
Tuesday
December 9, 1997

**48 CFR
PART 101-11.6
SEC. 101-11.6-1**

Part II

**Department of Defense
General Services
Administration**

**National Aeronautics and
Space Administration**

**48 CFR Chapter I
Federal Acquisition Regulations (FAR);
Final Rules**

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Chapter I

**Federal Acquisition Circular 97-03;
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 issued by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 97-03. Each rule follows this document in the order listed below. A companion document, the Small Entity Compliance Guide, follows this FAC and may be located on 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 analyst whose name appears (in the table below) in relation to each FAR case or subject area. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 97-03 and specific FAR case number(s).

SUPPLEMENTARY INFORMATION: Federal Acquisition Circular 97-03 amends the Federal Acquisition Regulation (FAR) as specified below:

Item	Subject	FAR case	Analyst
I	Part 30 Deviations	97-014	Nelson.
II	Information Technology Management Reform Act of 1996	96-319	Nelson.
III	Final Overhead Settlement	95-017	Klein.
IV	Reorganization of FAR Part 13, Simplified Acquisition Procedures	94-772	Linfield.
V	Reporting Trade Sanction Exemptions	97-021	Linfield.
VI	New Mexico Gross Receipts and Compensating Tax	97-018	Moss.
VII	Compensation of Certain Contractor Personnel	96-325	Nelson.
VIII	Independent Research and Development/Bid and Proposal Costs for Fiscal Year 1996 and Beyond.	95-032	Nelson.
IX	Travel Reimbursement (Interim)	97-007	Nelson.
X	Protests to GAO	97-009	O'Neill.
XI	Novation and Related Agreements	95-034	Klein.
XII	Commercial Bills of Lading, Small Package Shipments	97-017	Klein.
XIII	Standard Form 1406, Preaward Survey of Prospective Contractor—Quality Assurance	96-022	Klein.
XIV	Technical Amendments		

Item I—Part 30 Deviations (FAR Case 97-014)

This final rule amends FAR 1.402 to remove the prohibition against authorizing deviations from FAR part 30, Cost Accounting Standards Administration, except for subsections 30.201-3 and 30.201-4, or the Cost Accounting Standards Board rules and regulations.

Item II—Information Technology Management Reform Act of 1996 (FAR Case 96-319)

The interim rule published as Item I of FAC 90-41 is converted to a final rule. This rule implements the Information Technology Management Reform Act of 1996 (Division E of Pub. L. 104-106). The final rule differs from the interim rule in that it makes a clarifying revision to paragraph (c) of the definition of "information technology" at FAR 2.101.

Item III—Final Overhead Settlement (FAR Case 95-017)

This final rule amends FAR parts 4, 42, and 52 to improve the process of final settlement of contractor indirect cost rates under cost-reimbursement contracts by (1) extending the time period within which a contractor must

submit an indirect cost rate proposal from 90 days to 6 months after the end of the contractor's fiscal year, (2) permitting extensions to the 6-month time period for exceptional circumstances only, and (3) providing a specific reference to the Defense Contract Audit Agency pamphlet that contains guidance on what generally constitutes an adequate final indirect cost rate proposal and supporting data.

Item IV—Reorganization of FAR Part 13, Simplified Acquisition Procedures (FAR Case 94-772)

This final rule revises FAR part 13 to reorganize its contents in a more process-oriented manner and to emphasize the use of electronic contracting and the Governmentwide commercial purchase card. FAR part 52 is amended to permit agency provisions and clauses to be incorporated by reference in solicitations and contracts, if the full text of the provisions and clauses may be accessed electronically by prospective contractors. A new clause is added at FAR 52.213-4 for use in simplified acquisitions; the clause is a compilation of the required and most commonly used clauses that apply to simplified acquisitions, and may be

used in lieu of individual clauses prescribed in the FAR.

Item V—Reporting Trade Sanction Exemptions (FAR Case 97-021)

This final rule amends FAR Subpart 25.10 to eliminate requirements for agencies to notify Congress when exercising the authority at FAR 25.1002(c) for exemption of certain procurements from trade sanctions imposed by the President. The rule instead requires agencies to notify the United States Trade Representative of such exemptions within 30 days after contract award.

Item VI—New Mexico Gross Receipts and Compensating Tax (FAR Case 97-018)

This final rule amends FAR 29.401-6 to identify the Defense Special Weapons Agency as an agency that has entered into an agreement with the State of New Mexico regarding taxation.

Item VII—Compensation of Certain Contractor Personnel (FAR Case 96-325)

The interim rule published as Item XI of FAC 90-45 is converted to a final rule with a minor clarifying amendment at FAR 31.205-6(p)(1). The rule implements Section 809 of the Fiscal

Year 1997 National Defense Authorization Act (Pub. L. 104-201). Section 809 places a Governmentwide ceiling of \$250,000 per year on allowable compensation costs for contractor personnel in senior management positions under contracts awarded during fiscal year 1997.

Item VIII—Independent Research and Development/Bid and Proposal Costs for Fiscal Year 1996 and Beyond (FAR Case 95-032)

This final rule amends the cost principle at FAR 31.205-18, Independent Research and Development (IR&D) and Bid and Proposal (B&P) Costs, and deletes FAR subpart 42.10, Negotiating Advance Agreements for Independent Research and Development/Bid and Proposal Costs. The rule removes, for fiscal year 1996 and beyond, the requirements to calculate or negotiate a ceiling for IR&D/B&P costs. In addition, the rule clarifies that costs incurred in preparing, submitting, and supporting offers on potential cooperative arrangements are allowable to the extent they are allocable, reasonable, and not otherwise unallowable.

Item IX—Travel Reimbursement (FAR Case 97-007)

This interim rule amends FAR 31.205-46 to raise, from \$25 to \$75, the maximum travel expense amount that contractor personnel may claim without providing a supporting receipt. This change is consistent with a recent amendment to the Federal Travel Regulation.

Item X—Protests to GAO (FAR Case 97-009)

This final rule amends the protest procedures at FAR 33.101 and 33.104 to conform with revisions made to the General Accounting Office Bid Protest Regulations.

Item XI—Novation and Related Agreements (FAR Case 95-034)

This final rule amends FAR subpart 42.12 to expand and clarify procedures for processing novation agreements, and for determining when use of a novation agreement is appropriate.

Item XII—Commercial Bills of Lading, Small Package Shipments (FAR Case 97-017)

This final rule amends FAR 47.303-17 to raise the threshold for requiring receipted freight bills for small package shipments from \$25 to \$100, and the maximum amount that the Government may pay for invoiced but unsupported transportation charges from \$100 to

\$250. These increased amounts are considered to more accurately reflect shipping costs in today's business environment.

Item XIII—Standard Form 1406, Preaward Survey of Prospective Contractor—Quality Assurance (FAR Case 96-022)

This final rule revises Standard Form 1406, Preaward Survey of Prospective Contractor—Quality Assurance, to delete references to canceled specifications, and to conform the language in the form to the current language in FAR part 46.

Item XIV—Technical Amendments

This document makes technical corrections to FAR 1.201-1, 19.811-1, and 42.203. Standard Forms 33, 1435, 1436, and 1437 are reissued to reflect changes to internal references as a result of the rewrite of FAR part 15. Standard Form 279 is reissued to provide accounting for purchases under the commercial test.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 97-03 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 97-03 is effective February 9, 1998, except for Items VI, IX, and XIV, which are effective December 9, 1997.

Dated: November 22, 1997.

Eleanor R. Spector,

Director, Defense Procurement.

Dated: November 28, 1997.

Ida M. Ustad,

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

Dated: November 18, 1997.

Tom Luedtke,

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

[FR Doc. 97-31813 Filed 12-8-97; 8:45 am]

BILLING CODE 6820-EP-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1

[FAC 97-03; FAR Case 97-014; Item I]

RIN 9000-AH77

Federal Acquisition Regulation; Part 30 Deviations

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to remove the prohibition against authorizing deviations from certain sections pertinent to cost accounting standards administration. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 9, 1998.

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 97-03, FAR case 97-014.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR 1.402, Policy, to remove the prohibition against authorizing deviations from FAR Part 30 (except for subsections 30.201-3 and 30.201-4, or the Cost Accounting Standards Board (CASB) rules and regulations). This prohibition was added to the FAR when the CASB rules and regulations were added to FAR part 30. Since only the CASB has authority to waive CAS, the FAR part 30 deviation prohibition at FAR 1.402 was added to preclude the granting of a CAS waiver by other than the CASB. The prohibition was intended to apply to the CASB rules and regulations, not to the administration of CAS. Accordingly, the prohibition with respect to certain portions of FAR part 30 is no longer necessary since the CASB rules and

regulations have been removed from FAR part 30 and promulgated separately by the CASB in 48 CFR Chapter 99.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98-577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97-03, FAR case 97-014), in correspondence.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 1

Government procurement.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR part 1 is amended as set forth below:

PART 1—FEDERAL ACQUISITION REGULATION SYSTEM

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

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

2. Section 1.402 is amended by revising the penultimate sentence to read as follows:

1.402 Policy.

* * * Deviations are not authorized with respect to 30.201-3 and 30.201-4, or the requirements of the Cost Accounting Standards Board (CASB) rules and regulations (48 CFR Chapter 99 (FAR Appendix)). * * *

[FR Doc. 97-31814 Filed 12-8-97; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 5, 7, 8, 9, 12, 13, 16, 17, 19, 22, 32, 33, 34, 37, 38, 39, 45, 46, 51, 52, and 53

[FAC 97-03; FAR Case 96-319; Item II]

RIN 9000-AH75

Federal Acquisition Regulation; Information Technology Management Reform Act of 1996

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

ACTION: Interim rule adopted as final with change.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to adopt as final, with change, the interim rule published as Item I of Federal Acquisition Circular 90-41 on August 8, 1996. The rule amends the Federal Acquisition Regulation (FAR) to implement the Information Technology Management Reform Act (ITMRA) of 1996, Division E of Pub. L. 104-106. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 9, 1998.

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 97-03, FAR case 96-319.

SUPPLEMENTARY INFORMATION:

A. Background

An interim rule was published in the **Federal Register** at 61 FR 41467, August 8, 1996. Twelve comments from four respondents were received during the public comment period. All comments were considered in the development of the final rule. In response to public comments on the interim rule, the definition of "information technology" at FAR 2.101 has been clarified.

B. Regulatory Flexibility Act

A Final Regulatory Flexibility Analysis (FRFA) has been prepared and

will be provided to the Chief Counsel for Advocacy of the Small Business Administration. The analysis is summarized as follows:

ITMRA requires a simplified, clear, and understandable process in the FAR for acquiring information technology. No issues were raised in response to the Initial Regulatory Flexibility Analysis. The rule applies to all entities, large and small, that propose to perform, or are awarded, Government contracts for information technology. There are no statistics available on the exact number of small businesses that submit bids or proposals for contracts for information technology. However, based on information provided by the Federal Procurement Data System, a total of 29,879 awards were made to small businesses during fiscal year 1996 under information technology product codes with a total dollar value of \$4,443,176,000. The rule imposes no new reporting, recordkeeping, or other compliance requirements. There are no practical alternatives that will effectively implement ITMRA. The final rule simplifies and streamlines the process of acquiring information technology, and minimizes the economic burden of such acquisitions, while expanding opportunities for small entities to participate in Federal information technology contracts.

A copy of the FRFA may be obtained from the FAR Secretariat.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 2, 5, 7, 8, 9, 12, 13, 16, 17, 19, 22, 32, 33, 34, 37, 38, 39, 45, 46, 51, 52, and 53

Government procurement.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final With Change

Accordingly, the interim rule amending 48 CFR Parts 2, 5, 7, 8, 9, 12, 13, 16, 17, 19, 22, 32, 33, 34, 37, 38, 39, 45, 46, 51, 52, and 53, which was published at 61 FR 41467, August 8, 1996, is adopted as a final rule with the following change:

PART 2—DEFINITIONS OF WORDS AND TERMS

1. The authority citation for 48 CFR Part 2 continues to read as follows:

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

2. Section 2.101 is amended in the definition of "Information technology" by revising paragraph (c) to read as follows:

2.101 Definitions.

* * * * *
Information technology * * *
 * * * * *

(c) The term *information technology* does not include—

(1) Any equipment that is acquired by a contractor incidental to a contract; or

(2) Any equipment that contains imbedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment such as thermostats or temperature control devices, and medical equipment where information technology is integral to its operation, are not information technology.

* * * * *

[FR Doc. 97-31815 Filed 12-8-97; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 42, and 52

[FAC 97-03; FAR Case 95-017; Item III]

RIN 9000-AG87

Federal Acquisition Regulation; Final Overhead Settlement

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to improve the process of final settlement of contractor overhead rates. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501-3775. Please cite FAC 97-03, FAR case 95-017.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Parts 4, 42, and 52 to improve the process of final settlement of contractor indirect cost rates under cost-reimbursement contracts by—

- Extending the time period within which a contractor must submit an indirect cost rate proposal from 90 days to 6 months after the end of the contractors fiscal year;
- Permitting extensions to the 6-month time period for exceptional circumstances only; and
- Providing a specific reference to the Defense Contract Audit Agency pamphlet that contains guidance on what generally constitutes an adequate final indirect cost rate proposal and supporting data.

A proposed rule was published in the **Federal Register** on July 29, 1996 (61 FR 39518). Fourteen sources submitted comments. All comments were considered in the development of the final rule.

B. Regulatory Flexibility Act

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

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 4, 42, and 52

Government procurement.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 4, 42, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 4, 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 4—ADMINISTRATIVE MATTERS

4.703 [Amended]

2. Section 4.703 is amended in paragraph (b)(3) by removing "90-day" each time it appears (twice).

PART 42—CONTRACT ADMINISTRATION

3. Section 42.705-1 is amended 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 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 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 5 of the Defense Contract Audit Agency Pamphlet (DCAAP) No. 7641.90, Information for Contractors. The Model can be obtained by—

(i) Contacting Internet address <http://www.dtic.mil/dcaa>;

(ii) Sending a telefax request to Headquarters DCAA, ATTN: CMO, Publications Officer, at (703) 767-1061;

(iii) Sending an E-Mail request to *CMO@hql.dcaa.mil; or

(iv) Writing to: Headquarters DCAA, ATTN: CMO, Publications Officer, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060-6219.

* * * * *

4. Section 42.705-2 is amended by revising paragraph (b)(1) to read as follows:

42.705-2 Auditor determination procedures.

* * * * *

(b) *Procedures.* (1) The contractor shall submit to the cognizant contracting officer and auditor a final indirect cost rate proposal in accordance with 42.705-1(b)(1).

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 52.216-7 is amended by revising the date of the clause and paragraph (d)(2) to read as follows:

52.216-7 Allowable Cost and Payment.

* * * * *

Allowable Cost and Payment (Feb 1998)

* * * * *

(d) * * *

(2)(i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer 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. The Contractor shall support its proposal with adequate supporting data.

(ii) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

* * * * *

6. Section 52.216-13 is amended by revising the date of the clause; in the introductory text of paragraph (c) by removing the word "below" and inserting "of this clause"; and by revising paragraph (c)(2) to read as follows:

52.216-13 Allowable Cost and Payment—Facilities.

* * * * *

Allowable Cost and Payment Facilities (Feb 1998)

* * * * *

(c) * * *

(2)(i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer 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. The Contractor shall support its proposal with adequate supporting data.

(ii) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

* * * * *

7. Section 52.216-15 is amended by revising the date of the clause and paragraph (b) to read as follows:

52.216-15 Predetermined Indirect Cost Rates.

* * * * *

Predetermined Indirect Cost Rates (Feb 1998)

* * * * *

(b)(1) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer 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. The Contractor shall support its proposal with adequate supporting data.

(2) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

* * * * *

[FR Doc. 97-31816 Filed 12-8-97; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 6, 8, 12, 13, 16, 19, 32, 41, 43, 49, 52, and 53

[FAC 97-03; FAR Case 94-772; Item IV] RIN 9000-AH24

Federal Acquisition Regulation; Reorganization of FAR Part 13, Simplified Acquisition Procedures

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to reorganize part 13 for clarity and to make other changes to facilitate the use of electronic commerce in Government contracting. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Paul Linfield, Procurement Analyst, at (202) 501-1757. Please cite FAC 97-03, FAR case 94-772.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule revises FAR part 13 to reorganize its contents in a more process-oriented manner and to emphasize the use of electronic contracting and the Governmentwide commercial purchase card. FAR part 52 is amended to permit agency provisions and clauses to be incorporated by reference in solicitations and contracts, if the full text of the provisions and clauses may be accessed electronically by prospective contractors. A new clause is added at FAR 52.213-4 for use in simplified acquisitions; the clause is a compilation of the required and most commonly used clauses that apply to simplified acquisitions, and may be used in lieu of individual clauses prescribed in the FAR.

This effort was initiated as a result of public comments received during the comment period on FAR case 94-770, published in the **Federal Register** as an interim rule on July 3, 1995 (60 FR 34741). A proposed rule was published in the **Federal Register** on September 13, 1996 (61 FR 48532).

Thirteen public comments were received in response to the proposed rule. All comments were considered in the development of the final rule.

B. Regulatory Flexibility Act

A Final Regulatory Flexibility Analysis has been performed. A copy of the analysis may be obtained from the FAR Secretariat. The analysis is summarized as follows:

This rule amends the Federal Acquisition Regulation (FAR) by reorganizing the structure and material of part 13 in a manner that would be clear to those individuals that are newly authorized to make micro-purchases. The Federal Acquisition Streamlining Act of 1994 (FASA) (Pub. L. 103-355) authorized individuals other than contracting officers to make purchases under \$2,500 (micro-purchases). Also, the rule takes into account the anticipated impact on the workload of agency procurement personnel of evaluating the many sources that may respond electronically to contract actions that are initiated with widespread electronic public notice. Changes made by the rule will better enable agencies to capture the benefits of using electronic commerce in these situations. There were no public comments received in response to the initial regulatory flexibility analysis. Changes in FAR part 52 may affect a significant number of small entities that participate in Federal agency procurements. The provisions and clauses in this FAR part generally are not required for micro-purchases. It is estimated that 40 percent of the contract actions below \$25,000 are micro-purchases. Approximately 50 percent of all contract actions of \$100,000 or less are annually awarded to small business concerns. The rule will impose no new reporting, recordkeeping, or other compliance requirements on large or small entities. The changes to part 52 may have more impact on small business concerns than large business concerns because these changes make it more imperative that small business concerns have electronic capability to receive and transmit procurement information. This rule authorizes the incorporation by reference of any provision or clause used by an agency contracting activity, provided that provision or clause was accessible electronically to an offeror or prospective contractor. The changes in part 52 should also result in a reduction in the number of pages that a prospective contractor will have to submit with its offer to the Government. An alternative that was considered was making solicitation provisions and clauses available to prospective contractors at the time they registered with the Central Contractor Registration (CCR). In order to conduct electronic commerce with any agency of the

Federal Government, a potential contractor must register with the CCR. However, providing provisions and clauses at the time of registration with the CCR does not appear to be practical, since the prospective contractor would not have any assurance that the provisions and clauses were current at the time it wanted to participate in an agency procurement.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 4, 6, 8, 12, 13, 16, 19, 32, 41, 43, 49, 52, and 53

Government procurement.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR parts 4, 6, 8, 12, 13, 16, 19, 32, 41, 43, 49, 52, and 53 are amended as set forth below:

1. The authority citation for 48 CFR parts 4, 6, 8, 12, 13, 16, 19, 32, 41, 43, 49, 52, and 53 continues to read as follows:

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

PART 4—ADMINISTRATIVE MATTERS

4.800 [Amended]

2. Section 4.800 is amended to revise the reference in the parenthetical to read “13.106-3(b)”.

PART 6—COMPETITION REQUIREMENTS

6.001 [Amended]

3. Section 6.001 is amended in paragraph (a) by revising the references “13.602” and “subpart 13.6” to read “13.501” and “subpart 13.5”, respectively.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.404 [Amended]

4. Section 8.404 is amended in the first sentence of paragraph (b)(4) by revising the parenthetical to read “(see 13.303-2(c)(3))”.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

5. Section 12.102 is amended by revising paragraphs (d)(2) and (d)(3) to read as follows:

12.102 Applicability.

* * * * *

(d) * * *
(2) Using the Standard Form 44 (see 13.306);

(3) Using the imprest fund (see 13.305); or

* * * * *

12.203 [Amended]

6. Section 12.203 is amended in the last sentence of the undesignated paragraph by revising the reference “subpart 13.6” to read “subpart 13.5”.

12.206, 12.301, and 12.602 [Amended]

7. In the following sections, remove “13.106-2” and insert “13.106”: 12.206, 12.301(c)(2), 12.602(a), and 12.602(b).

8. Part 13 is revised to read as follows:

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

- 13.000 Scope of part.
- 13.001 Definitions.
- 13.002 Purpose.
- 13.003 Policy.
- 13.004 Legal effect of quotations.
- 13.005 Federal Acquisition Streamlining Act of 1994 list of inapplicable laws.
- 13.006 Inapplicable provisions and clauses.

Subpart 13.1—Procedures

- 13.101 General.
- 13.102 Source list.
- 13.103 Use of standing price quotations.
- 13.104 Promoting competition.
- 13.105 Synopsis and posting requirements.
- 13.106 Soliciting competition, evaluation of quotations or offers, award and documentation.
- 13.106-1 Soliciting competition.
- 13.106-2 Evaluation of quotations or offers.
- 13.106-3 Award and documentation.

Subpart 13.2—Actions at or Below the Micro-Purchase Threshold

- 13.201 General.
- 13.202 Purchase guidelines.

Subpart 13.3—Simplified Acquisition Methods

- 13.301 Governmentwide commercial purchase card.
- 13.302 Purchase orders.
- 13.302-1 General.
- 13.302-2 Unpriced purchase orders.
- 13.302-3 Obtaining contractor acceptance and modifying purchase orders.
- 13.302-4 Termination or cancellation of purchase orders.
- 13.302-5 Clauses.
- 13.303 Blanket purchase agreements (BPAs).
- 13.303-1 General.
- 13.303-2 Establishment of BPAs.
- 13.303-3 Preparation of BPAs.
- 13.303-4 Clauses.
- 13.303-5 Purchases under BPAs.
- 13.303-6 Review procedures.
- 13.303-7 Completion of BPAs.
- 13.303-8 Optional clause.
- 13.304 [Reserved]
- 13.305 Imprest funds and third party drafts.

- 13.305-1 General.
- 13.305-2 Agency responsibilities.
- 13.305-3 Conditions for use.
- 13.305-4 Procedures.
- 13.306 SF 44, Purchase Order—Invoice—Voucher.
- 13.307 Forms.

Subpart 13.4—Fast Payment Procedure

- 13.401 General.
- 13.402 Conditions for use.
- 13.403 Preparation and execution of orders.
- 13.404 Contract clause.

Subpart 13.5—Test Program for Certain Commercial Items

- 13.500 General.
- 13.501 Special documentation requirements.

13.000 Scope of part.

This part prescribes policies and procedures for the acquisition of supplies and services, including construction, research and development, and commercial items, the aggregate amount of which does not exceed the simplified acquisition threshold (see 2.101). Subpart 13.5 provides special authority for acquisitions of commercial items exceeding the simplified acquisition threshold but not exceeding \$5,000,000, including options. See part 12 for policies applicable to the acquisition of commercial items exceeding the micro-purchase threshold. See 36.602-5 for simplified procedures to be used when acquiring architect-engineer services.

13.001 Definitions.

As used in this part—

Authorized individual means a person who has been granted authority, in accordance with agency procedures, to acquire supplies and services in accordance with this part.

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

Imprest fund means a cash fund of a fixed amount established by an advance of funds, without charge to an appropriation, from an agency finance or disbursing officer to a duly appointed cashier, for disbursement as needed from time to time in making payment in cash for relatively small amounts.

Purchase order means an offer by the Government to buy supplies or services, including construction and research and development, upon specified terms and conditions, using simplified acquisition procedures.

Third party draft means an agency bank draft, similar to a check, that is used to acquire and to pay for supplies

and services. (See Treasury Financial Management Manual, Section 3040.70.)

13.002 Purpose.

The purpose of this part is to prescribe simplified acquisition procedures in order to—

- (a) Reduce administrative costs;
- (b) Improve opportunities for small, small disadvantaged, and women-owned small business concerns to obtain a fair proportion of Government contracts;
- (c) Promote efficiency and economy in contracting; and
- (d) Avoid unnecessary burdens for agencies and contractors.

13.003 Policy.

(a) Agencies shall use simplified acquisition procedures to the maximum extent practicable for all purchases of supplies or services not exceeding the simplified acquisition threshold (including purchases at or below the micro-purchase threshold). This policy does not apply if an agency can meet its requirement using—

- (1) Required sources of supply under part 8 (e.g., Federal Prison Industries, Committee for Purchase from People Who are Blind or Severely Disabled, and Federal Supply Schedule contracts);
- (2) Existing indefinite delivery/indefinite quantity contracts; or
- (3) Other established contracts.

(b)(1) Each acquisition of supplies or services that has an anticipated dollar value exceeding \$2,500 and not exceeding \$100,000 is reserved exclusively for small business concerns and shall be set aside (see 19.000 and subpart 19.5). See 19.502-2 for exceptions.

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

(c) The contracting office shall use simplified acquisition procedures for contract actions exceeding \$50,000 after December 31, 1999, only if the office's cognizant agency has certified full FACNET capability in accordance with 4.505-2. This limitation does not apply to acquisitions of commercial items conducted using subpart 13.5.

(d) The contracting officer shall not use simplified acquisition procedures to acquire supplies and services if the anticipated award will exceed the simplified acquisition threshold (or \$5,000,000, including options, for acquisitions of commercial items using Subpart 13.5). Do not break down requirements aggregating more than the

simplified acquisition threshold (or for commercial items, the threshold in subpart 13.5) or the micro-purchase threshold into several purchases that are less than the applicable threshold merely to—

- (1) Permit use of simplified acquisition procedures; or
 - (2) Avoid any requirement that applies to purchases exceeding the micro-purchase threshold.
- (e) An agency that has specific statutory authority to acquire personal services (see 37.104) may use simplified acquisition procedures to acquire those services.

(f) Agencies shall use the Governmentwide commercial purchase card and electronic purchasing techniques to the maximum extent practicable in conducting simplified acquisitions.

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

(h) Authorized individuals shall make purchases in the simplified manner that is most suitable, efficient, and economical based on the circumstances of each acquisition. For acquisitions not expected to exceed—

(1) The simplified acquisition threshold for other than commercial items, use any appropriate combination of the procedures in parts 13, 14, 15, 35, or 36, including the use of Standard Form 1442, Solicitation, Offer, and Award (Construction, Alteration, or Repair), for construction contracts (see 36.701(b)); or

(2) \$5 million for commercial items, use any appropriate combination of the procedures in parts 12, 13, 14, and 15 (see paragraph (d) of this section).

(i) In addition to other considerations, contracting officers shall—

(1) Promote competition to the maximum extent practicable (see 13.104);

(2) Establish deadlines for the submission of responses to solicitations that afford suppliers a reasonable opportunity to respond (see 5.203);

(3) Consider all quotations or offers that are timely received. For evaluation of quotations or offers conducted

through FACNET, see 13.106-2(b)(3); and

(4) Use innovative approaches, to the maximum extent practicable, in awarding contracts using simplified acquisition procedures.

13.004 Legal effect of quotations.

(a) A quotation is not an offer and, consequently, cannot be accepted by the Government to form a binding contract. Therefore, issuance by the Government of an order in response to a supplier's quotation does not establish a contract. The order is an offer by the Government to the supplier to buy certain supplies or services upon specified terms and conditions. A contract is established when the supplier accepts the offer.

(b) When appropriate, the contracting officer may ask the supplier to indicate acceptance of an order by notification to the Government, preferably in writing, as defined at 2.101. In other circumstances, the supplier may indicate acceptance by furnishing the supplies or services ordered or by proceeding with the work to the point where substantial performance has occurred.

(c) If the Government issues an order resulting from a quotation, the Government may (by written notice to the supplier, at any time before acceptance occurs) withdraw, amend, or cancel its offer. (See 13.302-4 for procedures on termination or cancellation of purchase orders.)

13.005 Federal Acquisition Streamlining Act of 1994 list of inapplicable laws.

(a) The following laws are inapplicable to all contracts and subcontracts (if otherwise applicable to subcontracts) at or below the simplified acquisition threshold:

(1) 41 U.S.C. 57(a) and (b) (Anti-Kickback Act of 1986). (Only the requirement for the incorporation of the contractor procedures for the prevention and detection of violations, and the contractual requirement for contractor cooperation in investigations are inapplicable.)

(2) 40 U.S.C. 270a (Miller Act). (Although the Miller Act does not apply to contracts at or below the simplified acquisition threshold, alternative forms of payment protection for suppliers of labor and material (see 28.102) are still required if the contract exceeds \$25,000.)

(3) 40 U.S.C. 327-333 (Contract Work Hours and Safety Standards Act—Overtime Compensation).

(4) 41 U.S.C. 701(a)(1) (Section 5152 of the Drug-Free Workplace Act of 1988), except for individuals.

(5) 42 U.S.C. 6962 (Solid Waste Disposal Act). (Only the requirement for

providing the estimate of recovered material utilized in the performance of the contract is inapplicable.)

(6) 10 U.S.C. 2306(b) and 41 U.S.C. 254(a) (Contract Clause Regarding Contingent Fees).

(7) 10 U.S.C. 2313 and 41 U.S.C. 254(c) (Authority to Examine Books and Records of Contractors).

(8) 10 U.S.C. 2402 and 41 U.S.C. 253g (Prohibition on Limiting Subcontractor Direct Sales to the United States).

(b) The Federal Acquisition Regulatory (FAR) Council will include any law enacted after October 13, 1994, that sets forth policies, procedures, requirements, or restrictions for the acquisition of property or services, on the list set forth in paragraph (a) of this section. The FAR Council may make exceptions when it determines in writing that it is in the best interest of the Government that the enactment should apply to contracts or subcontracts not greater than the simplified acquisition threshold.

(c) The provisions of paragraph (b) of this section do not apply to laws that—

(1) Provide for criminal or civil penalties; or

(2) Specifically state that notwithstanding the language of Section 4101, Public Law 103-355, the enactment will be applicable to contracts or subcontracts in amounts not greater than the simplified acquisition threshold.

(d) Any individual may petition the Administrator, Office of Federal Procurement Policy (OFPP), to include any applicable provision of law not included on the list set forth in paragraph (a) of this section unless the FAR Council has already determined in writing that the law is applicable. The Administrator, OFPP, will include the law on the list in paragraph (a) of this section unless the FAR Council makes a determination that it is applicable within 60 days of receiving the petition.

13.006 Inapplicable provisions and clauses.

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

(a) 52.203-5, Covenant Against Contingent Fees.

(b) 52.203-6, Restrictions on Subcontractor Sales to the Government.

(c) 52.203-7, Anti-Kickback Procedures.

(d) 52.215-2, Audits and Records—Negotiation.

(e) 52.222-4, Contract Work Hours and Safety Standards Act—Overtime Compensation.

(f) 52.223-6, Drug-Free Workplace, except for individuals.

(g) 52.223-9, Certification and Estimate of Percentage of Recovered Material Content for EPA Designated Items.

Subpart 13.1—Procedures

13.101 General.

(a) In making purchases, contracting officers shall—

(1) Comply with the policy in 7.202 relating to economic purchase quantities, when practicable;

(2) Satisfy the procedures described in subpart 19.6 with respect to Certificates of Competency before rejecting a quotation, oral or written, from a small business concern determined to be nonresponsible (see subpart 9.1);

(3) Use United States-owned excess or near-excess foreign currency, if appropriate, in making payments under simplified acquisition procedures (see subpart 25.3); and

(4) Provide for the inspection of supplies or services as prescribed in 46.404.

(b) In making purchases, contracting officers should—

(1) Include related items (such as small hardware items or spare parts for vehicles) in one solicitation and make award on an "all-or-none" or "multiple award" basis provided suppliers are so advised when quotations or offers are requested;

(2) Incorporate provisions and clauses by reference in solicitations and in awards under requests for quotations, provided the requirements in 52.102 are satisfied;

(3) Make maximum effort to obtain trade and prompt payment discounts (see 14.408-3). Prompt payment discounts shall not be considered in the evaluation of quotations; and

(4) Use bulk funding to the maximum extent practicable. Bulk funding is a system whereby the contracting officer receives authorization from a fiscal and accounting officer to obligate funds on purchase documents against a specified lump sum of funds reserved for the purpose for a specified period of time rather than obtaining individual obligational authority on each purchase document. Bulk funding is particularly appropriate if numerous purchases using the same type of funds are to be made during a given period.

13.102 Source list.

(a) Each contracting office should maintain a source list (or lists, if more

convenient). New supply sources for the list may be obtained from a variety of sources, including the Procurement Automated Source System (PASS) of the Small Business Administration and the Central Contractor Registration (CCR) Data Base (see 4.503). The list should identify the status of each source (when the status is made known to the contracting office) in the following categories:

- (1) Small business.
- (2) Small disadvantaged business.
- (3) Women-owned small business.

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

13.103 Use of standing price quotations.

Authorized individuals do not have to obtain individual quotations for each purchase. Standing price quotations may be used if—

- (a) The pricing information is current; and
- (b) The Government obtains the benefit of maximum discounts before award.

13.104 Promoting competition.

The contracting officer shall promote competition to the maximum extent practicable to obtain supplies and services from the source whose offer is the most advantageous to the Government, considering the administrative cost of the purchase.

- (a) The contracting officer shall not—
 - (1) Solicit quotations based on personal preference; or
 - (2) Restrict solicitation to suppliers of well-known and widely distributed makes or brands.
- (b) If using simplified acquisition procedures and not using FACNET, maximum practicable competition ordinarily can be obtained by soliciting quotations or offers from sources within the local trade area. Unless the contract action requires synopsis pursuant to 5.101 and an exception under 5.202 is not applicable, consider solicitation of at least three sources to promote competition to the maximum extent practicable. Whenever practicable, request quotations or offers from two sources not included in the previous solicitation.

13.105 Synopsis and posting requirements.

- (a) The contracting officer shall comply with the public display and synopsis requirements of 5.101 and 5.203 unless—

(1) FACNET is used for an acquisition at or below the simplified acquisition threshold; or

(2) An exception in 5.202 applies.

(b) When acquiring commercial items, the contracting officer may use a combined synopsis/solicitation. In such cases, a separate solicitation is not required. The contracting officer must include enough information to permit suppliers to develop quotations or offers.

13.106 Soliciting competition, evaluation of quotations or offers, award and documentation.

13.106-1 Soliciting competition.

(a) *Considerations.* In soliciting competition, the contracting officer shall consider the guidance in 13.104 and the following before requesting quotations or offers:

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

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

(iii) The urgency of the proposed purchase.

(iv) The dollar value of the proposed purchase.

(v) Past experience concerning specific dealers' prices.

(2) When soliciting quotations or offers, the contracting officer shall notify potential quoters or offerors of the basis on which award will be made (price alone or price and other factors, e.g., past performance and quality). Contracting officers are encouraged to use best value. Solicitations are not required to state the relative importance assigned to each evaluation factor and subfactor, nor are they required to include subfactors.

(b) *Soliciting from a single source.* (1) For purchases not exceeding the simplified acquisition threshold, contracting officers may solicit from one source if the contracting officer determines that the circumstances of the contract action deem only one source reasonably available (e.g., urgency, exclusive licensing agreements, or industrial mobilization).

(2) For sole source acquisitions of commercial items in excess of the simplified acquisition threshold conducted pursuant to subpart 13.5, the requirements at 13.501(a) apply.

(c) *Soliciting orally.* (1) The contracting officer shall solicit quotations orally to the maximum extent practicable, if—

(i) The acquisition does not exceed the simplified acquisition threshold;

(ii) FACNET is not available or the contracting office has a written determination that it is not practicable or cost-effective to purchase via FACNET (see 4.506); and

(iii) Notice is not required under 5.101.

(2) However, an oral solicitation may not be practicable for contract actions exceeding \$25,000 unless covered by an exception in 5.202.

(d) *Written solicitations.* If obtaining electronic or oral quotations is uneconomical or impracticable, the contracting officer should issue paper solicitations for contract actions likely to exceed \$25,000. The contracting officer shall issue a written solicitation for construction requirements exceeding \$2,000.

(e) *Use of options.* Options may be included in solicitations, provided the requirements of subpart 17.2 are met and the aggregate value of the acquisition and all options does not exceed the dollar threshold for use of simplified acquisition procedures.

(f) *Inquiries.* An agency should respond to inquiries received through any medium (including FACNET) if doing so would not interfere with the efficient conduct of the acquisition. For an acquisition conducted through FACNET, an agency must respond to telephonic or facsimile inquiries only if it is unable to receive inquiries through FACNET.

13.106-2 Evaluation of quotations or offers.

(a) *General.* (1) The contracting officer shall evaluate quotations or offers—

(i) In an impartial manner; and

(ii) Inclusive of transportation charges from the shipping point of the supplier to the delivery destination.

(2) Quotations or offers shall be evaluated on the basis established in the solicitation.

(3) All quotations or offers shall be considered (see paragraph (b) of this subsection).

(b) *Evaluation procedures.* (1) The contracting officer has broad discretion in fashioning suitable evaluation procedures. The procedures prescribed in parts 14 and 15 are not mandatory. At the contracting officer's discretion, one or more, but not necessarily all, of the evaluation procedures in part 14 or 15 may be used.

(2) If using price and other factors, ensure that quotations or offers can be evaluated in an efficient and minimally burdensome fashion. Formal evaluation plans and establishing a competitive range, conducting discussions, and scoring quotations or offers are not required. Contracting offices may

conduct comparative evaluations of offers. Evaluation of other factors, such as past performance—

- (i) Does not require the creation or existence of a formal data base; and
- (ii) May be based on information such as the contracting officer's knowledge of and previous experience with the supply or service being acquired, customer surveys, or other reasonable basis.

(3) For acquisitions conducted using FACNET, the contracting officer may—

- (i) After preliminary consideration of all quotations or offers, identify from all quotations or offers received one that is suitable to the user, such as the lowest priced brand name product, and quickly screen all lower priced quotations or offers based on readily discernible value indicators, such as past performance, warranty conditions, and maintenance availability; or
- (ii) Where an evaluation is based only on price and past performance, make an award based on whether the lowest priced of the quotations or offers having the highest past performance rating possible represents the best value when compared to any lower priced quotation or offer.

(3) For acquisitions conducted using FACNET, the contracting officer may—

13.106-3 Award and documentation.

(a) *Basis for award.* Before making award, the contracting officer shall determine that the proposed price is fair and reasonable.

(1) Whenever possible, base price reasonableness on competitive quotations or offers.

(2) If only one response is received, include a statement of price reasonableness in the contract file. The statement may be based on—

- (i) Market research;
- (ii) Comparison of the proposed price with prices found reasonable on previous purchases;
- (iii) Current price lists, catalogs, or advertisements;
- (iv) A comparison with similar items in a related industry;
- (v) Value analysis;
- (vi) The contracting officer's personal knowledge of the item being purchased;
- (vii) Comparison to an independent Government estimate; or
- (viii) Any other reasonable basis.

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

shall be documented to support the final action taken.

(b) *File documentation and retention.* Keep documentation to a minimum. Purchasing offices shall retain data supporting purchases (paper or electronic) to the minimum extent and duration necessary for management review purposes (see subpart 4.8). The following illustrate the extent to which quotation or offer information should be recorded:

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

(2) *Written solicitations* (see 2.101). For acquisitions not exceeding the simplified acquisition threshold, limit written records of solicitations or offers to notes or abstracts to show prices, delivery, references to printed price lists used, the supplier or suppliers contacted, and other pertinent data.

(3) *Special situations.* Include additional statements—

(i) Explaining the absence of competition if only one source is solicited and the acquisition does not exceed the simplified acquisition threshold (does not apply to an acquisition of utility services available from only one source); or

(ii) Supporting the award decision if other than price-related factors were considered in selecting the supplier.

(c) *Notification.* For acquisitions that do not exceed the simplified acquisition threshold and for which automatic notification is not provided through FACNET, notification to unsuccessful suppliers shall be given only if requested or required by 5.301.

(d) *Request for information.* If a supplier requests information on an award that was based on factors other than price alone, a brief explanation of the basis for the contract award decision shall be provided (see 15.503(b)(2)).

Subpart 13.2—Actions at or Below the Micro-Purchase Threshold

13.201 General.

(a) Agency heads are encouraged to delegate micro-purchase authority (see 1.603-3).

(b) The Governmentwide commercial purchase card shall be the preferred method to purchase and to pay for micro-purchases (see 2.101).

(c) Purchases at or below the micro-purchase threshold may be conducted

using any of the methods described in subpart 13.3, provided the purchaser is authorized and trained, pursuant to agency procedures, to use those methods.

(d) Micro-purchases do not require provisions or clauses, except as provided at 32.1103. This paragraph takes precedence over any other FAR requirement to the contrary, but does not prohibit the use of any clause.

(e) The requirements in part 8 apply to purchases at or below the micro-purchase threshold.

13.202 Purchase guidelines.

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

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

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

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

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

(b) *Documentation.* If competitive quotations were solicited and award was made to other than the low quoter, documentation to support the purchase may be limited to identification of the solicited concerns and an explanation for the award decision.

Subpart 13.3—Simplified Acquisition Methods

13.301 Governmentwide commercial purchase card.

(a) The Governmentwide commercial purchase card is authorized for use in making and/or paying for purchases of supplies, services, or construction. The Governmentwide commercial purchase card may be used by contracting officers and other individuals designated in accordance with 1.603-3. The card may

be used only for purchases that are otherwise authorized by law or regulation.

(b) Agencies using the Governmentwide commercial purchase card shall establish procedures for use and control of the card that comply with the Treasury Financial Manual for Guidance of Departments and Agencies (TFM 4-4500) and that are consistent with the terms and conditions of the GSA Federal Supply Service Contract Guide for Governmentwide Commercial Purchase Card Service. Agency procedures should not limit the use of the Governmentwide commercial purchase card to micro-purchases. Agency procedures should encourage use of the card in greater dollar amounts by contracting officers to place orders and to pay for purchases against contracts established under part 8 procedures, when authorized; and to place orders and/or make payment under other contractual instruments, when agreed to by the contractor.

(c) The Governmentwide commercial purchase card may be used to—

- (1) Make micro-purchases;
- (2) Place a task or delivery order (if authorized in the basic contract, basic ordering agreement, or blanket purchase agreement); or
- (3) Make payments, when the contractor agrees to accept payment by the card.

13.302 Purchase orders.

13.302-1 General.

(a) Except as provided under the unpriced purchase order method (see 13.302-2), purchase orders generally are issued on a fixed-price basis. See 12.207 for acquisition of commercial items.

(b) Purchase orders shall—

- (1) Specify the quantity of supplies or scope of services ordered;
- (2) Contain a determinable date by which delivery of the supplies or performance of the services is required;
- (3) Provide for inspection as prescribed in part 46. Generally, inspection and acceptance should be at destination. Source inspection should be specified only if required by part 46. When inspection and acceptance will be performed at destination, advance copies of the purchase order or equivalent notice shall be furnished to the consignee(s) for material receipt purposes. Receiving reports shall be accomplished immediately upon receipt and acceptance of supplies;
- (4) Specify f.o.b. destination for supplies to be delivered within the United States, except Alaska or Hawaii, unless there are valid reasons to the contrary; and

(5) Include any trade and prompt payment discounts that are offered, consistent with the applicable principles at 14.408-3.

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

(d) Limit the distribution of copies of purchase orders and related forms to the minimum deemed essential for administration and transmission of contractual information.

(e) In accordance with 31 U.S.C. 3332, electronic funds transfer (EFT) may be required for payments. See 32.1103 for instructions for use of the appropriate clause in purchase orders. When obtaining verbal quotes, the contracting officer shall inform the quoter of the EFT clause that will be in any resulting purchase order. Contracting officers shall not accept EFT payment data. The contractor shall provide all such data directly to the payment office.

13.302-2 Unpriced purchase orders.

(a) An unpriced purchase order is an order for supplies or services, the price of which is not established at the time of issuance of the order.

(b) An unpriced purchase order may be used only when—

(1) It is impractical to obtain pricing in advance of issuance of the purchase order; and

(2) The purchase is for—

(i) Repairs to equipment requiring disassembly to determine the nature and extent of repairs;

(ii) Material available from only one source and for which cost cannot readily be established; or

(iii) Supplies or services for which prices are known to be competitive, but exact prices are not known (e.g., miscellaneous repair parts, maintenance agreements).

(c) Unpriced purchase orders may be issued on paper or electronically. A realistic monetary limitation, either for each line item or for the total order, shall be placed on each unpriced purchase order. The monetary limitation shall be an obligation subject to adjustment when the firm price is established. The contracting office shall follow up on each order to ensure timely pricing. The contracting officer or the contracting officer's designated representative shall review the invoice price and, if reasonable (see 13.106-3(a)), process the invoice for payment.

13.302-3 Obtaining contractor acceptance and modifying purchase orders.

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

(b) Each purchase order modification shall identify the order it modifies and shall contain an appropriate modification number.

(c) A contractor's written acceptance of a purchase order modification may be required only if—

- (1) Determined by the contracting officer to be necessary to ensure the contractor's compliance with the purchase order as revised; or
- (2) Required by agency regulations.

13.302-4 Termination or cancellation of purchase orders.

(a) If a purchase order that has been accepted in writing by the contractor is to be terminated, the contracting officer shall process the termination in accordance with—

- (1) 12.403(d) and 52.212-4(l) for commercial items; or
- (2) Part 49 or 52.213-4 for other than commercial items.

(b) If a purchase order that has not been accepted in writing by the contractor is to be canceled, the contracting officer shall notify the contractor in writing that the purchase order has been canceled, request the contractor's written acceptance of the cancellation, and proceed as follows:

(1) If the contractor accepts the cancellation and does not claim that costs were incurred as a result of beginning performance under the purchase order, no further action is required (i.e., the purchase order shall be considered canceled).

(2) If the contractor does not accept the cancellation or claims that costs were incurred as a result of beginning performance under the purchase order, the contracting officer shall process the termination action as prescribed in paragraph (a) of this subsection.

13.302-5 Clauses.

(a) Each purchase order (and each purchase order modification (see 13.302-3)) shall incorporate all clauses prescribed for the particular acquisition.

(b) The contracting officer shall insert the clause at 52.213-2, Invoices, in purchase orders that authorize advance payments (see 31 U.S.C. 3324(d)(2)) for subscriptions or other charges for newspapers, magazines, periodicals, or other publications (i.e., any publication printed, microfilmed, photocopied, or

magnetically or otherwise recorded for auditory or visual usage).

(c) The contracting officer shall insert the clause at 52.213-3, Notice to Supplier, in unpriced purchase orders.

(d) The contracting officer may use the clause at 52.213-4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items), in simplified acquisitions exceeding the micro-purchase threshold that are for other than commercial items (see 12.301). The clause—

(1) Is a compilation of the most commonly used clauses that apply to simplified acquisitions; and

(2) May be modified to fit the individual acquisition to add other needed clauses, or those clauses may be added separately. Modifications (*i.e.*, additions, deletions, or substitutions) must not create a void or internal contradiction in the clause. For example, do not add an inspection and acceptance or termination for convenience requirement unless the existing requirement is deleted. Also, do not delete a paragraph without providing for an appropriate substitute.

13.303 Blanket purchase agreements (BPAs).

13.303-1 General.

(a) A blanket purchase agreement (BPA) is a simplified method of filling anticipated repetitive needs for supplies or services by establishing "charge accounts" with qualified sources of supply (see subpart 16.7 for additional coverage of agreements).

(b) BPAs should be established for use by an organization responsible for providing supplies for its own operations or for other offices, installations, projects, or functions. Such organizations, for example, may be organized supply points, separate independent or detached field parties, or one-person posts or activities.

(c) The use of BPAs does not exempt an agency from the responsibility for keeping obligations and expenditures within available funds.

13.303-2 Establishment of BPAs.

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

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

(2) There is a need to provide commercial sources of supply for one or more offices or projects in a given area that do not have or need authority to purchase otherwise.

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

(4) There is no existing requirements contract for the same supply or service that the contracting activity is required to use.

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

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

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

(c) BPAs may be established with—

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

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

(3) Federal Supply Schedule contractors, if not inconsistent with the terms of the applicable schedule contract.

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

(1) Securing maximum discounts;

(2) Documenting individual purchase transactions;

(3) Periodic billings; and

(4) Incorporating other necessary details.

13.303-3 Preparation of BPAs.

Prepare BPAs on the forms specified in 13.307. Do not cite accounting and appropriation data (see 13.303-5(e)(4)).

(a) The following terms and conditions are mandatory:

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

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

(3) *Purchase limitation.* A statement that specifies the dollar limitation for each individual purchase under the BPA (see 13.303-5(b)).

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

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

(i) Name of supplier.

(ii) BPA number.

(iii) Date of purchase.

(iv) Purchase number.

(v) Itemized list of supplies or services furnished.

(vi) Quantity, unit price, and extension of each item, less applicable discounts (unit prices and extensions need not be shown when incompatible with the use of automated systems, provided that the invoice is itemized to show this information).

(vii) Date of delivery or shipment.

(6) *Invoices.* One of the following statements shall be included (except that the statement in paragraph (a)(6)(iii) of this subsection should not be used if the accumulation of the individual invoices by the Government materially increases the administrative costs of this purchase method):

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

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

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

(A) A consolidated payment will be made for each specified period; and

(B) The period of any discounts will commence on the final date of the billing period or on the date of receipt of invoices for all deliveries accepted during the billing period, whichever is later.

(iv) An invoice for subscriptions or other charges for newspapers,

magazines, or other periodicals shall show the starting and ending dates and shall state either that ordered subscriptions have been placed in effect or will be placed in effect upon receipt of payment.

(b) If the fast payment procedure is used, include the requirements stated in 13.403.

13.303-4 Clauses.

(a) The contracting officer shall insert in each BPA the clauses prescribed elsewhere in this part that are required for or applicable to the particular BPA.

(b) Unless a clause prescription specifies otherwise (*e.g.*, see 22.305(a), 22.605(a)(5), or 22.1006), if the prescription includes a dollar threshold, the amount to be compared to that threshold is that of any particular order under the BPA.

13.303-5 Purchases under BPAs.

(a) Use a BPA only for purchases that are otherwise authorized by law or regulation.

(b) Individual purchases shall not exceed the simplified acquisition threshold. However, agency regulations may establish a higher threshold consistent with the following:

(1) The simplified acquisition threshold and the \$5,000,000 limitation for individual purchases do not apply to BPAs established in accordance with 13.303-2(c)(3).

(2) The limitation for individual purchases for commercial item acquisitions conducted under subpart 13.5 is \$5,000,000.

(c) The existence of a BPA does not justify purchasing from only one source or avoiding small business set-asides. The requirements of 13.003(b) and subpart 19.5 also apply to each order.

(d) If, for a particular purchase greater than the micro-purchase threshold, there is an insufficient number of BPAs to ensure maximum practicable competition, the contracting officer shall—

(1) Solicit quotations from other sources (see 13.105) and make the purchase as appropriate; and

(2) Establish additional BPAs to facilitate future purchases if—

(i) Recurring requirements for the same or similar supplies or services seem likely;

(ii) Qualified sources are willing to accept BPAs; and

(iii) It is otherwise practical to do so.

(e) Limit documentation of purchases to essential information and forms as follows:

(1) Purchases generally should be made electronically, or orally when it is not considered economical or practical to use electronic methods.

(2) A paper purchase document may be issued if necessary to ensure that the supplier and the purchaser agree concerning the transaction.

(3) Unless a paper document is issued, record essential elements (*e.g.*, date, supplier, supplies or services, price, delivery date) on the purchase requisition, in an informal memorandum, or on a form developed locally for the purpose.

(4) Cite the pertinent purchase requisitions and the accounting and appropriation data.

(5) When delivery is made or the services are performed, the supplier's sales document, delivery document, or invoice may (if it reflects the essential elements) be used for the purpose of recording receipt and acceptance of the supplies or services. However, if the purchase is assigned to another activity for administration, the authorized Government representative shall document receipt and acceptance of supplies or services by signing and dating the agency specified form after verification and after notation of any exceptions.

13.303-6 Review procedures.

(a) The contracting officer placing orders under a BPA, or the designated representative of the contracting officer, shall review a sufficient random sample of the BPA files at least annually to ensure that authorized procedures are being followed.

(b) The contracting officer that entered into the BPA shall—

(1) Ensure that each BPA is reviewed at least annually and, if necessary, updated at that time; and

(2) Maintain awareness of changes in market conditions, sources of supply, and other pertinent factors that may warrant making new arrangements with different suppliers or modifying existing arrangements.

(c) If an office other than the purchasing office that established a BPA is authorized to make purchases under that BPA, the agency that has jurisdiction over the office authorized to make the purchases shall ensure that the procedures in paragraph (a) of this subsection are being followed.

13.303-7 Completion of BPAs.

An individual BPA is considered complete when the purchases under it equal its total dollar limitation, if any, or when its stated time period expires.

13.303-8 Optional clause.

The clause at 52.213-4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items), may be used in BPAs established under this section.

13.304 [Reserved]

13.305 Imprest funds and third party drafts.

13.305-1 General.

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

13.305-2 Agency responsibilities.

Each agency using imprest funds and third party drafts shall—

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

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

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

(1) Designation of personnel authorized to make purchases using imprest funds or third party drafts; and

(2) Documentation of purchases using imprest funds or third party drafts, including documentation of—

(i) Receipt and acceptance of supplies and services by the Government;

(ii) Receipt of cash or third party draft payments by the suppliers; and

(iii) Cash advances and reimbursements.

13.305-3 Conditions for use.

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

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

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

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

(d) The use of imprest funds or third party drafts for the transaction otherwise complies with any additional conditions established by agencies and with the policies and regulations referenced in 13.305-1.

13.305-4 Procedures.

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

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

(c) Since there is, for all practical purposes, simultaneous placement of the order and delivery of the items, clauses are not required for purchases using imprest funds or third party drafts.

(d) Forms prescribed at 13.307(e) may be used if a written order is considered necessary (e.g., if required by the supplier for discount, tax exemption, or other reasons). If a purchase order is used, endorse it "Payment to be made from Imprest Fund" (or "Payment to be made from Third Party Draft," as appropriate).

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

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

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

(ii) The unit prices and extensions; and

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

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

(i) The supplier's name and address;

(ii) List and quantity of items supplied;

(iii) Unit prices and extensions; and

(iv) Cash discount, if any.

13.306 SF 44, Purchase Order—Invoice—Voucher.

The SF 44, Purchase Order—Invoice—Voucher, is a multipurpose pocket-size purchase order form designed primarily for on-the-spot, over-the-counter purchases of supplies and nonpersonal services while away from the purchasing office or at isolated

activities. It also can be used as a receiving report, invoice, and public voucher.

(a) This form may be used if all of the following conditions are satisfied:

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

(2) The supplies or services are immediately available;

(3) One delivery and one payment will be made; and

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

(b) General procedural instructions governing the form's use are printed on the form and on the inside front cover of each book of forms.

(c) Since there is, for all practical purposes, simultaneous placement of the order and delivery of the items, clauses are not required for purchases using this form.

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

13.307 Forms.

(a) *Commercial items.* For use of the SF 1449, Solicitation/Contract/Order for Commercial Items, see 12.204.

(b) *Other than commercial items.*

(1) Except when quotations are solicited via FACNET, other electronic means, or orally, the SF 1449; SF 18, Request for Quotations; or an agency form/automated format may be used. Each agency request for quotations form/automated format should conform with the SF 18 or SF 1449 to the maximum extent practicable.

(2) Both SF 1449 and OF 347, Order for Supplies or Services, are multipurpose forms used for negotiated purchases of supplies or services, delivery or task orders, inspection and receiving reports, and invoices. An agency form/automated format also may be used.

(c) *Forms used for both commercial and other than commercial items.*

(1) OF 336, Continuation Sheet, or an agency form/automated format may be used when additional space is needed.

(2) OF 348, Order for Supplies or Services Schedule—Continuation, or an agency form/automated format may be used for negotiated purchases when additional space is needed. Agencies may print on these forms the clauses considered to be generally suitable for purchases.

(3) SF 30, Amendment of Solicitation/Modification of Contract, or a purchase

order form may be used to modify a purchase order, unless an agency form/automated format is prescribed in agency regulations.

(d) SF 44, Purchase Order—Invoice—Voucher, is a multipurpose pocket-size purchase order form that may be used as outlined in 13.306.

(e) SF 1165, Receipt for Cash—Subvoucher, or an agency purchase order form may be used for purchases using imprest funds or third party drafts.

Subpart 13.4—Fast Payment Procedure

13.401 General.

(a) The fast payment procedure allows payment under limited conditions to a contractor prior to the Government's verification that supplies have been received and accepted. The procedure provides for payment for supplies based on the contractor's submission of an invoice that constitutes a certification that the contractor—

(1) Has delivered the supplies to a post office, common carrier, or point of first receipt by the Government; and

(2) Shall replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase agreements.

(b) The contracting officer shall be primarily responsible for collecting debts resulting from failure of contractors to properly replace, repair, or correct supplies lost, damaged, or not conforming to purchase requirements (see 32.605(b) and 32.606).

13.402 Conditions for use.

If the conditions in paragraphs (a) through (f) of this section are present, the fast payment procedure may be used, provided that use of the procedure is consistent with the other conditions of the purchase. The conditions for use of the fast payment procedure are as follows:

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

(b) Deliveries of supplies are to occur at locations where there is both a geographical separation and a lack of adequate communications facilities between Government receiving and disbursing activities that will make it impractical to make timely payment based on evidence of Government acceptance.

(c) Title to the supplies passes to the Government—

(1) Upon delivery to a post office or common carrier for mailing or shipment to destination; or

(2) Upon receipt by the Government if the shipment is by means other than Postal Service or common carrier.

(d) The supplier agrees to replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase requirements.

(e) The purchasing instrument is a firm-fixed-price contract, a purchase order, or a delivery order for supplies.

(f) A system is in place to ensure—

(1) Documentation of evidence of contractor performance under fast payment purchases;

(2) Timely feedback to the contracting officer in case of contractor deficiencies; and

(3) Identification of suppliers that have a current history of abusing the fast payment procedure (also see subpart 9.1).

13.403 Preparation and execution of orders.

Priced or unpriced contracts, purchase orders, or BPAs using the fast payment procedure shall include the following:

(a) A requirement that the supplies be shipped transportation or postage prepaid.

(b) A requirement that invoices be submitted directly to the finance or other office designated in the order, or in the case of unpriced purchase orders, to the contracting officer (see 13.302-2(c)).

(c) The following statement on the consignee's copy:

Consignee's Notification to Purchasing Activity of Nonreceipt, Damage, or Nonconformance

The consignee shall notify the purchasing office promptly after the specified date of delivery of supplies not received, damaged in transit, or not conforming to specifications of the purchase order. Unless extenuating circumstances exist, the notification should be made not later than 60 days after the specified date of delivery.

13.404 Contract clause.

The contracting officer shall insert the clause at 52.213-1, Fast Payment Procedure, in solicitations and contracts when the conditions in 13.402 are applicable and it is intended that the fast payment procedure be used in the contract (in the case of BPAs, the contracting officer may elect to insert the clause either in the BPA or in orders under the BPA).

Subpart 13.5—Test Program for Certain Commercial Items

13.500 General.

(a) This subpart authorizes, as a test program, use of simplified procedures

for the acquisition of supplies and services in amounts greater than the simplified acquisition threshold but not exceeding \$5,000,000, including options, if the contracting officer reasonably expects, based on the nature of the supplies or services sought, and on market research, that offers will include only commercial items. Under this test program, contracting officers may use any simplified acquisition procedure in this part, subject to any specific dollar limitation applicable to the particular procedure. The purpose of this test program is to vest contracting officers with additional procedural discretion and flexibility, so that commercial item acquisitions in this dollar range may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both the Government and industry (10 U.S.C. 2304(g) and 2305 and 41 U.S.C. 253(g) and 253a and 253b).

(b) For the period of this test, contracting activities shall employ the simplified procedures authorized by the test to the maximum extent practicable.

(c) When acquiring commercial items using the procedures in this part, the requirements of part 12 apply subject to the order of precedence provided at 12.102(c). This includes use of the provisions and clauses in subpart 12.3.

(d) The authority to issue solicitations under this subpart shall expire on January 1, 2000. Contracts may be awarded after the expiration of this authority for solicitations issued before the expiration of the authority.

13.501 Special documentation requirements.

(a) *Sole source acquisitions.* (1) Acquisitions conducted under simplified acquisition procedures are exempt from the requirements in part 6. However, contracting officers shall—

(i) Conduct sole source acquisitions, as defined in 6.003, under this subpart only if the need to do so is justified in writing and approved at the levels specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this section; and

(ii) Prepare sole source justifications using the format at 6.303-2, modified to reflect an acquisition under the authority of the test program for commercial items (section 4202 of the Clinger-Cohen Act of 1996).

(2) Justifications and approvals are required under this subpart only for sole source acquisitions.

(i) For a proposed contract exceeding \$100,000, but not exceeding \$500,000, the contracting officer's certification that the justification is accurate and

complete to the best of the contracting officer's knowledge and belief will serve as approval, unless a higher approval level is established in accordance with agency procedures.

(ii) For a proposed contract exceeding \$500,000, the approval shall be by the competition advocate for the procuring activity, designated pursuant to 6.501; or an official described in 6.304(a)(3) or (a)(4). This authority is not delegable.

(b) *Contract file documentation.* The contract file shall include—

(1) A brief written description of the procedures used in awarding the contract, including the fact that the test procedures in FAR subpart 13.5 were used;

(2) The number of offers received;

(3) An explanation, tailored to the size and complexity of the acquisition, of the basis for the contract award decision; and

(4) Any justification approved under paragraph (a) of this section.

PART 16—TYPES OF CONTRACTS

16.701 [Amended]

9. Section 16.701 is amended in the parenthetical by revising "subpart 13.2" to read "13.303".

16.703 [Amended]

10. Section 16.703 is amended in paragraph (c)(1)(vi) by revising the citation "13.303" to read "13.403".

PART 19—SMALL BUSINESS PROGRAMS

19.1006 [Amended]

11. Section 19.1006 is amended in paragraph (c)(1)(i) by removing "13.105 or".

PART 32—CONTRACT FINANCING

32.1103 [Amended]

12. Section 32.1103 is amended in paragraph (a)(1) by revising the reference "13.103(e)" to read "13.003(f)" and in paragraph (b)(2) by revising "13.103(e)" to read "13.301".

PART 41—ACQUISITION OF UTILITY SERVICES

41.202 [Amended]

13. Section 41.202 is amended in paragraph (c)(1) by revising the reference "subpart 13.5" to read "13.302".

PART 43—CONTRACT MODIFICATIONS

43.301 [Amended]

14. Section 43.301 is amended in paragraph (a)(2)(iii) by revising the reference "13.503" to read "13.302-3".

PART 49—TERMINATION OF CONTRACTS**49.002 [Amended]**

15. Section 49.002 is amended in paragraph (a) by revising the reference "13.504(b)" to read "13.302-4".

16. Section 49.501 is amended by adding the following text as the second sentence:

49.501 General.

* * * This subpart does not apply to contracts that use the clause at 52.213-4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items). * * *

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**52.101 [Amended]**

17. Section 52.101 is amended in paragraph (e)(2)(i) by removing the semicolon after the word "authorized" and replacing it with "(see 52.102);".

18. Section 52.102 is revised to read as follows:

52.102 Incorporating provisions and clauses.

(a) Provisions and clauses should be incorporated by reference to the maximum practical extent, rather than being incorporated in full text, even if they—

- (1) Are used with one or more alternates or on an optional basis;
- (2) Are prescribed on a "substantially as follows" or "substantially the same as" basis, provided they are used verbatim;

(3) Require modification or the insertion by the Government of fill-in material (see 52.104); or

(4) Require completion by the offeror or prospective contractor. This instruction also applies to provisions completed as annual representations and certifications.

(b) Except for provisions and clauses prescribed in 52.107, any provision or clause that can be accessed electronically by the offeror or prospective contractor may be incorporated by reference in solicitations and/or contracts. However, the contracting officer, upon request, shall provide the full text of any provision or clause incorporated by reference.

(c) Agency approved provisions and clauses prescribed in agency acquisition regulations, and provisions and clauses not authorized by subpart 52.3 to be incorporated by reference, need not be incorporated in full text, provided the contracting officer includes in the

solicitation and contract a statement that—

(1) Identifies all provisions and clauses that require completion by the offeror or prospective contractor;

(2) Specifies that the provisions and clauses must be completed by the offeror or prospective contractor and must be submitted with the quotation or offer; and

(3) Identifies to the offeror or prospective contractor at least one electronic address where the full text may be accessed.

(d) An agency may develop a group listing of provisions and clauses that apply to a specific category of contracts. An agency group listing may be incorporated by reference in solicitations and/or contracts in lieu of citing the provisions and clauses individually, provided the group listing is made available electronically to offerors and prospective contractors.

(e) A provision or clause that is not available electronically to offerors and prospective contractors shall be incorporated in solicitations and/or contracts in full text if it is—

(1) A FAR provision or clause that otherwise is not authorized to be incorporated by reference (see subpart 52.3); or

(2) A provision or clause prescribed for use in an agency acquisition regulation.

(f) Provisions or clauses may not be incorporated by reference by being listed in the—

(1) Provision at 52.252-3, Alterations in Solicitations; or

(2) Clause at 52.252-4, Alterations in Contract.

52.102-1 and 52.102-2 [Removed]

19. Sections 52.102-1 and 52.102-2 are removed.

20. Section 52.213-1 is revised to read as follows:

52.213-1 Fast Payment Procedure.

As prescribed in 13.404, insert the following clause:

Fast Payment Procedure (Feb 1998)

(a) *General.* The Government will pay invoices based on the Contractor's delivery to a post office or common carrier (or, if shipped by other means, to the point of first receipt by the Government).

(b) *Responsibility for supplies.* (1) Title to the supplies passes to the Government upon delivery to—

(i) A post office or common carrier for shipment to the specific destination; or

(ii) The point of first receipt by the Government, if shipment is by means other than Postal Service or common carrier.

(2) Notwithstanding any other provision of the contract, order, or blanket purchase agreement, the Contractor shall—

(i) Assume all responsibility and risk of loss for supplies not received at destination, damaged in transit, or not conforming to purchase requirements; and

(ii) Replace, repair, or correct those supplies promptly at the Contractor's expense, if instructed to do so by the Contracting Officer within 180 days from the date title to the supplies vests in the Government.

(c) *Preparation of invoice.* (1) Upon delivery to a post office or common carrier (or, if shipped by other means, the point of first receipt by the Government), the Contractor shall—

(i) Prepare an invoice as provided in this contract, order, or blanket purchase agreement; and

(ii) Display prominently on the invoice "FAST PAY."

(2) If the purchase price excludes the cost of transportation, the Contractor shall enter the prepaid shipping cost on the invoice as a separate item. The Contractor shall not include the cost of parcel post insurance. If transportation charges are stated separately on the invoice, the Contractor shall retain related paid freight bills or other transportation billings paid separately for a period of 3 years and shall furnish the bills to the Government upon request.

(3) If this contract, order, or blanket purchase agreement requires the preparation of a receiving report, the Contractor shall prepare the receiving report on the prescribed form or, alternatively, shall include the following information on the invoice, in addition to that required in paragraph (c)(1) of this clause:

(i) A statement in prominent letters "NO RECEIVING REPORT PREPARED."

(ii) Shipment number.

(iii) Mode of shipment.

(iv) At line item level—

(A) National stock number and/or manufacturer's part number;

(B) Unit of measure;

(C) Ship-To Point;

(D) Mark-For Point, if in the contract; and

(E) FEDSTRIP/MILSTRIP document

number, if in the contract.

(4) If this contract, order, or blanket purchase agreement does not require preparation of a receiving report on a prescribed form, the Contractor shall include on the invoice the following information at the line item level, in addition to that required in paragraph (c)(1) of this clause:

(i) Ship-To Point.

(ii) Mark-For Point.

(iii) FEDSTRIP/MILSTRIP document

number, if in the contract.

(5) Where a receiving report is not required, the Contractor shall include a copy of the invoice in each shipment.

(d) *Certification of invoice.* The Contractor certifies by submitting an invoice to the Government that the supplies being billed to the Government have been shipped or delivered in accordance with shipping instructions issued by the ordering officer, in the quantities shown on the invoice, and that the supplies are in the quantity and of the quality designated by the contract, order, or blanket purchase agreement.

(e) *Fast pay container identification.* The Contractor shall mark all outer shipping containers "FAST PAY."

(End of clause)

52.213-2 [Amended]

21. Section 52.213-2 is amended in the introductory text by revising the reference "13.506(b)" to read "13.302-5(b)".

52.213-3 [Amended]

22. Section 52.213-3 is amended in the introductory text by revising the reference "13.506(c)" to read "13.302-5(c)".

23. Section 52.213-4 is added to read as follows:

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

As prescribed in 13.302-5(d), insert the following clause:

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (Feb 1998)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses that are incorporated by reference:

(1) The clauses listed below implement provisions of law or Executive order:

(i) 52.222-3, *Convict Labor* (Aug 1996) (E.O. 11755).

(ii) 52.233-3, *Protest After Award* (Aug 1996) (31 U.S.C. 3553).

(2) Listed below are additional clauses that apply:

(i) 52.225-11, *Restrictions on Certain Foreign Purchases* (Oct 1996).

(ii) 52.232-1, *Payments* (Apr 1984).

(iii) 52.232-8, *Discounts for Prompt Payment* (May 1997).

(iv) 52.232-11, *Extras* (Apr 1984).

(v) 52.232-25, *Prompt Payment* (Jun 1997).

(vi) 52.232-33, *Mandatory Information for Electronic Funds Transfer Payment* (Aug 1996).

(vii) 52.233-1, *Disputes* (Oct 1995).

(viii) 52.244-6, *Subcontracts for Commercial Items and Commercial Components* (Oct 1995).

(ix) 52.253-1, *Computer Generated Forms* (Jan 1991).

(b) The Contractor shall comply with the following FAR clauses, incorporated by reference, unless the circumstances do not apply:

(1) The clauses listed below implement provisions of law or Executive order:

(i) 52.222-20, *Walsh-Healey Public Contracts Act* (DEC 1996) (41 U.S.C. 35-45) (Applies to supply contracts over \$10,000 in the United States).

(ii) 52.222-26, *Equal Opportunity* (APR 1984) (E.O. 11246) (Applies to contracts over \$10,000).

(iii) 52.222-35, *Affirmative Action for Special Disabled and Vietnam Era Veterans* (APR 1984) (38 U.S.C. 4212) (Applies to contracts over \$10,000).

(iv) 52.222-36, *Affirmative Action for Handicapped Workers* (APR 1984) (29 U.S.C. 793) (Applies to contracts over \$2,500).

(v) 52.222-37, *Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era* (JAN 1988) (38 U.S.C. 4212) (Applies to contracts over \$10,000).

(vi) 52.222-41, *Service Contract Act of 1965, As Amended* (MAY 1989) (41 U.S.C. 351, *et seq.*) (Applies to service contracts over \$2,500).

(vii) 52.223-5, *Pollution Prevention and Right-to-Know Information* (MAR 1997) (E.O. 12856) (Applies to services performed on Federal facilities).

(viii) 52.225-3, *Buy American Act—Supplies* (JAN 1994) (41 U.S.C. 10) (Applies to supplies, and to services involving the furnishing of supplies, if the contract was—

(A) Under \$25,000; or

(B) Set aside for small business concerns, regardless of dollar value).

(2) Listed below are additional clauses that may apply:

(i) 52.209-6, *Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment* (JULY 1995) (Applies to contracts over \$25,000).

(ii) 52.211-17, *Delivery of Excess Quantities* (SEPT 1989) (Applies to fixed-price supplies).

(iii) 52.247-29, *F.o.b. Origin* (JUN 1988) (Applies to supplies if delivery is f.o.b. origin).

(iv) 52.247-34, *F.o.b. Destination* (NOV 1991) (Applies to supplies if delivery is f.o.b. destination).

(c) *FAR 52.252-2, Clauses Incorporated by Reference* (FEB 1998). This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

[Insert one or more Internet addresses]

(d) *Inspection/Acceptance.* The Contractor shall tender for acceptance only those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its postacceptance rights—

(1) Within a reasonable period of time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(e) *Excusable delays.* The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the

Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(f) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that the Contractor can demonstrate to the satisfaction of the Government, using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

(g) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(h) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract. (End of clause)

24. Sections 52.252-1 and 52.252-2 are revised to read as follows:

52.252-1 Solicitation Provisions Incorporated by Reference.

As prescribed in 52.107(a), insert the following provision:

Solicitation Provisions Incorporated by Reference (Feb 1998)

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting

the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es):

[Insert one or more Internet addresses]
(End of provision)

52.252-2 Clauses Incorporated by Reference.

As prescribed in 52.107(b), insert the following clause:

Clauses Incorporated by Reference (Feb 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

[Insert one or more Internet addresses]
(End of clause)

PART 53—FORMS

53.213 and 53.243 [Amended]

25. Amend the internal references throughout 53.213 and 53.243 as indicated in the following table:

Location	Remove	Insert
53.213(a)	13.107 both times it appears	13.307(b)
53.213(b)	13.503(b)	13.307(c)(3)
3.213(c)	13.505(b)	13.306
53.213(d)	13.404(e)	13.307(e)
53.213(e)	13.107(c)	13.307(c)(1)
53.213(f)(1)	13.505	13.307
53.213(f)(2)	13.202	13.303-2
53.213(f)(2)	13.204(e)	13.303-5
53.243 undesignated paragraph	13.503(b)	13.302-3

[FR Doc. 97-31817 Filed 12-8-97; 8:45 am]
BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 25

[FAC 97-03; FAR Case 97-021; Item V]

RIN 9000-AH80

Federal Acquisition Regulation; Reporting Trade Sanction Exemptions

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to revise the reporting requirements for trade sanction exemptions. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For

clarification of content, contact Mr. Paul Linfield, Procurement Analyst, at (202) 501-1757. Please cite FAC 97-03, FAR case 97-021.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Subpart 25.10 to eliminate requirements for agencies to notify Congress when exercising the authority at FAR 25.1002(c) for exemption of certain procurements from the trade sanctions imposed by the President. The rule instead requires agencies to notify the United States Trade Representative (USTR) of such exemptions within 30 days after contract award. FAR Subpart 25.10 implements sanctions imposed by the President (58 FR 31136, May 28, 1993) pursuant to the Trade Agreements Act (10 U.S.C. 2515), as amended by Title VII of Public Law 100-418 (The Buy American Act of 1988). The Buy American Act of 1988 also amended 41 U.S.C. 10b-1 to permit agency heads to waive application of the sanctions for certain contracts after providing notification to Congress.

The Buy American Act of 1988 included a sunset provision (Section 7004) by which amendments to 19 U.S.C. 2515 and 41 U.S.C. 10b-1 expired on April 30, 1996. However, the sanctions imposed by the President remain in effect until the President amends or terminates them. The requirement to notify Congress is no longer in effect. Since the USTR is delegated by the President with administering the sanctions, the requirement to notify the USTR has been retained.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97-03, FAR case 97-021), in correspondence.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 25

Government procurement.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR part 25 is amended as set forth below:

PART 25—FOREIGN ACQUISITION

1. The authority citation for 48 CFR Part 25 continues to read as follows:

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

2. Section 25.1000 is revised to read as follows:

25.1000 Scope of subpart.

This subpart implements sanctions imposed by the President (58 FR 31136, May 28, 1993) pursuant to section 305(g)(1) of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2515(g)(1)). These sanctions apply to countries that discriminate against U.S. products or services in Government procurement. This subpart does not apply to the Department of Defense. For thresholds that are unique to individual agencies (e.g., Power Marketing Administration of the Department of Energy), see agency regulations.

3. Section 25.1002 is amended by revising paragraph (c)(2) to read as follows:

25.1002 Trade sanctions.

* * * * *

(c) * * *

(2) When a determination is made according to this paragraph (c), the agency shall notify the United States Trade Representative within 30 days after contract award.

* * * * *

[FR Doc. 97-31818 Filed 12-8-97; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 29

[FAC 97-03; FAR Case 97-018; Item VI]

RIN 9000-AH79

Federal Acquisition Regulation; New Mexico Gross Receipts and Compensating Tax

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to identify the Defense Special Weapons Agency as an agency that has entered into an agreement with the State of New Mexico regarding taxation. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: December 9, 1997.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501-4764. Please cite FAC 97-03, FAR case 97-018.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR 29.401-6 by adding the Defense Special Weapons Agency to the list in paragraph (c)(1) as an agency that has entered into an agreement with the State of New Mexico to eliminate double taxation under New Mexico's Gross Receipts and Compensating Tax Act. Because participating Federal agencies may or may not be executive agencies, the term "executive" has been deleted in paragraphs (b) and (c)(1).

B. Regulatory Flexibility Act

This final rule does not constitute a significant FAR revision within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, et seq. (FAC 97-03, FAR case 97-018), in correspondence.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 29

Government procurement.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR part 29 is amended as set forth below:

PART 29—TAXES

1. The authority citation for 48 CFR Part 29 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).

29.401-6 [Amended]

2. Section 29.401-6 is amended in the introductory text of paragraph (b) and paragraph (c)(1) by removing "executive"; and also in the list following paragraph (c)(1) by adding, in alphabetical order, "United States Defense Special Weapons Agency;"

[FR Doc. 97-31819 Filed 12-8-97; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 97-03; FAR Case 96-325; Item VII]

RIN 9000-AH50

Federal Acquisition Regulation; Compensation of Certain Contractor Personnel

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

ACTION: Interim rule adopted as final with changes.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to adopt as final, with changes, the interim rule published as Item XI of Federal Acquisition Circular 90-45 on January 2, 1997. The rule amends the Federal Acquisition Regulation (FAR) to implement Section 809 of the Fiscal Year 1997 National Defense Authorization Act (Pub. L. 104-201) by placing a Governmentwide ceiling on allowable compensation costs for contractor personnel in senior management positions under contracts that are awarded during fiscal year 1997. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 9, 1998.

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 97-03, FAR case 96-325.

SUPPLEMENTARY INFORMATION:

A. Background

An interim rule was published in the **Federal Register** at 62 FR 269, January 2, 1997. The preamble to the interim rule erroneously contained an effective date of January 1, 1997; the rule applies to contracts awarded on or after the date the rule was published (January 2, 1997).

This final rule differs from the interim rule by making an editorial change for clarity. At FAR 31.205-6(p)(1), "that exceed" replaces the phrase "in excess of."

Public comments were received from 11 sources. All comments were considered in developing the final rule.

B. Regulatory Flexibility Act

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

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final With Change

Accordingly, the interim rule amending 48 CFR Part 31, which was published at 62 FR 269, January 2, 1997, is adopted as a final rule with the following change:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

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

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

2. Section 31.205-6 is amended by revising paragraph (p)(1) to read as follows:

31.205-6 Compensation for personal services.

* * * * *

(p) * * * (1) For contracts awarded during fiscal year 1997, costs incurred from October 1, 1996, through September 30, 1997, for compensation of an officer in a senior management position that exceed \$250,000 per year are unallowable (Section 809 of Public Law 104-201).

* * * * *

[FR Doc. 97-31820 Filed 12-8-97; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 31 and 42**

[FAC 97-03; FAR Case 95-032; Item VIII]

RIN 9000-AH37

Federal Acquisition Regulation; Independent Research and Development/Bid and Proposal Costs for Fiscal Year 1996 and Beyond

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) allowable cost criteria for Independent Research and Development (IR&D)/Bid and Proposal (B&P) costs for fiscal year 1996 and beyond, by removing the requirements to calculate or negotiate a ceiling for IR&D/B&P costs. In addition, the final rule clarifies that costs incurred in preparing, submitting, and supporting offers on potential cooperative arrangements are allowable to the extent they are allocable, reasonable, and not otherwise unallowable. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 9, 1998.

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 97-03, FAR case 95-032.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule was published on November 14, 1996 (61 FR 58452). The final rule differs from the proposed rule by revising the last sentence at FAR 31.205-18(e) for clarification and by deleting "and B&P" from the heading at 31.205-18(d) to better convey the subject matter of the paragraph.

Public comments were received from four sources. The comments were considered in developing the final rule.

B. Regulatory Flexibility Act

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

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 31 and 42

Government procurement.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 31 and 42 are amended as set forth below:

1. The authority citation for 48 CFR Parts 31 and 42 continues to read as follows:

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

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Section 31.205-18 is amended in paragraph (a) by removing definitions for "Contractor", "Covered contract", "Covered segment", and "Major contractor"; by revising paragraph (c) and the heading of paragraph (d); and adding paragraph (e)(3) to read as follows:

31.205-18 Independent research and development and bid and proposal costs.

* * * * *

(c) *Allowability.* Except as provided in paragraphs (d) and (e) of this subsection, or as provided in agency regulations, costs for IR&D and B&P are allowable as indirect expenses on contracts to the extent that those costs are allocable and reasonable.

(d) *Deferred IR&D costs.* * * *

* * * * *

(e) * * *

(3) Costs incurred in preparing, submitting, and supporting offers on potential cooperative arrangements are allowable to the extent they are allocable, reasonable, and not otherwise unallowable.

PART 42—CONTRACT ADMINISTRATION

Subpart 42.10 [Reserved]

3. Subpart 42.10 is removed and reserved.

[FR Doc. 97-31821 Filed 12-8-97; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 97-03; FAR Case 97-007; Item IX]

RIN 9000-AH76

Federal Acquisition Regulation; Travel Reimbursement

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 have agreed on an interim rule amending the

Federal Acquisition Regulation (FAR) to increase from \$25 to \$75 the maximum travel expense amount that contractor personnel may claim without providing a supporting receipt. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

DATES: *Effective:* December 9, 1997.

Comments: Comments should be submitted to the FAR Secretariat at the address shown below on or before February 9, 1998 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to:

General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW., Room 4035, Washington, DC 20405

E-Mail comments submitted over the Internet should be addressed to: farcase.97-007@gsa.gov

Please cite FAC 97-03, FAR case 97-007, 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. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 97-03, FAR case 97-007.

SUPPLEMENTARY INFORMATION:

A. Background

On October 28, 1996, GSA published Federal Travel Regulation (FTR) Amendment 50, in the **Federal Register** (61 FR 55577), to streamline the process of travel reimbursement claims. One of the FTR changes was to raise, from \$25.00 to \$75.00, the maximum travel expense amount which may be claimed without the requirement for a supporting receipt.

In concert with the FTR change, this rule amends the cost principle at FAR 31.205-46 to increase, from \$25.00 to \$75.00, the threshold at which contractor personnel must provide a receipt to support travel expenditures.

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 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 contained in this rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subpart also will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C 601, *et seq.* (FAC 97-03, FAR case 97-007), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) is deemed to apply because the interim rule contains information collection requirements. The collection of this information is currently cleared under Office of Management and Budget number 9000-0088. The increase in the receipt threshold is expected to reduce the existing burden hours. Copies of the form and supporting documents reducing the burden hours may be obtained from the FAR Secretariat. Estimated number of respondents: 5,800; responses per respondent: 10; total burden hours: 14,500; frequency of report: on occasion.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to make the cost principle consistent with the newly revised Federal Travel Regulations and to remove the unnecessarily burdensome recordkeeping requirement for travel expenses between \$25.00 and \$75.00, as quickly as possible. However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

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

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

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

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

2. Section 31.205-46 is amended by revising paragraph (a)(3)(iv) to read as follows:

31.205-46 Travel costs.

- (a) * * *
- (3) * * *

(iv) Documentation to support actual costs incurred shall be in accordance with the contractor's established practices, subject to paragraph (a)(7) of this subsection, and provided that a receipt is required for each expenditure of \$75.00 or more. The approved justification required by paragraph (a)(3)(ii) and, if applicable, paragraph (a)(3)(iii) of this subsection must be retained.

* * * * *

[FR Doc. 97-31822 Filed 12-8-97; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 33

[FAC 97-03; FAR Case 97-009; Item X]

RIN 9000-AH81

Federal Acquisition Regulation; Protests to GAO

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to conform with revisions to the General Accounting Office (GAO) Bid Protest Regulations. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 9, 1998.

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. Jack O'Neill, Procurement Analyst, at (202) 501-3856. Please cite FAC 97-03, FAR case 97-009.

SUPPLEMENTARY INFORMATION:

A. Background

The GAO published a final rule amending its Bid Protest Regulations in the **Federal Register** on July 26, 1996 (61 FR 39039). Several conforming amendments to FAR Part 33 are necessary to reflect the current GAO Bid Protest Regulations. The definition of "day" in FAR 33.101 is amended to exclude Saturdays, Sundays, and Federal holidays from being counted if such day is the last day of the period after the act, event, or default. FAR 33.104 is amended to require agencies to include a best estimate of the contract value in an agency report of a protest; and to require agencies to provide to all parties, at least 5 days prior to the filing of a report, a list of documents the agency intends to release or withhold, and reasons for proposed withholding. The time within which agencies are required to provide additional documents requested by a protester is reduced from 5 to 2 days. The time within which protesters or other interested parties are required to furnish comments on an agency report is reduced from 14 to 10 days, or from 7 to 5 days if an express option is used; or, if a hearing is held, from 7 to 5 days. Language is added to require a protester to file its claim for costs with the contracting agency within 60 days after receipt of GAO's recommendation that the agency pay the protester its costs.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97-03, FAR case 97-009), in correspondence.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 33

Government procurement.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

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

PART 33—PROTESTS, DISPUTES, AND APPEALS

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

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

33.101 [Amended]

2. Section 33.101 is amended in paragraph (b)(1) under the definition of "Day" by removing the word "legal" and inserting "Federal" in its place; and by removing paragraph (c).

3. Section 33.104 is amended by—

- a. Redesignating (a)(3)(iii) as (a)(3)(iv), and adding a new (a)(3)(iii);
- b. Revising newly designated (a)(3)(iv)(B); removing (a)(3)(iv)(C); redesignating (a)(3)(iv)(D) as (a)(3)(iv)(C);
- c. Replacing "5" with "2" in paragraphs (a)(4)(ii)(A) and (a)(4)(ii)(B);
- d. Replacing "14" with "10" and "7" with "5" each time it appears in paragraph (a)(6);
- e. Adding "the agency" before the word "report" in the third sentence of paragraph (e);
- f. Revising paragraph (h) to read as follows:

33.104 Protests to GAO.

* * * * *

- (a) * * *
- (3) * * *

(iii) At least 5 days prior to the filing of the report, in cases in which the protester has filed a request for specific documents, the agency shall provide to all parties and the GAO a list of those documents, or portions of documents, that the agency has released to the protester or intends to produce in its report, and those documents that the agency intends to withhold from the protester and the reasons for the proposed withholding. Any objection to the scope of the agency's proposed disclosure or nondisclosure of the documents must be filed with the GAO and the other parties within 2 days after receipt of this list.

- (iv) * * *
- (A) * * *

(B) The contracting officer's signed statement of relevant facts, including a best estimate of the contract value, and a memorandum of law. The contracting officer's statement shall set forth findings, actions, and recommendations, and any additional evidence or information not provided in the protest

file that may be necessary to determine the merits of the protest; and

* * * * *

(h) *Award of costs.* (1) If the GAO determines that a solicitation for a contract, a proposed award, or an award of a contract does not comply with a statute or regulation, the GAO may recommend that the agency pay to an appropriate protester the cost, exclusive of profit, of filing and pursuing the protest, including reasonable attorney, consultant, and expert witness fees, and bid and proposal preparation costs. The agency shall use funds available for the procurement to pay the costs awarded.

(2) The protester shall file its claim for costs with the contracting agency within 60 days after receipt of the GAO's recommendation that the agency pay the protester its costs. Failure to file the claim within that time may result in forfeiture of the protester's right to recover its costs.

(3) The agency shall attempt to reach an agreement on the amount of costs to be paid. If the agency and the protester are unable to agree on the amount to be paid, the GAO may, upon request of the protester, recommend to the agency the amount of costs that the agency should pay.

(4) Within 60 days after the GAO recommends the amount of costs the agency should pay the protester, the agency shall notify the GAO of the action taken by the agency in response to the recommendation.

(5) No agency shall pay a party, other than a small business concern within the meaning of section 3(a) of the Small Business Act (see 19.001, "Small business concern"), costs under paragraph (h)(2) of this section

(i) For consultant and expert witness fees that exceed the highest rate of compensation for expert witnesses paid by the Government pursuant to 5 U.S.C. 3109 and 5 CFR 304.105; or

(ii) For attorney's fees that exceed \$150 per hour, unless the agency determines, based on the recommendation of the Comptroller General on a case-by-case basis, that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee. The cap placed on attorneys' fees for businesses, other than small businesses, constitutes a benchmark as to a "reasonable" level for attorney's fees for small businesses.

(6) Before paying a recommended award of costs, agency personnel should consult legal counsel. Section 33.104(h) applies to all recommended awards of costs that have not yet been paid.

(7) Any costs the contractor receives under this section shall not be the

subject of subsequent proposals, billings, or claims against the Government, and those exclusions should be reflected in the cost agreement.

(8) If the Government pays costs, as provided in paragraph (h)(1) of this section, where a postaward protest is sustained as the result of an awardee's intentional or negligent misstatement, misrepresentation, or miscertification, the Government may require the awardee to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the awardee under any contract between the awardee and the Government.

[FR Doc. 97-31823 Filed 12-8-97; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 42 and 53

[FAC 97-03; FAR Case 95-034; Item XI]

RIN 9000-AH18

Federal Acquisition Regulation; Novation and Related Agreements

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

ACTION: Final rule.

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

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501-3775. Please cite FAC 97-03, FAR case 95-034.

SUPPLEMENTARY INFORMATION:

A. Background

The purpose of this rule is to facilitate the process of novating contracts and to provide guidelines for contracting officers, while preserving the Government's interests in business combinations affecting its contracts. A proposed rule was published in the **Federal Register** on August 21, 1996 (61 FR 43294). Eighteen comments were received from six respondents. All comments were considered in the development of the final rule.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because novation agreements generally affect only a relatively small number of large and small business entities.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 42 and 53

Government procurement.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR parts 42 and 53 are amended as set forth below:

1. The authority citation for 48 CFR parts 42 and 53 continues to read as follows:

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

PART 42—CONTRACT ADMINISTRATION

2. Section 42.1203 is amended by revising paragraphs (b) and (c); redesignating paragraphs (d) through (f) as (f) through (h), respectively; and adding new paragraphs (d) and (e) to read as follows:

42.1203 Processing agreements.

* * * * *

(b) The responsible contracting officer shall—

(1) Identify and request that the contractor submit the information necessary to evaluate the proposed agreement for recognizing a successor in interest or a name change. This information should include the items identified in 42.1204 (e) and (f) or 42.1205(a), as applicable;

(2) Notify each contract administration office and contracting office affected by a proposed agreement for recognizing a successor in interest, and provide those offices with a list of all affected contracts; and

(3) Request submission of any comments or objections to the proposed transfer within 30 days after notification. Any submission should be accompanied by supporting documentation.

(c) Upon receipt of the necessary information, the responsible contracting officer shall determine whether or not it is in the Governments interest to recognize the proposed successor in interest on the basis of—

(1) The comments received from the affected contract administration offices and contracting offices;

(2) The proposed successor's responsibility under subpart 9.1, Responsible Prospective Contractors; and

(3) Any factor relating to the proposed successor's performance of contracts with the Government that the Government determines would impair the proposed successor's ability to perform the contract satisfactorily.

(d) The execution of a novation agreement does not preclude the use of any other method available to the contracting officer to resolve any other issues related to a transfer of contractor assets, including the treatment of costs.

(e) Any separate agreement between the transferor and transferee regarding the assumption of liabilities (e.g., long-term incentive compensation plans, cost accounting standards noncompliances, environmental cleanup costs, and final overhead costs) should be referenced specifically in the novation agreement.

* * * * *

3. Section 42.1204 is amended by—

a. Revising the section heading and paragraph (a) introductory text, (a)(1), and the introductory text of (a)(2);

b. Redesignating paragraphs (b), (c), (d), and (e) as (c), (e), (h), and (i), respectively;

c. Adding new paragraphs (b), (d), (f), and (g); and

d. Revising newly redesignated paragraph (e) to read as follows:

42.1204 Applicability of novation agreements.

(a) 41 U.S.C. 15 prohibits transfer of Government contracts from the contractor to a third party. The Government may, when in its interest, recognize a third party as the successor in interest to a Government contract when the third party's interest in the contract arises out of the transfer of—

(1) All the contractor's assets; or

(2) The entire portion of the assets involved in performing the contract. (See 14.404-2(l) for the effect of novation agreements after bid opening but before award.) Examples of such transactions include, but are not limited to—

* * * * *

(b) A novation agreement is unnecessary when there is a change in the ownership of a contractor as a result of a stock purchase, with no legal change in the contracting party, and when that contracting party remains in control of the assets and is the party performing the contract. However, whether there is a purchase of assets or a stock purchase, there may be issues related to the change in ownership that appropriately should be addressed in a formal agreement between the contractor and the Government (see 42.1203(e)).

* * * * *

(d) When considering whether to recognize a third party as a successor in interest to Government contracts, the responsible contracting officer shall identify and evaluate any significant organizational conflicts of interest in accordance with subpart 9.5. If the responsible contracting officer determines that a conflict of interest cannot be resolved, but that it is in the best interest of the Government to approve the novation request, a request for a waiver may be submitted in accordance with the procedures at 9.503.

(e) When a contractor asks the Government to recognize a successor in interest, the contractor shall submit to the responsible contracting officer three signed copies of the proposed novation agreement and one copy each, as applicable, of the following:

(1) The document describing the proposed transaction, e.g., purchase/sale agreement or memorandum of understanding.

(2) A list of all affected contracts between the transferor and the Government, as of the date of sale or transfer of assets, showing for each, as of that date, the—

(i) Contract number and type;

(ii) Name and address of the contracting office;

(iii) Total dollar value, as amended; and

(iv) Approximate remaining unpaid balance.

(3) Evidence of the transferee's capability to perform.

(4) Any other relevant information requested by the responsible contracting officer.

(f) Except as provided in paragraph (g) of this section, the contractor shall submit to the responsible contracting officer one copy of each of the following documents, as applicable, as the documents become available:

(1) An authenticated copy of the instrument effecting the transfer of assets; e.g., bill of sale, certificate of merger, contract, deed, agreement, or court decree.

(2) A certified copy of each resolution of the corporate parties' boards of directors authorizing the transfer of assets.

(3) A certified copy of the minutes of each corporate party's stockholder meeting necessary to approve the transfer of assets.

(4) An authenticated copy of the transferee's certificate and articles of incorporation, if a corporation was formed for the purpose of receiving the assets involved in performing the Government contracts.

(5) The opinion of legal counsel for the transferor and transferee stating that the transfer was properly effected under applicable law and the effective date of transfer.

(6) Balance sheets of the transferor and transferee as of the dates immediately before and after the transfer of assets, audited by independent accountants.

(7) Evidence that any security clearance requirements have been met.

(8) The consent of sureties on all contracts listed under paragraph (e)(2) of this section if bonds are required, or a statement from the transferor that none are required.

(g) If the Government has acquired the documents during its participation in the pre-merger or pre-acquisition review process, or the Government's interests are adequately protected with an alternative formulation of the information, the responsible contracting officer may modify the list of documents to be submitted by the contractor.

NOVATION AGREEMENT

* * * * *

PART 53—FORMS

53.242-1 [Amended]

4. Section 53.242-1 is amended by revising "42.1203(f)" to read "42.1203(h)".

53.243 [Amended]

5. Section 53.243 is amended by revising "42.1203(f)" to read "42.1203(h)".

[FR Doc. 97-31824 Filed 12-8-97; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Part 47**

[FAC 97-03; FAR Case 97-017; Item XII]

RIN 9000-AH78

**Federal Acquisition Regulation;
Commercial Bills of Lading, Small
Package Shipments**

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to raise the threshold for requiring receipted freight bills for small package shipments, and the maximum amount that the Government may pay for invoiced but unsupported transportation charges. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501-3775. Please cite FAC 97-03, FAR case 97-017.

SUPPLEMENTARY INFORMATION:**A. Background**

Based upon the benefits encountered during a 6-month test conducted by the Defense Finance and Accounting Service, Denver Center, this rule amends FAR 47.303-17 to raise the threshold for requiring receipted freight bills for small package shipments from \$25 to \$100, and the maximum amount

that the Government may pay for invoiced but unsupported transportation charges from \$100 to \$250. These increased amounts are considered to more accurately reflect shipping costs in today's business environment.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97-03, FAR case 97-017), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) is deemed to apply because the final rule contains information collection requirements. Accordingly, a revised paperwork burden reflecting a decrease in burden as a result of the increase to thresholds will be forwarded to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 47:

Government procurement.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 47 is amended as set forth below:

PART 47—TRANSPORTATION

1. The authority citation for 48 CFR part 47 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).

47.303-17 [Amended]

2. Section 47.303-17 is amended in paragraph (d)(1) by removing "\$25" and inserting "\$100"; in (d)(2) by removing "\$100" and inserting "\$250"; and in the second sentence of paragraph (e) by replacing "47.303-17(d)(1)" with "paragraph (d)(2) of this subsection" and "\$25" with "\$250".

[FR Doc. 97-31825 Filed 12-8-97; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Part 53**

[FAC 97-05; FAR Case 96-022; Item XIII]

RIN 9000-AH74

**Federal Acquisition Regulation;
Standard Form 1406, Preaward Survey
of Prospective Contractor—Quality
Assurance**

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to revise Standard Form 1406, Preaward Survey of Prospective Contractor—Quality Assurance, to delete references to canceled specifications and to conform the language in the form to the current quality assurance guidance in the FAR. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501-3775. Please cite FAC 97-05, FAR case 96-022.

SUPPLEMENTARY INFORMATION:**A. Background**

Revision of the Standard Form 1406 is necessary due to the cancellation of military specifications, such as MIL-Q-9858 and MIL-I-45208, which are cited in the form, and to conform the language in the form to the current language in FAR Part 46.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart

will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97-05, FAR case 96-022), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office

of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 53

Government procurement.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR part 53 is amended as set forth below:

PART 53—FORMS

1. The authority citation for 48 CFR part 53 continues to read as follows:

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

53.209-1 [Amended]

2. Section 53.209-1 is amended in paragraph (d) by revising "(Rev 9/88)" to read "(Rev 11/97)".

3. Section 53.301-1406 is revised to read as follows:

BILLING CODE 6820-EP-P

SECTION II - COMPANY AND SOLICITATION DATA

1. BRIEFLY DESCRIBE HOW QUALITY ASSURANCE RESPONSIBILITIES ARE ACCOMPLISHED.

2. QUALITY ASSURANCE OFFICIALS CONTACTED

A. NAME	B. TITLE	C. YEARS OF QUALITY ASSURANCE EXPERIENCE

3. APPLICABLE CONTRACT QUALITY REQUIREMENTS

A. NUMBER	B. TITLE	C. TAILORING (If any)

4. IDENTICAL OR SIMILAR ITEMS HAVE BEEN PRODUCED, SUPPLIED, OR SERVICED BY PROSPECTIVE CONTRACTOR

(If similar items, identify: _____)

SECTION III - EVALUATION CHECKLIST

STATEMENTS		YES	NO
1. These items (where applicable to the contract) are understood by the prospective contractor.	A. Exhibits, technical data, drawings, specifications, and approval requirements.		
	B. Preservation, packaging, packing, and marking requirements.		
	C. Other (Specify)		
2. Records available indicate that the prospective contractor has a satisfactory quality performance record during the past twelve (12) months for similar items.			
3. Used, reconditioned, or remanufactured material and former Government surplus material will be furnished by the prospective contractor. (If Yes, explain in Section I NARRATIVE)			
4. Prospective contractor will require unusual assistance from the Government. (If Yes, explain in Section I NARRATIVE)			
5. Did prospective contractor fulfill commitments to correct deficiencies, as proposed on previous surveys, when awarded that contract? (If No, explain in Section I NARRATIVE)			
6. Quality verification personnel	NUMBER SKILLED		
	NUMBER SEMI-SKILLED		
7. Quality verification to production personnel ratio.	RATIO		
THE FOLLOWING ARE AVAILABLE AND ADEQUATE. (If not applicable, show "N/A" in "Yes" column.)			
8. Inspection and test equipment, gauges, and instruments for first article and production (including solicitation specified equipment).			
9. Calibration/metrology program.			
10. Quality system procedures and controls.			
11. Control of specifications, drawings, changes and modifications, work/process instructions.			
12. System for determining inspection, test, and measurement requirements.			
13. Purchasing: Processes for selecting qualified suppliers and assuring the quality of purchased materials.			
14. Product identification, segregation, traceability, and maintenance.			
15. Government furnished property controls.			
16. Process controls.			
17. Nonconforming product: System for timely identification, disposition, correction of deficiencies, and corrective and preventative action.			
18. Preservation, storage, packaging, packing, marking, and delivery controls.			
19. Records (such as: inspection, test, status, corrective actions, calibration, etc.)			
20. Controls for investigation of customer complaints and correction of deficiencies.			
21. Design controls system.			
22. Computer software (deliverable and/or non-deliverable) quality assurance program.			
23. Management review and internal quality audits.			
24. Quality assurance training program.			
25. Installation and servicing quality assurance program.			
26. Statistical techniques.			

STANDARD FORM 1406 (REV. 11-97) BACK

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Parts 1, 19, 42, and 53

[FAC 97-03; Item XIV]

**Federal Acquisition Regulation;
Technical Amendments**

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

ACTION: Corrections.

SUMMARY: This document makes technical corrections to FAR sections 1.201-1, 19.811-1, and 42.203. SF 33, SF 1435, SF 1436, and SF 1437 are being reissued in order to reflect changes to internal references as a result of the rewrite of Part 15 of the Federal Acquisition Regulation. SF 279 is being reissued to provide accounting for purchases under the commercial test.

EFFECTIVE DATE: December 9, 1997.

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

Dated: December 1, 1997.

Edward C. Loeb,
Director, Federal Acquisition Policy Division.

Therefore, 48 CFR parts 1, 19, 42, and 53 are amended as set forth below:

1. The authority citation for 48 CFR parts 1, 19, 42, and 53 continues to read as follows:

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

**PART 1—FEDERAL ACQUISITION
REGULATIONS SYSTEM**

1.201-1 [Amended]

2. Section 1.201-1 is amended in the first sentence of paragraph (a) by removing the word "Regulatory" and inserting "Regulations" in its place.

**PART 19—SMALL BUSINESS
PROGRAMS**

3. Section 19.811-1 is amended in the introductory text of paragraph (c) by revising the first and second sentences to read as follows:

19.811-1 Sole source.

* * * * *

(c) Except in procurements where the SBA will make advance payments to its 8(a) contractor, the agency contracting officer may, as an alternative to the procedures in paragraphs (a) and (b) of this subsection, use a single contract document for both the prime contract between the agency and the SBA and its 8(a) contractor. The single contract

document shall contain the information in paragraphs (b) (1), (2), and (3) of this subsection. * * *

* * * * *

**PART 42—CONTRACT
ADMINISTRATION**

42.203 [Amended]

4. Section 42.203 is amended at the end of paragraph (a) by removing "4.201(c)" and inserting "4.201(d)" in its place.

PART 53—FORMS

53.204-2 [Amended]

5. Section 53.204-2 is amended in paragraph (a) by revising the revision date to read "(Rev. 10/97)".

53.214 [Amended]

6. Section 53.214 is amended in paragraph (c) by revising the revision date to read "(Rev. 9/97)".

53.215-1 [Amended]

7. Section 53.215-1 is amended in paragraph (c) by revising the revision date to read "(Rev. 9/97)".

53.249 [Amended]

8. Section 53.249 is amended in paragraphs (a)(2), (a)(3), and (a)(4) by revising the revision dates to read "(Rev. 9/97)", and by removing the last sentence of each paragraph.

BILLING CODE 6820-EP-P

9. Section 53.301-33 is revised to read as follows:

53.301-33 Solicitation, Offer and Award.

SOLICITATION, OFFER AND AWARD		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)		RATING	PAGE	OF	PAGES
2. CONTRACT NUMBER	3. SOLICITATION NUMBER	4. TYPE OF SOLICITATION. <input type="checkbox"/> SEALED BID (IFB) <input type="checkbox"/> NEGOTIATED (RFP)		5. DATE ISSUED	6. REQUISITION/PURCHASE NUMBER		
7. ISSUED BY		CODE	8. ADDRESS OFFER TO (If other than Item 7)				

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

SOLICITATION

9. Sealed offers in original and _____ copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if handcarried, in the depository located in _____ until _____ local time _____ (Hour) _____ (Date)

CAUTION - LATE Submissions, Modifications, and Withdrawals: See Section L, Provision No. 52.214-7 or 52.215-1. All offers are subject to all terms and conditions contained in this solicitation.

10. FOR INFORMATION CALL:	A. NAME		B. TELEPHONE (NO COLLECT CALLS)		C. E-MAIL ADDRESS	
	AREA CODE	NUMBER	EXT.			

11. TABLE OF CONTENTS

(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)
PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES			
	A	SOLICITATION/CONTRACT FORM			I	CONTRACT CLAUSES	
	B	SUPPLIES OR SERVICES AND PRICES/COSTS		PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.			
	C	DESCRIPTION/SPECS./WORK STATEMENT			J	LIST OF ATTACHMENTS	
	D	PACKAGING AND MARKING		PART IV - REPRESENTATIONS AND INSTRUCTIONS			
	E	INSPECTION AND ACCEPTANCE			K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
	F	DELIVERIES OR PERFORMANCE			L	INSTRS., CONDS., AND NOTICES TO OFFERORS	
	G	CONTRACT ADMINISTRATION DATA			M	EVALUATION FACTORS FOR AWARD	
	H	SPECIAL CONTRACT REQUIREMENTS					

OFFER (Must be fully completed by offeror)

NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within _____ calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

13. DISCOUNT FOR PROMPT PAYMENT (See Section I, Clause No. 52.232-8)	10 CALENDAR DAYS (%)	20 CALENDAR DAYS (%)	30 CALENDAR DAYS (%)	CALENDAR DAYS (%)
14. ACKNOWLEDGMENT OF AMENDMENTS (The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated):	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE

15A. NAME AND ADDRESS OF OFFEROR	CODE	FACILITY	16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)	
15B. TELEPHONE NUMBER	AREA CODE	NUMBER	EXT.	17. SIGNATURE
15C. CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE. <input type="checkbox"/>				18. OFFER DATE

AWARD (To be completed by Government)

19. ACCEPTED AS TO ITEMS NUMBERED	20. AMOUNT	21. ACCOUNTING AND APPROPRIATION	
22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 U.S.C. 2304(c) () <input type="checkbox"/> 41 U.S.C. 253(c) ()		23. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise specified) ITEM	
24. ADMINISTERED BY (If other than Item 7) CODE		25. PAYMENT WILL BE MADE BY CODE	
26. NAME OF CONTRACTING OFFICER (Type or print)		27. UNITED STATES OF AMERICA (Signature of Contracting Officer)	
		28. AWARD DATE	

IMPORTANT - Award will be made on this Form, or on Standard Form 26, or by other authorized official written notice.

10. Section 53.301-279 is revised to read as follows:

53.301-279 Federal Procurement Data System (FPDS)—Individual Contract Action Report.

FEDERAL PROCUREMENT DATA SYSTEM (FPDS) INDIVIDUAL CONTRACT ACTION REPORT				INTERAGENCY REPORT CONTROL NUMBER 0206-GSA-QU	
1. REPORTING AGENCY CODE (FPDS 95)(4 Pos.)		2. CONTRACT NUMBER (Left justified with no special characters) (15 Pos.)		3. MODIFICATION NUMBER (Left justified; cannot exceed 4 characters) (4 Pos.)	
4. CONTRACTING OFFICE ORDER NUMBER (Left justified; cannot exceed 15 characters) (15 Pos.)		5. CONTRACTING OFFICE CODE (5 alpha-numeric character code) (5 Pos.)		6. ACTION DATE (4 digit calendar year and 2 digit month, e.g., 200012) (6 Pos.)	
7. TYPE OF DATA ENTRY (1 Pos.)		8. REPORT PERIOD (4 digit fiscal year and 1 digit quarter, e.g., 20001) (5 Pos.)		9. KIND OF CONTRACT ACTION (1 Pos.)	
A. Original B. Deleting C. Correcting		10. DOLLARS OBLIGATED OR DEOBLIGATED THIS ACTION (Right justified; round to nearest 1000; use lead zeros) (8 Pos.)		11. TYPE OF OBLIGATION (1 Pos.)	
A. Obligated B. Deobligated		12. PRINCIPAL PRODUCT OR SERVICE (FPDS Product Service Code Manual) (4 Pos.)		13. PRINCIPAL STANDARD INDUSTRIAL CLASSIFICATION (SIC) CODE (OMB SIC Manual) (4 Pos.)	
14. COMMERCIAL ITEM ACQUISITION (1 Pos.)		15. CONTRACTOR NAME (30 Pos.)		16. CONTRACTOR IDENTIFICATION NUMBER (9 Pos.)	
Y - Yes N - No		17a. PRINCIPAL PLACE OF PERFORMANCE (State and City Code FPDS 55) (7 Pos.)		17b. FOREIGN COUNTRY (FPDS 10-3) (2 Pos.)	
STATE CITY		18. CONTRACT FOR FOREIGN GOVT. OR INTERNATIONAL ORGANIZATION (1 Pos.)		19. TARIFF OR REGULATED (Pre-CICA) (1 Pos.)	
Y - Yes N - No		20. MULTI-YEAR CONTRACT (1 Pos.)		21. RESERVED FOR FPDS (2 Pos.)	
Y - Yes N - No		22. COUNTRY OF MANUFACTURE (FPDS 10-3) (2 Pos.)		23. SYNOPSIS OF PROCUREMENT PRIOR TO AWARD (1 Pos.)	
A. Synopsized prior to award B. Not synopsized due to urgency C. Not synopsized for other reason		24. TYPE OF CONTRACT OR MODIFICATION (1 Pos.)		25. CICA APPLICABILITY (1 Pos.)	
A. Fixed-Price Redetermination B. Fixed-Price C. Fixed-Price with Economic Price Adjustment D. Fixed-Price Incentive E. Cost-Plus-Award-Fee F. Cost-Plus-Fee G. Cost-Plus-Fixed-Fee H. Cost-Plus-Incentive I. Time and Materials J. Labor Hour		26. SOLICITATION PROCEDURES (Complete only if item 25 = A) (1 Pos.)		27. AUTHORITY FOR OTHER THAN FULL AND OPEN COMPETITION (Complete only if item 26 = L) (1 Pos.)	
A. CICA Applicable B. Purchase Orders/BPA Calls Using Simplified Acquisition Procedures C. Subject to Statute Other Than CICA D. Pre-CICA E. Commercial Items Acquisition Under Test Program		A. Full and Open Competition - Sealed Bid B. Full and Open Competition - Competitive Proposal C. Full and Open Competition - Combination D. Architect - Engineer E. Basic Research F. Multiple Award Schedule G. Alternative Sources H. Reserved I. Reserved J. Set-Aside K. Other Than Full and Open Competition		A. 1 B. 2-5 C. 6-10 D. 11-15 E. 16-20 F. 21-50 G. Over 50	
28. NUMBER OF OFFERS RECEIVED (Complete only if item 25 = A or E) (1 Pos.)		29. EXTENT COMPETED (1 Pos.)		30. TYPE OF CONTRACTOR (1 Pos.)	
A. 1 B. 2-5 C. 6-10 D. 11-15 E. 16-20 F. 21-50 G. Over 50		A. Competed Action B. Not Available for Competition C. Follow-on to Competed Action D. Not Competed		A. Small Disadvantaged Business B. Other Small Business C. Large Business D. JWOD Nonprofit Agency E. Nonprofit Educational Organization F. Nonprofit Hospital G. Other Nonprofit Organization H. State/Local Govt - Educational J. State/Local Govt - Hospital K. Other State/Local Government L. Foreign Contractor M. Domestic Contractor Performing Outside U.S. U. Historically Black College/University or Minority Institution (HBCU/MI)	
31. WOMEN-OWNED BUSINESS (1 Pos.)		32. PREFERENCE PROGRAM (1 Pos.)		33. SUBCONTRACTING PLAN (Small, Small Disadvantaged, and Women-Owned Small Business) (1 Pos.)	
Y - Yes N - No		A. Directed to JWOD Nonprofit Agency B. B(a) Contract Award C. Reserved D. Small Business Set-Aside E. Reserved F. Reserved G. Buy Indian/Self-Determination H. No Preference Program or Not Listed J. Small Disadvantaged Business Set-Aside		A. Required B. Not Required	
34. SUBJECT TO LABOR STATUTES (1 Pos.)		35. ESTIMATED CONTRACT COMPLETION DATE (4 digit calendar year and 2 digit month, e.g., 200012) (6 Pos.)		36. CONTRACTOR'S TIN (9 Pos.)	
A. Walsh-Healey Act B. Reserved C. Service Contract Act D. Davis-Bacon Act E. Not Subject to Walsh-Healey, Service Contract, or Davis-Bacon		37. COMMON PARENT'S NAME (30 Pos.)		38. COMMON PARENT'S TIN (9 Pos.)	
39. RESERVED FOR FPDS (4 Pos.)		40. RESERVED FOR FPDS (1 Pos.)		41. RESERVED FOR FPDS (5 Pos.)	
SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM (Applicable to AGR, DOD, DOE, DOI, DOT, EPA, GSA, HHS, NASA, and VA)					
42. DEMONSTRATION TEST PROGRAM (1 Pos.)		43. EMERGING SMALL BUSINESS (1 Pos.)		44. EMERGING SMALL BUSINESS RESERVE AWARD (1 Pos.)	
Y - Yes N - No		Y - Yes N - No		Y - Yes N - No	
45. SIZE OF SMALL BUSINESS (1 Pos.)		46. RESERVED FOR FPDS (10 Pos.)		47. OPTIONAL REPORTED DATA ELEMENTS (30 Pos.)	
NUMBER OF EMPLOYEES OR AVERAGE ANNUAL GROSS REVENUE		A. 50 or Less B. 51 - 100 C. 101 - 250 D. 251 - 500 E. 501-750 F. 751 - 1,000 G. Over 1,000 M. 1,000,000 or Less N. 1,000,001 - 2,000,000 O. 2,000,001 - 3,500,000 P. 3,500,001 - 5,000,000 Q. 5,000,001 - 10,000,000 R. 10,000,001 - 17,000,000 S. Over 17,000,000		48. FOR AGENCY INTERNAL USE	
49. CONTRACTING OFFICER OR REPRESENTATIVE					
a. TYPED NAME		b. SIGNATURE		c. TELEPHONE NUMBER	
				AREA CODE NUMBER	
d. DATE SUBMITTED					

11. Section 53.301-1435 is revised to read as follows:

53.301-1435 Settlement Proposal (Inventory Basis).

SETTLEMENT PROPOSAL (INVENTORY BASIS)		OMB No.: 9000-0012 Expires: 05/31/98
<small>Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.</small>		
FOR USE BY A FIXED-PRICE PRIME CONTRACTOR OR FIXED-PRICE SUBCONTRACTOR		
THIS PROPOSAL APPLIES TO (Check one) <input type="checkbox"/> A PRIME CONTRACT WITH THE GOVERNMENT <input type="checkbox"/> SUBCONTRACT OR PURCHASE ORDER		COMPANY
SUBCONTRACT OR PURCHASE ORDER NO(S).		STREET ADDRESS
CONTRACTOR WHO SENT NOTICE OF TERMINATION		CITY AND STATE (Include ZIP Code)
NAME		NAME OF GOVERNMENT AGENCY
ADDRESS (Include ZIP Code)		GOVERNMENT PRIME CONTRACT NO.
If moneys payable under the contract have been assigned, give the following: NAME OF ASSIGNEE		CONTRACTOR'S REFERENCE NO.
ADDRESS (Include ZIP Code)		EFFECTIVE DATE OF TERMINATION
SF 1439, SCHEDULE OF ACCOUNTING INFORMATION <input type="checkbox"/> IS <input type="checkbox"/> IS NOT ATTACHED (If not, explain below)		PROPOSAL NO.
		CHECK ONE <input type="checkbox"/> INTERIM <input checked="" type="checkbox"/> FINAL

SECTION I - STATUS OF CONTRACT OR ORDER AT EFFECTIVE DATE OF TERMINATION							
PRODUCTS COVERED BY TERMINATED CONTRACT OR PURCHASE ORDER (a)	FINISHED			UNFINISHED OR NOT COMMENCED		TOTAL COVERED BY CONTRACT OR ORDER (g)	
	PREVIOUSLY SHIPPED AND INVOICED (b)	ON HAND		TO BE COMPLETED (Partial termination only) (e)	NOT TO BE COMPLETED (f)		
		PAYMENT TO BE RECEIVED THROUGH INVOICING (c)	INCLUDED IN THIS PROPOSAL (d)				
QUANTITY							
\$							
QUANTITY							
\$							
QUANTITY							
\$							

SECTION II - PROPOSED SETTLEMENT					
NO.	ITEM (a)	(Use Columns (b) and (c) only where previous proposal has been filed)		TOTAL PROPOSED TO DATE (d)	FOR USE OF CONTRACTING AGENCY ONLY (e)
		TOTAL PREVIOUSLY PROPOSED (b)	INCREASE OR DECREASE BY THIS PROPOSAL (c)		
1	METALS				
2	RAW MATERIALS (other than metals)				
3	PURCHASED PARTS				
4	FINISHED COMPONENTS				
5	MISCELLANEOUS INVENTORY				
6	WORK-IN-PROCESS				
7	SPECIAL TOOLING AND SPECIAL TEST EQUIPMENT				
8	OTHER COSTS (from Schedule B)				
9	GENERAL AND ADMINISTRATIVE EXPENSES (from Schedule C)				
10	TOTAL (Items 1 to 9 inclusive)				
11	PROFIT (explain in Schedule D)				
12	SETTLEMENT EXPENSES (from Schedule E)				
13	TOTAL (Items 10 to 12 inclusive)				
14	SETTLEMENTS WITH SUBCONTRACTORS (from Schedule F)				
15	ACCEPTABLE FINISHED PRODUCT				
16	GROSS PROPOSED SETTLEMENT (Items 13 thru 15)				
17	DISPOSAL AND OTHER CREDITS (from Schedule G)				
18	NET PROPOSED SETTLEMENT (Item 16 less 17)				
19	ADVANCE, PROGRESS & PARTIAL PAYMENTS (from Schedule H)				
20	NET PAYMENT REQUESTED (Item 18 less 19)				

(When the space provided for any information is insufficient, continue on a separate sheet.)

SCHEDULE A - ANALYSIS OF INVENTORY COST (Items 4 and 6)

Furnish the following information (unless not reasonably available) for inventories of finished components and work-in-progress included in this proposal:

	TOTAL DIRECT LABOR	TOTAL DIRECT MATERIALS	TOTAL INDIRECT EXPENSES	TOTAL
FINISHED COMPONENTS				
WORK-IN-PROGRESS				

NOTE: Individual items of small amounts may be grouped into a single entry in Schedules B, C, D, and G.

SCHEDULE B - OTHER COSTS (Item 8)

ITEM	EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE C - GENERAL AND ADMINISTRATIVE EXPENSES (Item 9)

DETAIL OF EXPENSES	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE D - PROFIT (Item 11)

EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

(Where the space provided for any information is insufficient, continue on a separate sheet.)

12. Section 53.301-1436 is revised to read as follows:

53.301-1436 Settlement Proposal (Total Cost Basis).

SETTLEMENT PROPOSAL (TOTAL COST BASIS)		OMB No.: 9000-0012 Expires: 05/31/98	
Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.			
FOR USE BY A FIXED-PRICE PRIME CONTRACTOR OR FIXED-PRICE SUBCONTRACTOR			
THIS PROPOSAL APPLIES TO <i>(Check one)</i> <input type="checkbox"/> A PRIME CONTRACT WITH THE GOVERNMENT <input type="checkbox"/> SUBCONTRACT OR PURCHASE ORDER SUBCONTRACT OR PURCHASE ORDER NOIS).		COMPANY	
CONTRACTOR WHO SENT NOTICE OF TERMINATION NAME		STREET ADDRESS	
ADDRESS <i>(Include ZIP Code)</i>		CITY AND STATE <i>(Include ZIP Code)</i>	
If moneys payable under the contract have been assigned, give the following: NAME OF ASSIGNEE		NAME OF GOVERNMENT AGENCY	
ADDRESS <i>(Include ZIP Code)</i>		GOVERNMENT PRIME CONTRACT NO.	CONTRACTOR'S REFERENCE NO.
		EFFECTIVE DATE OF TERMINATION	
		PROPOSAL NO.	CHECK ONE <input type="checkbox"/> INTERIM <input type="checkbox"/> FINAL
SF 1439, SCHEDULE OF ACCOUNTING INFORMATION <input type="checkbox"/> IS <input type="checkbox"/> IS NOT ATTACHED <i>(If not, explain below)</i>			

SECTION I - STATUS OF CONTRACT OR ORDER AT EFFECTIVE DATE OF TERMINATION							
PRODUCTS COVERED BY TERMINATED CONTRACT OR PURCHASE ORDER (a)	QUANTITY	FINISHED		UNFINISHED OR NOT COMMENCED		TOTAL COVERED BY CONTRACT OR ORDER (g)	
		PREVIOUSLY SHIPPED AND INVOICED (b)	ON HAND		SUBSEQUENTLY COMPLETED AND INVOICED* (e)		NOT TO BE COMPLETED (f)
			PAYMENT TO BE RECEIVED THROUGH INVOICING (c)	PAYMENT NOT TO BE RECEIVED THROUGH INVOICING (d)			
	\$						
	QUANTITY						
	\$						
	QUANTITY						
	\$						

SECTION II - PROPOSED SETTLEMENT					
NO.	ITEM (a)	(Use Columns (b) and (c) only where previous proposal has been filed)		TOTAL PROPOSED TO DATE (d)	FOR USE OF CONTRACTING AGENCY ONLY (e)
		TOTAL PREVIOUSLY PROPOSED (b)	INCREASE OR DECREASE BY THIS PROPOSAL (c)		
1	DIRECT MATERIAL				
2	DIRECT LABOR				
3	INDIRECT FACTORY EXPENSE <i>(from Schedule A)</i>				
4	SPECIAL TOOLING AND SPECIAL TEST EQUIPMENT <i>(SF 1432)</i>				
5	OTHER COSTS <i>(from Schedule B)</i>				
6	GENERAL AND ADMINISTRATIVE EXPENSES <i>(from Schedule C)</i>				
7	TOTAL COSTS <i>(Items 1 thru 6)</i>				
8	PROFIT <i>(Explain in Schedule D)</i>				
9	TOTAL <i>(Items 7 and 8)</i>				
10	DEDUCT FINISHED PRODUCT INVOICED OR TO BE INVOICED*				
11	TOTAL <i>(Item 9 less Item 10)</i>				
12	SETTLEMENT EXPENSES <i>(from Schedule E)</i>				
13	TOTAL <i>(Items 11 and 12)</i>				
14	SETTLEMENTS WITH SUBCONTRACTORS <i>(from Schedule F)</i>				
15	GROSS PROPOSED SETTLEMENT <i>(Items 13 thru 14)</i>				
16	DISPOSAL AND OTHER CREDITS <i>(from Schedule G)</i>				
17	NET PROPOSED SETTLEMENT <i>(Item 15 less 16)</i>				
18	ADVANCE, PROGRESS & PARTIAL PAYMENTS <i>(from Schedule H)</i>				
19	NET PAYMENT REQUESTED <i>(Item 17 less 18)</i>				

*Column (e), Section I, should only be used in the event of a partial termination, in which the total cost reported in Section II should be accumulated to date of completion of the continued portion of the contract and the deduction for finished product (Item 10, Section II) should be the contract price of finished product in Column (b), (c), and (e), Section I.

NOTE: File inventory schedules (SF 1426, 1428, 1430, and 1432) for allocable inventories on hand at date of termination (See 49.206).

(When the space provided for any information is insufficient, continue on a separate sheet.)

SCHEDULE A - INDIRECT FACTORY EXPENSE (Item 3)			
DETAIL OF EXPENSES	METHOD OF ALLOCATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

NOTE: Individual items of small amounts may be grouped into a single entry in Schedules B, C, D, E, and G.

SCHEDULE B - OTHER COSTS (Item 5)			
ITEM	EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE C - GENERAL AND ADMINISTRATIVE EXPENSES (Item 6)			
DETAIL OF EXPENSES	METHOD OF ALLOCATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE D - PROFIT (Item 8)		
EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

(Where the space provided for any information is insufficient, continue on a separate sheet.)

SCHEDULE E - SETTLEMENT EXPENSES (Item 12)

ITEM	EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE F - SETTLEMENTS WITH IMMEDIATE SUBCONTRACTORS AND SUPPLIERS (Item 14)

NAME AND ADDRESS OF SUBCONTRACTOR	BRIEF DESCRIPTION OF PRODUCT CANCELED	AMOUNT OF SETTLEMENT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE G - DISPOSAL AND OTHER CREDITS (Item 16)

DESCRIPTION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

(If practicable, show separately amount of disposal credits applicable to acceptable finished product included on SF 1428.)

(Where the space provided for any information is insufficient, continue on a separate sheet.)

13. Section 53.301-1437 is revised to read as follows:

53.301-1437 Settlement Proposal for Cost—Reimbursement Type Contracts.

SETTLEMENT PROPOSAL FOR COST-REIMBURSEMENT TYPE CONTRACTS	OMB No.: 9000-0012 Expires: 05/31/98
------------------------------------------------------------------	-----------------------------------------

Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

To be used by prime contractors submitting settlement proposals on cost-reimbursement type contracts under Part 49 of the Federal Acquisition Regulation. Also suitable for use in connection with terminated cost-reimbursement type subcontracts.

COMPANY	PROPOSAL NUMBER	CHECK ONE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL
STREET ADDRESS	GOVERNMENT PRIME CONTRACT NO.	REFERENCE NO.
CITY AND STATE (Include ZIP Code)	EFFECTIVE DATE OF TERMINATION	

ITEM (a)	TOTAL PREVIOUSLY SUBMITTED (b)	INCREASE OR DECREASE BY THIS PROPOSAL (c)	TOTAL SUBMITTED TO DATE (d)
1. DIRECT MATERIAL	\$	\$	\$
2. DIRECT LABOR			
3. INDIRECT FACTORY EXPENSE			
4. SPECIAL TOOLING AND SPECIAL TEST EQUIPMENT			
5. OTHER COSTS			
6. GENERAL AND ADMINISTRATIVE EXPENSE			
7. TOTAL COST (Items 1 thru 6)	\$	\$	\$
8. FEE			
9. SETTLEMENT EXPENSES			
10. SETTLEMENTS WITH SUBCONTRACTORS			
11. GROSS PROPOSED SETTLEMENT (Items 7 thru 10)			
12. DISPOSAL AND OTHER CREDITS			
13. NET PROPOSED SETTLEMENT (Item 11 less 12)	\$	\$	\$
14. PRIOR PAYMENTS TO CONTRACTOR	\$	\$	\$
15. NET PAYMENT REQUESTED (Item 13 less 14)	\$	\$	\$

CERTIFICATE

This is to certify that the undersigned, individually, and as an authorized representative of the Contractor, has examined this termination settlement proposal and that, to the best knowledge and belief of the undersigned:

(a) AS TO THE CONTRACTOR'S OWN CHARGES. The proposed settlement (exclusive of charges set forth in Item 10) and supporting schedules and explanations have been prepared from the books of account and records of the Contractor in accordance with recognized commercial accounting practices; they include only those charges allocable to the terminated portion of this contract; they have been prepared with knowledge that they will, or may, be used directly or indirectly as the basis of settlement of a termination settlement proposal or claim against an agency of the United States; and the charges as stated are fair and reasonable.

(b) AS TO THE SUBCONTRACTORS' CHARGES. (1) The Contractor has examined, or caused to be examined, to an extent it considered adequate in the circumstances, the termination settlement proposals of its immediate subcontractors (exclusive of proposals filed against these immediate subcontractors by their subcontractors); (2) The settlements on account of immediate subcontractors' own charges are fair and reasonable, the charges are allocable to the terminated portion of this contract, and the settlements were negotiated in good faith and are not more favorable to its immediate subcontractors than those that the Contractor would make if reimbursement by the Government were not involved; (3) The Contractor has received from all its immediate subcontractors appropriate certificates with respect to their termination settlement proposals, which certificates are substantially in the form of this certificate; and (4) The Contractor has no information leading it to doubt (i) the reasonableness of the settlements with more remote subcontractors or (ii) that the charges for them are allocable to this contract. Upon receipt by the Contractor of amounts covering settlements with its immediate subcontractors, the Contractor will pay or credit them promptly with the amounts so received, to the extent that it has not previously done so. The term "subcontractors," as used above, includes suppliers.

NOTE: The Contractor shall, under conditions stated in FAR 15.403, be required to submit a Certificate of Current Cost or Pricing Data (see FAR 15.406-2 and 15.408 Table 15-2).

NAME OF CONTRACTOR	BY (Signature of authorized official)	
	TITLE	DATE
NAME OF SUPERVISORY ACCOUNTING OFFICIAL	TITLE	

[FR Doc. 97-31827 Filed 12-8-97; 8:45 am]
BILLING CODE 6820-EP-C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter I

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 as the Federal Acquisition Regulation (FAR) Council. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121). It consists of a summary of the rules appearing in Federal Acquisition

Circular (FAC) 97-03 which amends the FAR. The rules marked with an asterisk (*) are those for which a final regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Further information regarding these rules may be obtained by referring to FAC 97-03 which precedes this notice. This document may be obtained from the Internet at <http://www.arnet.gov/far>.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, (202) 501-4755.

LIST OF RULES IN FAC 97-03

Item	Subject	FAR Case	Analyst
I	Part 30 Deviations	97-014	Nelson.
II*	Information Technology Management Reform Act of 1996	96-319	Nelson.
III	Final Overhead Settlement	95-017	Klein.
IV*	Reorganization of FAR Part 13, Simplified Acquisition Procedures	94-772	Linfield.
V	Reporting Trade Sanction Exemptions	97-021	Linfield.
VI	New Mexico Gross Receipts and Compensating Tax	97-018	Moss
VII	Compensation of Certain Contractor Personnel	96-325	Nelson.
VIII	Independent Research and Development/Bid and Proposal Costs for Fiscal Year 1996 and Beyond	95-032	Nelson.
IX	Travel Reimbursement (Interim)	97-007	Nelson.
X	Protests to GAO	97-009	O'Neill.
XI	Novation and Related Agreements	95-034	Klein
XII	Commercial Bills of Lading, Small Package Shipments	97-017	Klein
XIII	Standard Form 1406, Preaward Survey of Prospective Contractor—Quality Assurance	96-022	Klein
XIV	Technical Amendments.		

Item I—Part 30 Deviations (FAR Case 97-014)

This final rule amends FAR 1.402 to remove the prohibition against authorizing deviations from FAR Part 30, Cost Accounting Standards Administration, except for subsections 30.201-3 and 30.201-4, or the Cost Accounting Standards Board rules and regulations.

Item II—Information Technology Management Reform Act of 1996 (FAR Case 96-319)

The interim rule published as Item I of FAC 90-41 is converted to a final rule. This rule implements the Information Technology Management Reform Act of 1996 (Division E of Public Law 104-106). The final rule differs from the interim rule in that it makes a clarifying revision to paragraph (c) of the definition of “information technology” at FAR 2.101.

Item III—Final Overhead Settlement (FAR Case 95-017)

This final rule amends FAR Parts 4, 42, and 52 to improve the process of final settlement of contractor indirect cost rates under cost-reimbursement contracts by (1) extending the time period within which a contractor must

submit an indirect cost rate proposal from 90 days to 6 months after the end of the contractor’s fiscal year, (2) permitting extensions to the 6-month time period for exceptional circumstances only, and (3) providing a specific reference to the Defense Contract Audit Agency pamphlet that contains guidance on what generally constitutes an adequate final indirect cost rate proposal and supporting data.

Item IV—Reorganization of FAR Part 13, Simplified Acquisition Procedures (FAR Case 94-772)

This final rule revises FAR Part 13 to reorganize its contents in a more process-oriented manner and to emphasize the use of electronic contracting and the Governmentwide commercial purchase card. FAR Part 52 is amended to permit agency provisions and clauses to be incorporated by reference in solicitations and contracts, if the full text of the provisions and clauses may be accessed electronically by prospective contractors. A new clause is added at FAR 52.213-4 for use in simplified acquisitions; the clause is a compilation of the required and most commonly used clauses that apply to simplified acquisitions, and may be

used in lieu of individual clauses prescribed in the FAR.

Item V—Reporting Trade Sanction Exemptions (FAR Case 97-021)

This final rule amends FAR Subpart 25.10 to eliminate requirements for agencies to notify Congress when exercising the authority at FAR 25.1002(c) for exemption of certain procurements from trade sanctions imposed by the President. The rule instead requires agencies to notify the United States Trade Representative of such exemptions within 30 days after contract award.

Item VI—New Mexico Gross Receipts and Compensating Tax (FAR Case 97-018)

This final rule amends FAR 29.401-6 to identify the Defense Special Weapons Agency as an agency that has entered into an agreement with the State of New Mexico regarding taxation.

Item VII—Compensation of Certain Contractor Personnel (FAR Case 96-325)

The interim rule published as Item XI of FAC 90-45 is converted to a final rule with a minor clarifying amendment at FAR 31.205-6(p)(1). The rule

implements Section 809 of the Fiscal Year 1997 National Defense Authorization Act (Pub. L. 104-201). Section 809 places a Governmentwide ceiling of \$250,000 per year on allowable compensation costs for contractor personnel in senior management positions under contracts awarded during fiscal year 1997.

Item VIII—Independent Research and Development/Bid and Proposal Costs for Fiscal Year 1996 and Beyond (FAR Case 95-032)

This final rule amends the cost principle at FAR 31.205-18, Independent Research and Development (IR&D) and Bid and Proposal (B&P) Costs, and deletes FAR Subpart 42.10, Negotiating Advance Agreements for Independent Research and Development/Bid and Proposal Costs. The rule removes, for fiscal year 1996 and beyond, the requirements to calculate or negotiate a ceiling for IR&D/B&P costs. In addition, the rule clarifies that costs incurred in preparing, submitting, and supporting offers on potential cooperative arrangements are allowable to the extent they are allocable, reasonable, and not otherwise unallowable.

Item IX—Travel Reimbursement (FAR Case 97-007)

This interim rule amends FAR 31.205-46 to raise, from \$25 to \$75, the maximum travel expense amount that contractor personnel may claim without providing a supporting receipt. This change is consistent with a recent amendment to the Federal Travel Regulation.

Item X—Protests to GAO (FAR Case 97-009)

This final rule amends the protest procedures at FAR 33.101 and 33.104 to conform with revisions made to the General Accounting Office Bid Protest Regulations.

Item XI—Novation and Related Agreements (FAR Case 95-034)

This final rule amends FAR Subpart 42.12 to expand and clarify procedures for processing novation agreements, and for determining when use of a novation agreement is appropriate.

Item XII—Commercial Bills of Lading, Small Package Shipments (FAR Case 97-017)

This final rule amends FAR 47.303-17 to raise the threshold for requiring receipted freight bills for small package shipments from \$25 to \$100, and the maximum amount that the Government

may pay for invoiced but unsupported transportation charges from \$100 to \$250. These increased amounts are considered to more accurately reflect shipping costs in today's business environment.

Item XIII—Standard Form 1406, Preaward Survey of Prospective Contractor—Quality Assurance (FAR Case 96-022)

This final rule revises Standard Form 1406, Preaward Survey of Prospective Contractor—Quality Assurance, to delete references to canceled specifications, and to conform the language in the form to the current language in FAR Part 46.

Item XIV—Technical Amendments

This document makes technical corrections to FAR 1.201-1, 19.811-1, and 42.203. Standard Forms 33, 1435, 1436, and 1437 are reissued to reflect changes to internal references as a result of the rewrite of FAR Part 15. Standard Form 279 is reissued to provide accounting for purchases under the commercial test.

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Director, Federal Acquisition Policy Division.
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