph (c)(6). Contracting officers should not take any action on any complaint filed under former FAR Subpart 22.12.

**Item V—Caribbean Basin Country End Products (FAR Case 2000-306)**

This interim rule amends FAR 25.003, 25.400, 25.404, and the clause at 52.225-5, Trade Agreements, to implement the determination of the United States Trade Representative (USTR) to renew the treatment of Caribbean Basin country end products as eligible products under the Trade Agreements Act (TAA), with the exception of end products from the Dominican Republic, Honduras, and Panama. This rule applies only if an acquisition is subject to the TAA (see FAR 25.403). The Dominican Republic and Honduras were already removed from the definition of Caribbean Basin countries in FAC 97-17, FAR case 2000-003, published in the **Federal Register** at 65 FR 24321, April 25, 2000. This rule now removes Panama. Offers of end products from these countries are

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

This interim rule also amends the definition of "Caribbean Basin country end product" at FAR 25.003 and in the clause at 52.225-5, Trade Agreements, to implement Section 211 of the United States—Caribbean Basin Trade Partnership Act and the determinations of the USTR as to which countries qualify for the enhanced trade benefits under that Act. Offerors of end products from the Caribbean Basin must understand the revised definition in order to certify whether the products that they are offering qualify as Caribbean Basin country end products. The definition of "Caribbean Basin country end product" excludes products that do not qualify for duty-free treatment. Information provided in this rule helps offerors determine the duty-free status of a product by review of the Harmonized Tariff Schedule of the United States.

#### Item VI—Final Contract Voucher Submission (FAR Case 1999-026)

This final rule amends FAR 42.705, Final indirect cost rates, and FAR 52.216-7, Allowable Cost and Payment, to explicitly state the right of the contracting officer to unilaterally determine the final contract payment amount when the contractor does not submit the final invoice or voucher within the time specified in the contract. The rule is applicable to contracting officers that administer contract closeout procedures.

#### Item VII—Technical Amendments

These amendments update sections and make editorial changes at sections 3.807, 9.203, 12.301, 13.301, 14.205-2, 14.409-1, 15.404-4, 31.002, 31.205-17, 36.606, 42.705-1, 46.202-4, 51.101, 52.212-3, 52.213-4, 52.219-21, and 52.222-44.

Dated: February 1, 2002.

#### Al Matera,

Director, Acquisition Policy Division.

#### Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001-04 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 2001-04 is effective February 20, 2002.

Dated: January 31, 2002.

Carolyn M. Balven,  
Col., USAF Deputy Dir., Defense Procurement.

Dated: January 30, 2002.

David A. Drabkin,  
Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: January 30, 2002.

Tom Luedtke,  
Associate Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 02-2912 Filed 2-7-02; 8:45 am]

BILLING CODE 6820-EP-P

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 2, 4, 14, and 32

[FAC 2001-04; FAR Case 2000-404; Item I]

RIN 9000-A181

#### Federal Acquisition Regulation; Definitions for Classified Acquisitions

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

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed to amend the Federal Acquisition Regulation (FAR) to provide consistent definitions for classified acquisitions.

**DATES:** *Effective Date:* February 20, 2002.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph DeStefano, Procurement Analyst, at (202) 501-1758. Please cite FAC 2001-04, FAR case 2000-404.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This rule amends the FAR to address perceived inconsistencies in definitions that are used for classified acquisitions. The rule moves the definitions of "classified acquisition," "classified contract," and "classified information"

from FAR 4.401 to FAR 2.101, because the definitions apply to more than one FAR part. Those definitions also have been amended for clarity. The definition of "classified information" has been further amended to reflect classification of privately generated restricted data in accordance with Department of Energy regulations at 10 CFR 1045.21. The rule also amends the policy regarding bid openings for classified acquisitions at FAR 14.402-2 for clarity.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 46558, July 28, 2000. Four respondents submitted comments on the proposed rule. The Councils considered all comments in the development of the final rule. The following issues merit noting:

- *Comment:* Expand the definition of "classified information" at FAR 2.101 to include privately generated Restricted Data, which is established under the Atomic Energy Act of 1954, as amended, and implemented in 10 CFR 1045.21. Response: Accepted.

- *Comment:* Amend the "classified contract" definition at FAR 2.101 to address only situations where the contract itself is classified and add a new "contracts involving access to classified" definition at FAR 2.101. Commentor believed that the suggested change was more in keeping with a "plain language" philosophy. Response: Not accepted. The suggested change does not conform to the way the terms are used in the FAR.

- *Comment:* The rule at FAR 14.402-2 states "the contracting officer must not make a public record of the bids or the bid prices." The language is too narrow because it only restricts the contracting officer from making a public record. Response: Accepted. The current FAR language will be retained in lieu of the language in the proposed rule. Keeping the present FAR language addresses the person opening the bids.

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, while we have made changes for clarity, we

have not substantively changed procedures for award and administration of contracts.

### C. Paperwork Reduction Act

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

#### List of Subjects in 48 CFR parts 2, 4, 14, and 32

Government procurement.

Dated: February 1, 2002.

#### Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 4, 14, and 32 as set forth below:

1. The authority citation for 48 CFR parts 2, 4, 14, and 32 continues to read as follows:

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

### PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by adding, in alphabetical order, the definitions “classified acquisition,” “classified contract,” and “classified information” to read as follows:

#### 2.101 Definitions.

\* \* \* \* \*

*Classified acquisition* means an acquisition in which offerors must have access to classified information to properly submit an offer or quotation, to understand the performance requirements, or to perform the contract.

*Classified contract* means any contract in which the contractor or its employees must have access to classified information during contract performance. A contract may be a classified contract even though the contract document itself is unclassified.

*Classified information* means any knowledge that can be communicated or any documentary material, regardless of its physical form or characteristics, that—

(1)(i) Is owned by, is produced by or for, or is under the control of the United States Government; or

(ii) Has been classified by the Department of Energy as privately generated restricted data following the procedures in 10 CFR 1045.21; and

(2) Must be protected against unauthorized disclosure according to Executive Order 12958, Classified National Security Information, April 17,

1995, or classified in accordance with the Atomic Energy Act of 1954.

\* \* \* \* \*

### PART 4—ADMINISTRATIVE MATTERS

#### 4.401 [Reserved]

3. Section 4.401 is removed and reserved.

### PART 14—SEALED BIDDING

#### 14.103-1 [Amended]

4. Amend section 14.103-1 in paragraph (c) by removing “(see 4.401)”.

5. Revise section 14.402-2 to read as follows:

#### 14.402-2 Classified bids.

The general public may not attend bid openings for classified acquisitions. A bidder or its representative may attend and record the results if the individual has the appropriate security clearance. The contracting officer also may make the bids available at a later time to properly cleared individuals who represent bidders. No public record shall be made of bids or bid prices received in response to classified invitations for bids.

### PART 32—CONTRACT FINANCING

#### 32.1103 [Amended]

6. Amend section 32.1103 in paragraph (d) by removing “(see 4.401)”.

[FR Doc. 02-2913 Filed 2-7-02; 8:45 am]

BILLING CODE 6820-EP-P

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 13

[FAC 2001-04; FAR Case 2002-002; Item II]

#### RIN 9000-AJ28

### Federal Acquisition Regulation; Special Simplified Procedures for Purchases of Commercial Items in Excess of the Simplified Acquisition 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 agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Section 823 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 107-107). Section 823 extends the test of the special simplified procedures for purchases of commercial items greater than the simplified acquisition threshold, but not exceeding \$5,000,000, until January 1, 2003.

**DATES:** *Effective Date:* February 20, 2002.

*Applicability Date:* FAR Subpart 13.5, as amended by this rule, is applicable to solicitations issued on or after January 1, 2002.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501-4764. Please cite FAC 2001-04, FAR case 2002-002.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This final rule amends FAR Subpart 13.5 to implement section 823 of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107-107). Section 823 amends section 4202(e) of the Clinger-Cohen Act of 1996 (Divisions D and E of Pub. L. 104-106; 110 Stat. 654; 10 U.S.C. 2304 note) to extend, through January 1, 2003, the expiration of the test of special simplified procedures for purchases of commercial items greater than the simplified acquisition threshold, but not exceeding \$5,000,000.

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

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 Subpart 13.5 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 2001-04, FAR case 2002-002), in correspondence.

**C. Paperwork Reduction Act**

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

**List of Subjects in 48 CFR Part 13**

Government procurement.

Dated: February 1, 2002.

**Al Matera,**

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 13 as set forth below:

**PART 13—SIMPLIFIED ACQUISITION PROCEDURES**

1. The authority citation for 48 CFR part 13 continues to read as follows:

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

**13.500 [Amended]**

2. Amend section 13.500 in paragraph (d) by removing "January 1, 2002" and adding "January 1, 2003" in its place.

[FR Doc. 02-2914 Filed 2-7-02; 8:45 am]

BILLING CODE 6820-EP-P

**DEPARTMENT OF DEFENSE****GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Part 15**

[FAC 2001-04; FAR Case 2001-013; Item III]

RIN 9000-AJ29

**Federal Acquisition Regulation; Notification of Noncompliance With Cost Accounting Standards**

**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 remove the requirement for a contractor to notify the contracting officer when there is a

cost accounting standard (CAS) noncompliance that has an immaterial cost impact.

**DATES:** *Effective Date:* February 20, 2002.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson at (202) 501-3221. Please cite FAC 2001-04, FAR case 2001-013.

**SUPPLEMENTARY INFORMATION:****A. Background**

Contracting officers may require submission of cost or pricing data in the format indicated in Table 15-2, Instructions for Submitting Cost/Price Proposals When Cost or Pricing Data are Required, which is included in FAR 15.408, Solicitation provisions and contract clauses. This Table requires contractors to state whether they have been notified that they are or may be in noncompliance with the CAS. When there is a noncompliance and the cognizant Federal agency official determines the noncompliance has an immaterial cost impact, it is not necessary for the contractor to notify the contracting officer because the noncompliance will not impact the contract price. If the noncompliance is not corrected and it subsequently results in materially increased costs to the Government, the provisions of the applicable CAS clauses will continue to be enforced. Since the notification requirement is an inefficient use of resources and may cause an unnecessary delay, this rule deletes it.

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**

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 15 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 2001-04, FAR case 2001-013), in correspondence.

**C. Paperwork Reduction Act**

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

**List of Subjects in 48 CFR Part 15**

Government procurement.

Dated: February 1, 2002.

**Al Matera,**

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 15 as set forth below:

1. The authority citation for 48 CFR part 15 continues to read as follows:

**PART 15—CONTRACTING BY NEGOTIATION**

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

2. In section 15.408, amend Table 15-2, which follows paragraph (m)(4), by revising paragraph A.(8) of the General Instructions to read as follows:

**15.408 Solicitation provisions and contract clauses.**

\* \* \* \* \*

**Table 15-2—Instructions for Submitting Cost/Price Proposals When Cost or Pricing Data are Required**

\* \* \* \* \*

**I. General Instructions**

A. \* \* \*

(8) Whether your organization is subject to cost accounting standards; whether your organization has submitted a CASB Disclosure Statement, and if it has been determined adequate; whether you have been notified that you are or may be in noncompliance with your Disclosure Statement or CAS (other than a noncompliance that the cognizant Federal agency official has determined to have an immaterial cost impact), and, if yes, an explanation; whether any aspect of this proposal is inconsistent with your disclosed practices or applicable CAS, and, if so, an explanation; and whether the proposal is consistent with your established estimating and accounting principles and procedures and FAR Part 31, Cost Principles, and, if not, an explanation;

\* \* \* \* \*

[FR Doc. 02-2915 Filed 2-7-02; 8:45 am]

BILLING CODE 6820-EP-P

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Parts 22 and 52**[FAC 2001-04; FAR Case 2001-017;  
Item IV]

RIN 9000-AJ13

**Federal Acquisition Regulation;  
Executive Order 13204, Revocation of  
Executive Order on Nondisplacement  
of Qualified Workers Under Certain  
Contracts****AGENCIES:** Department of Defense (DoD),  
General Services Administration (GSA),  
and National Aeronautics and Space  
Administration (NASA).**ACTION:** Final rule.**SUMMARY:** The Civilian Agency  
Acquisition Council and the Defense  
Acquisition Regulations Council  
(Councils) have agreed on a final rule  
amending the Federal Acquisition  
Regulation (FAR) to implement  
Executive Order (E.O.) 13204,  
Revocation of Executive Order on  
Nondisplacement of Qualified Workers  
Under Certain Contracts, signed by the  
President on February 17, 2001. The  
E.O. requires that any rules  
implementing E.O. 12933,  
Nondisplacement of Qualified Workers  
Under Certain Contracts, be promptly  
rescinded.**DATES:** *Effective Date:* February 20,  
2002.**FOR FURTHER INFORMATION CONTACT:** The  
FAR Secretariat, Room 4035, GS  
Building, Washington, DC, 20405, (202)  
501-4755, for information pertaining to  
status or publication schedules. For  
clarification of content, contact Ms.  
Linda Nelson, Procurement Analyst, at  
(202) 501-1900. Please cite FAC 2001-  
04, FAR case 2001-017.**SUPPLEMENTARY INFORMATION:****A. Background**

This final rule amends the FAR to  
implement Executive Order (E.O.)  
13204, Revocation of Executive Order  
on Nondisplacement of Qualified  
Workers Under Certain Contracts. The  
E.O. required the prompt recession of  
any orders, rules, regulations,  
guidelines, or policies implementing or  
enforcing E.O. 12933, Nondisplacement  
of Qualified Workers Under Certain  
Contracts, to the extent consistent with  
law.

DoD, GSA, and NASA published an  
interim rule in the **Federal Register** at  
66 FR 27416, May 16, 2001. No  
comments were received in response to  
the notice. The interim rule is converted  
to a final rule without change.

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

**B. Regulatory Flexibility Act**

The Department of Defense, the  
General Services Administration, and  
the National Aeronautics and Space  
Administration certify that this final  
rule will not have a significant  
economic impact on a substantial  
number of small entities within the  
meaning of the Regulatory Flexibility  
Act, 5 U.S.C. 601, *et seq.*, because the  
rule merely removes requirements from  
the FAR that implemented regulations  
issued by the Department of Labor (DoL)  
for which DoL certified would not have  
a significant economic effect on a  
substantial number of small entities (see  
**Federal Register** at 62 FR 28175, May  
22, 1997).

**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 22 and  
52**

Government procurement.

Dated: February 1, 2002.

**Al Matera,***Director, Acquisition Policy Division.***Interim Rule Adopted as Final Without  
Change**

Accordingly, DoD, GSA, and NASA  
adopt the interim rule amending 48 CFR  
parts 22 and 52, which was published  
in the **Federal Register** at 66 FR 27416,  
May 16, 2001, as a final rule without  
change.

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

[FR Doc. 02-2916 Filed 2-7-02; 8:45 am]

**BILLING CODE 6820-EP-P****DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Parts 25 and 52**[FAC 2001-04; FAR Case 2000-306;  
Item V]

RIN 9000-AJ27

**Federal Acquisition Regulation;  
Caribbean Basin Country End  
Products****AGENCIES:** Department of Defense (DoD),  
General Services Administration (GSA),  
and National Aeronautics and Space  
Administration (NASA).**ACTION:** Interim rule with request for  
comments.**SUMMARY:** The Civilian Agency  
Acquisition Council and the Defense  
Acquisition Regulations Council  
(Councils) have agreed on an interim  
rule amending the Federal Acquisition  
Regulation (FAR) to implement the  
determination of the United States  
Trade Representative (USTR) to extend  
the treatment of certain end products,  
from countries designated by the  
President as beneficiaries under the  
Caribbean Basin Economic Recovery  
Act, as eligible products under the  
Trade Agreements Act, with the  
exception of end products from the  
Dominican Republic, Honduras, and  
Panama. This rule also implements  
Section 211 of the United States—  
Caribbean Basin Trade Partnership Act  
and the determination of the USTR as to  
which countries qualify for the  
enhanced trade benefits under that Act.**DATES:** *Effective Date:* February 20,  
2002.*Comment Date:* Interested parties  
should submit comments to the FAR  
Secretariat at the address shown below  
on or before April 9, 2002, to be  
considered in the formulation of a final  
rule.**ADDRESSES:** Submit written comments  
to: General Services Administration,  
FAR Secretariat (MVP), 1800 F Street,  
NW, Room 4035, Attn: Ms. Laurie  
Duarte, Washington, DC 20405.Submit electronic comments via the  
Internet to: [farcase.2000-306@gsa.gov](mailto:farcase.2000-306@gsa.gov)Please submit comments only and cite  
FAC 2001-04, FAR case 2000-306, in  
all correspondence related to this case.**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 L. Davis, Procurement Analyst, at (202) 219-0202. Please cite FAC 2001-04, FAR case 2000-306.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

The USTR published a notice in the **Federal Register** on December 14, 2001 (66 FR 64897), renewing the treatment of certain end products, from countries designated by the President as beneficiaries under the Caribbean Basin Economic Recovery Act, as eligible products under the Trade Agreements Act, with the exception of end products from the Dominican Republic, Honduras, and Panama. This rule implements that determination.

This interim rule also amends the FAR to implement Section 211 of the United States—Caribbean Basin Trade Partnership Act (Title II of Pub. L. 106-200) and the determinations of the USTR under that Act. To date, the USTR has published determinations in the **Federal Register** at 65 FR 60236, October 10, 2000; 65 FR 69988, November 21, 2000; 66 FR 9888, February 12, 2001, and 66 FR 31272, June 11, 2001. Section 211 amends the Caribbean Basin Economic Recovery Act at 19 U.S.C. 2703 to provide enhanced trade benefits for Caribbean Basin countries that have implemented and follow, or are making substantial progress toward implementing and following, the customs procedures required by the Caribbean Basin Trade Partnership Act. Certain products of those countries now qualify for duty-free treatment, so they can be treated as Caribbean Basin country end products. Offerors can find these products, and the current list of countries, in the Harmonized Tariff Schedule (HTS). The FAR gives information on the HTS in FAR clause 52.225-5, Trade Agreements. The USTR notices in the **Federal Register** announced the determination that Barbados, Belize, Costa Rica, Dominican Republic, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Nicaragua, Panama, Saint Lucia, and Trinidad and Tobago currently qualify for the enhanced trade benefits and modified the Harmonized Tariff Schedule of the United States accordingly.

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 interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it only affects a limited number of products from a few Caribbean Basin countries. The Berry Amendment (formerly at 10 U.S.C. 2241, note, but recently enacted as 10 U.S.C. 2533a) still prohibits the Department of Defense from buying most of the textile and apparel articles receiving duty-free treatment under this Act. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR parts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2001-04, FAR case 2000-306), in correspondence.

##### C. Paperwork Reduction Act

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

##### D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the determination of the USTR to provide enhanced benefits to the products of certain countries under the Caribbean Basin Trade Partnership Act became effective on October 2, 2000, and because the USTR reinstated the expired Caribbean Basin program on December 14, 2001, effective immediately. However, pursuant to Public Law 98-577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

##### List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: February 1, 2002.

**Al Matera,**

*Director, Acquisition Policy Division.*

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

1. The authority citation for 48 CFR parts 25 and 52 continues to read as follows:

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

#### PART 25—FOREIGN ACQUISITION

2. Amend section 25.003 in the definition “Caribbean Basin country” by removing “Panama,”; and by revising the definition “Caribbean Basin country end product” to read as follows:

##### 25.003 Definitions.

\* \* \* \* \*

*Caribbean Basin country end product—*

(1) Means an article that—

(i)(A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(B) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed; and

(ii) Is not excluded from duty-free treatment for Caribbean countries under 19 U.S.C. 2703(b).

(A) For this reason, the following articles are not Caribbean Basin country end products:

(1) Tuna, prepared or preserved in any manner in airtight containers.

(2) Petroleum, or any product derived from petroleum.

(3) Watches and watch parts (including cases, bracelets, and straps) of whatever type including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Harmonized Tariff Schedule of the United States (HTSUS) column 2 rates of duty apply (*i.e.*, Afghanistan, Cuba, Laos, North Korea, and Vietnam).

(4) Certain of the following: textiles and apparel articles; footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel; or handloomed, handmade, and folklore articles.

(B) Access to the HTSUS to determine duty-free status of articles of the types listed in paragraph (1)(ii)(A)(4) of this definition is available via the Internet at

http://www.customs.ustreas.gov/impoexpo/impoexpo.htm. In particular, see the following:

- (1) General Note 3(c), Products Eligible for Special Tariff treatment.
- (2) General Note 17, Products of Countries Designated as Beneficiary Countries under the United States—Caribbean Basin Trade Partnership Act of 2000.
- (3) Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).
- (4) Section XXII, Chapter 98, Subchapter XX, Goods Eligible for Special Tariff Benefits under the United States-Caribbean Basin Trade Partnership Act; and
- (2) Refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the acquisition, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

\* \* \* \* \*

**25.400 [Amended]**

3. Amend section 25.400 in paragraph (a)(2) by removing the words "Republic and Honduras" and adding "Republic, Honduras, and Panama," in its place.

**25.404 [Amended]**

4. Amend section 25.404 by removing the second and third sentences.

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

- 5. Amend section 52.225-5 by—
  - a. Removing "Panama," from the definition "Caribbean Basin country"; and
  - b. Revising the definition "Caribbean Basin country end product" to read as follows:

**52.225-5 Trade Agreements.**

\* \* \* \* \*

**Trade Agreements (Feb 2002)**

- (a) \* \* \*
  - \* \* \* \* \*
  - Caribbean Basin country end product*—
  - (1) Means an article that—
    - (i)(A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or
    - (B) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed; and
    - (ii) Is not excluded from duty-free treatment for Caribbean countries under 19 U.S.C. 2703(b).

- (A) For this reason, the following articles are not Caribbean Basin country end products:
  - (1) Tuna, prepared or preserved in any manner in airtight containers;
  - (2) Petroleum, or any product derived from petroleum;
  - (3) Watches and watch parts (including cases, bracelets, and straps) of whatever type including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Harmonized Tariff Schedule of the United States (HTSUS) column 2 rates of duty apply (i.e., Afghanistan, Cuba, Laos, North Korea, and Vietnam); and
  - (4) Certain of the following: textiles and apparel articles; footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel; or handloomed, handmade, and folklore articles;
- (B) Access to the HTSUS to determine duty-free status of articles of these types is available at <http://www.customs.ustreas.gov/impoexpo/impoexpo.htm>. In particular, see the following:
  - (1) General Note 3(c), Products Eligible for Special Tariff treatment.
  - (2) General Note 17, Products of Countries Designated as Beneficiary Countries under the United States—Caribbean Basin Trade Partnership Act of 2000.
  - (3) Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).
  - (4) Section XXII, Chapter 98, Subchapter XX, Goods Eligible for Special Tariff Benefits under the United States—Caribbean Basin Trade Partnership Act; and
  - (2) Refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the acquisition, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

- \* \* \* \* \*

[FR Doc. 02-2917 Filed 2-7-02; 8:45 am]  
BILLING CODE 6820-EP-P

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 42 and 52**

[FAC 2001-04; FAR Case 1999-026; Item VI]

RIN 9000-AI86

**Federal Acquisition Regulation; Final Contract Voucher Submission**

**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 explicitly state the right of the contracting officer to unilaterally determine the final contract payment amount when the contractor does not submit the final invoice or voucher within the time specified in the contract.

**DATES:** *Effective Date:* February 20, 2002.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501-3775. Please cite FAC 2001-04, FAR case 1999-026.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 46332, July 27, 2000, with a request for comment. The proposed rule amended FAR 42.705, Final indirect cost rates, and FAR 52.216-7, Allowable Cost and Payment, to—

- Explicitly state that the contracting officer may issue a unilateral modification that reflects the contracting officer's determination of the amounts due to the contractor under the contract. The contracting officer may make this determination if the contractor fails to submit a completion invoice or voucher within the time specified (normally 120 days after settlement of the final indirect cost rates but may be longer, if approved in writing by the contracting officer); and
- Make the contracting officer's determination not subject to appeal under the Disputes clause of the contract.

Thirteen respondents submitted public comments to the proposed rule. The Councils considered all comments when developing the final rule, which was modified as a result. The following issues merit noting:

- 1. Almost half of the respondents questioned the language in paragraphs 42.705(c)(2) and 52.216-7(d)(6)(ii) of the proposed rule that stated that the contracting officer's decision would not be subject to appeal under the Disputes clause. The Councils agreed that precluding the right to appeal is not equitable and may result in inaccurate financial payment decisions. The rule has been revised by making the contracting officer's decision final and



binding, but does not preclude contractor appeal under the Disputes clause.

2. Several respondents disagreed with the conclusion that contractor failure to submit a final voucher is the leading reason contract closeouts are not accomplished in a timely manner. The Councils agreed that there are many causes for delays in contract closeout and that it would be helpful to list examples of circumstances a contracting officer should consider in deciding whether or not to extend the time for submission of a final voucher or to issue a final decision regarding final payment. The rule has been revised at 42.705(b) by providing examples of extenuating circumstances that may justify the contracting officer's extension of the 120-day due date for submission of a completion invoice or voucher.

3. Several respondents indicated that the rule should define when settlement of final indirect rates takes place. The Councils did not concur since the actual date of settlement depends on the circumstances of the negotiation. Establishing a universal definition of settlement date is unnecessary and would reduce the flexibility of both contractors and contracting officers.

4. One respondent stated that the rule should include a provision requiring the contracting officer to provide written notice to the contractor and to provide an opportunity to respond before the issuance of a unilateral determination of amounts due. The Councils did not agree. The requirement to submit a timely final invoice is already stated in FAR 52.216-7, Allowable Cost and Payment. Therefore, the contractor is already responsible for complying with this requirement or communicating with the contracting officer if the requirement cannot be met. It is unnecessary to repeat contract requirements in separate notices.

5. Several respondents requested that the rule explicitly preclude the application of the proposed revised closeout procedures to existing contracts. The Councils did not concur. Contracting officers already have the authority to determine final voucher payment amounts and issue final decisions. While the new language in this rule makes that authority explicit, it does not, and should not, impact the contracting officer's authority under existing contracts.

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 this rule does not change the current policies at FAR 42.705 that require the contractor to submit a completion invoice or voucher within 120 days (or longer period, if approved in writing by the contracting officer) after settlement of the final indirect costs rates. The rule simply makes it explicit that if the contractor fails to submit the completion invoice or voucher within the time required, the contracting officer may determine the amounts due the contractor and record this determination in a unilateral modification.

**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 42 and 52**

Government procurement.

Dated: February 1, 2002.

**Al Matera,**

*Director, Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA amend 48 CFR parts 42 and 52 as set forth below:

1. The authority citation for 48 CFR parts 42 and 52 continues to read as follows:

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

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

2. Amend section 42.705 by revising paragraph (b) and by adding paragraph (c) to read as follows:

**42.705 Final indirect cost rates.**

\* \* \* \* \*

(b) Within 120 days (or longer period, if approved in writing by the contracting officer,) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the contractor must submit a completion invoice or voucher reflecting the settled amounts and rates. To determine whether a period longer than 120 days

is appropriate, the contracting officer should consider whether there are extenuating circumstances, such as the following:

- (1) Pending closeout of subcontracts awaiting Government audit.
- (2) Pending contractor, subcontractor, or Government claims.
- (3) Delays in the disposition of Government property.
- (4) Delays in contract reconciliation.
- (5) Any other pertinent factors.

(c)(1) If the contractor fails to submit a completion invoice or voucher within the time specified in paragraph (b) of this section, the contracting officer may—

- (i) Determine the amounts due to the contractor under the contract; and
- (ii) Record this determination in a unilateral modification to the contract.

(2) This contracting officer determination must be issued as a final decision in accordance with 33.211.

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

3. Amend section 52.216-7 in paragraph (d) by redesignating paragraph (d)(4) as (d)(5) and paragraph (d)(5) as (d)(4), respectively; revising the newly designated (d)(5); adding paragraph (d)(6); and by amending paragraph (h)(1) by removing “paragraph (d)(4)” and adding “paragraph (d)(5)” in its place. The revised text reads as follows:

**52.216-7 Allowable cost and payment**

\* \* \* \* \*

**Allowable Cost and Payment (Feb 2002)**

\* \* \* \* \*

(d) \* \* \*

(5) Within 120 days (or longer period if approved in writing by the Contracting Officer) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.

(6)(i) If the Contractor fails to submit a completion invoice or voucher within the time specified in paragraph (d)(5) of this clause, the Contracting Officer may—

- (A) Determine the amounts due to the Contractor under the contract; and
- (B) Record this determination in a unilateral modification to the contract.
- (ii) This determination constitutes the final decision of the Contracting Officer in accordance with the Disputes clause.

\* \* \* \* \*

[FR Doc. 02-2918 Filed 2-7-02; 8:45 am]

**BILLING CODE 6820-EP-P**

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 3, 9, 12, 13, 14, 15, 31, 36, 42, 46, 51, and 52

[FAC 2001-04; Item VII]

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 in order to update references and make editorial changes.

DATES: Effective Date: February 8, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 2001-04, Technical Amendments.

List of Subjects in 48 CFR Parts 3, 9, 12, 13, 14, 15, 31, 36, 42, 46, 51, and 52

Government procurement.

Dated: February 1, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 3, 9, 12, 13, 14, 15, 31, 36, 42, 46, 51, and 52 as set forth below:

1. The authority citation for 48 CFR parts 3, 9, 12, 13, 14, 15, 31, 36, 42, 46, 51, and 52 continues to read as follows:

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

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3.807 [Amended]

2. Amend section 3.807 by removing "3804-3408," and adding "3804-3808," in its place.

PART 9—CONTRACTOR QUALIFICATIONS

3. Amend section 9.203 by revising paragraph (c)(2) to read as follows:

9.203 QPL's, QML's, and QBL's.

\* \* \* \* \*

(c) \* \* \* (2) Defense Standardization Manual 4120.24-M, Appendix 2, as amended by Military Standards 961 and 962.

\* \* \* \* \*

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.301 [Amended]

4. Amend section 12.301 in paragraph (e)(1) by removing "16.505" and adding "16.506" in its place.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.301 [Amended]

5. Amend section 13.301 in the first sentence of paragraph (b) by removing "GSA Federal Supply Service Contract Guide for Governmentwide Commercial Purchase Card Service" and adding "current GSA credit card contract" in its place.

PART 14—SEALED BIDDING

14.205-2 [Amended]

6. Amend section 14.205-2 in paragraph (b) by adding "or suspended" after the word "debarred".

14.409-1 [Amended]

7. Amend section 14.409-1 in the introductory text of paragraph (a)(2) by removing "(see 25.408(a)(4))," and adding "(see 25.408(a)(5))," in its place.

PART 15—CONTRACTING BY NEGOTIATION

15.404-4 [Amended]

8. Amend section 15.404-4 in the introductory text of paragraph (c)(4)(i) by removing "10 U.S.C. 2306(e)" and adding "10 U.S.C. 2306(d)" in its place.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

9. Revise section 31.002 to read as follows:

31.002 Availability of accounting guide.

Contractors needing assistance in developing or improving their accounting systems and procedures may request a copy of the Defense Contract Audit Agency Pamphlet No. 7641.90, Information for Contractors. The pamphlet is available via the Internet at http://www.dcaa.mil.

31.205-17 [Amended]

10. Amend section 31.205-17 by designating the undesignated introductory paragraph as "(a) Definitions.;" and in the definition "Idle facilities" by redesignating paragraphs (1), (i), (ii), (2), and (3) as (b), (b)(1), (b)(2), (c), and (d), respectively.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.606 [Amended]

11. Amend section 36.606 in the first sentence of paragraph (f) by removing "best and final offer" and adding "final proposal revision" in its place.

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

12. Amend section 42.705-1 by revising paragraph (b)(1) to read as follows:

42.705-1 Contracting officer determination procedure.

\* \* \* \* \*

(b) Procedures. (1) In accordance with the Allowable Cost and Payment clause at 52.216-7 or 52.216-13, the contractor shall submit to the contracting officer (or cognizant Federal agency official) and to the cognizant auditor a final indirect cost rate proposal. The required content of the proposal and supporting data will vary depending on such factors as business type, size, and accounting system capabilities. The contractor, contracting officer, and auditor must work together to make the proposal, audit, and negotiation process as efficient as possible. Accordingly, each contractor shall submit an adequate proposal to the contracting officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the contractor and granted in writing by the contracting officer. A contractor shall support its proposal with adequate supporting data. For guidance on what generally constitutes an adequate final indirect cost rate proposal and supporting data, contractors should refer to the Model Incurred Cost Proposal in Chapter 6 of the Defense Contract Audit Agency Pamphlet No. 7641.90, Information for Contractors, available via the Internet at http://www.dcaa.mil.

\* \* \* \* \*

PART 46—QUALITY ASSURANCE

13. Amend section 46.202-4 by revising the last sentence of paragraph (b) to read as follows:

46.202-4 Higher-level contract quality requirements.

\* \* \* \* \*

(b) \* \* \* Examples of higher-level quality standards are ISO 9001, 9002, or 9003; ANSI/ISO/ASQ Q9001-2000;

ANSI/ASQC Q9001, Q9002, or Q9003; QS-9000; AS-9000; ANSI/ASQC E4; and ANSI/ASME NQA-1.

**PART 51—CONTRACTOR USE OF GOVERNMENT SUPPLY SOURCES**

**51.101 [Amended]**

14. Amend section 51.101 in paragraph (b) by removing “(see 41 CFR 101-26.407)” and adding “(see 41 CFR 101-26.507)” in its place.

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

15. Amend section 52.212-3 by—  
 a. Revising the date of the provision;  
 b. Removing the reference “(c)(7)(i)” from paragraph (c)(9)(ii) and adding “(c)(9)(i)” in its place;  
 c. Revising paragraph (h); and  
 d. Removing from Alternate I “(Oct 2000)” and adding “(Feb 2002)” in its place; and by removing “(c)(2)” from paragraph (10) of Alternate I and adding “(c)(4)” in its place. The revised text reads as follows:

**52.212-3 Offeror Representations and Certifications—Commercial Items.**

\* \* \* \* \*

**Offeror Representations and Certifications—Commercial Items (Feb 2002)**

\* \* \* \* \*

(h) *Certification Regarding Debarment, Suspension or Ineligibility for Award (Executive Order 12549).* (Applies only if the contract value is expected to exceed the simplified acquisition threshold.) The offeror certifies, to the best of its knowledge and belief, that the offeror and/or any of its principals—

(1) [ ] Are, [ ] are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency; and

(2) [ ] Have, [ ] have not, within a three-year period preceding this offer, been convicted of or had a civil

judgment rendered against them for: Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(3) [ ] Are, [ ] are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses.

\* \* \* \* \*

16. Amend section 52.213-4 by revising paragraph (a)(2)(vi); and in paragraph (b)(1)(viii), by removing “(Jan 2001)” and adding “(Dec 2001)” in its place. The revised text reads as follows:

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

\* \* \* \* \*

**Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (Feb 2002)**

(a) \* \* \*

(2) \* \* \*

(vi) 52.244-6, Subcontracts for Commercial Items (Dec 2001).

\* \* \* \* \*

**52.219-21 [Amended]**

17. Amend section 52.219-21 in the prescription by removing “19.1007(c)” and adding “19.1008(c)” in its place.

**52.222-44 [Amended]**

18. Amend section 52.222-44 by revising the date of the clause to read “(Feb 2002)” and in paragraph (d) by removing “paragraph (b)” and adding “paragraph (c)” in its place.

[FR Doc. 02-2919 Filed 2-7-02; 8:45 am]

BILLING CODE 6820-EP-P

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

**Federal Acquisition Regulation; Small Entity Compliance Guide**

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

**ACTION:** Small Entity Compliance Guide.

**SUMMARY:** This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2001-04 which amend the FAR. An asterisk (\*) next to a rule indicates that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 2001-04 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 2001-04**

Item	Subject	FAR case	Analyst
I .....	Definitions for Classified Acquisitions .....	2000-404	DeStefano.
II .....	Special Simplified Procedures for Purchases of Commercial Items in Excess of the Simplified Acquisition Threshold.	2002-002	Moss.
III .....	Notification of Noncompliance with Cost Accounting Standards .....	2001-013	Olson.
IV .....	Executive Order 13204, Revocation of Executive Order on Nondisplacement of Qualified Workers Under Certain Contracts.	2001-017	Nelson.
V .....	Caribbean Basin Country End Products .....	2000-306	Davis.
VI .....	Final Contract Voucher Submission .....	1999-026	Klein.

## VII Technical Amendments

### Item I—Definitions for Classified Acquisitions (FAR Case 2000-404)

This final rule amends the FAR to clarify definitions that are used for classified procurements. The final rule—

- Moves the definitions of “classified acquisition,” “classified contract,” and “classified information” from FAR 4.401 to FAR 2.101, because the definitions apply to more than one FAR part;
- Amends those definitions in accordance for clarity;
- Amends the definition of “classified information” to reflect classification of privately generated restricted data in accordance with Department of Energy regulations; and
- Amends the policy regarding bid openings for classified acquisitions at FAR 14.402-2 for clarity.

### Item II—Special Simplified Procedures for Purchases of Commercial Items in Excess of the Simplified Acquisition Threshold (FAR Case 2002-002)

This rule amends FAR Subpart 13.5 to implement Section 823 of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107-107). Section 823 amends Section 4202(e) of the Clinger-Cohen Act of 1996 (Divisions D and E of Pub. L. 104-106; 110 Stat. 654; 10 U.S.C. 2304 note) to extend, through January 1, 2003, the expiration of the test of special simplified procedures for purchases of commercial items greater than the simplified acquisition threshold, but not exceeding \$5,000,000.

### Item III—Notification of Noncompliance with Cost Accounting Standards (FAR Case 2001-013)

This final rule amends Table 15-2, Instructions for Submitting Cost/Price Proposals When Cost or Pricing Data are Required, located at FAR 15.4, Contract pricing. The rule removes the requirement for a contractor to notify the contracting officer when there is a noncompliance that has an immaterial cost impact. The rule affects contracting officers that require cost or pricing data

on cost accounting standard-covered contracts.

### Item IV—Executive Order 13204, Revocation of Executive Order on Nondisplacement of Qualified Workers Under Certain Contracts (FAR Case 2001-017)

The interim rule published in the **Federal Register** at 66 FR 27416, May 16, 2001, is converted to a final rule without change. This rule finalizes the implementation of Executive Order (E.O.) 13204, Revocation of Executive Order on Nondisplacement of Qualified Workers Under Certain Contracts, signed by the President on February 17, 2001. The E.O. requires that any rules implementing E.O. 12933, Nondisplacement of Qualified Workers Under Certain Contracts, be promptly rescinded. As a result, Subpart 22.12 and the clause at 52.222-50 was removed and reserved. The clause at 52.212-5 was amended by revising the date and removing paragraph (c)(6). Contracting officers should not take any action on any complaint filed under former FAR Subpart 22.12.

### Item V—Caribbean Basin Country End Products (FAR Case 2000-306)

This interim rule amends FAR 25.003, 25.400, 25.404, and the clause at 52.225-5, Trade Agreements, to implement the determination of the United States Trade Representative (USTR) to renew the treatment of Caribbean Basin country end products as eligible products under the Trade Agreements Act (TAA), with the exception of end products from the Dominican Republic, Honduras, and Panama. This rule applies only if an acquisition is subject to the TAA (see FAR 25.403). The Dominican Republic and Honduras were already removed from the definition of Caribbean Basin countries in FAC 97-17, FAR case 2000-003, published in the **Federal Register** at 65 FR 24321, April 25, 2000. This rule now removes Panama. Offers of end products from these countries are no longer acceptable under acquisitions subject to the TAA unless the contracting officer does not receive any offers of U.S.-made end products or

eligible products (designated, Caribbean Basin, or NAFTA country end products).

This interim rule also amends the definition of “Caribbean Basin country end product” at FAR 25.003 and in the clause at 52.225-5, Trade Agreements, to implement Section 211 of the United States—Caribbean Basin Trade Partnership Act and the determinations of the USTR as to which countries qualify for the enhanced trade benefits under that Act. Offerors of end products from the Caribbean Basin must understand the revised definition in order to certify whether the products that they are offering qualify as Caribbean Basin country end products. The definition of “Caribbean Basin country end product” excludes products that do not qualify for duty-free treatment. Information provided in this rule helps offerors determine the duty-free status of a product by review of the Harmonized Tariff Schedule of the United States.

### Item VI—Final Contract Voucher Submission (FAR Case 1999-026)

This final rule amends FAR 42.705, Final indirect cost rates, and FAR 52.216-7, Allowable Cost and Payment, to explicitly state the right of the contracting officer to unilaterally determine the final contract payment amount when the contractor does not submit the final invoice or voucher within the time specified in the contract. The rule is applicable to contracting officers that administer contract closeout procedures.

### Item VII—Technical Amendments

These amendments update sections and make editorial changes at sections 3.807, 9.203, 12.301, 13.301, 14.205-2, 14.409-1, 15.404-4, 31.002, 31.205-17, 36.606, 42.705-1, 46.202-4, 51.101, 52.212-3, 52.213-4, 52.219-21, and 52.222-44.

Dated: February 1, 2002.

**Al Matera,**

*Director, Acquisition Policy Division.*

[FR Doc. 02-2920 Filed 2-7-02; 8:45 am]

**BILLING CODE 6820-EP-P**