



# Federal Register

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**Wednesday,  
July 26, 2000**

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**Part II**

**Department of Defense  
General Services  
Administration**

**National Aeronautics and  
Space Administration**

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**48 CFR Ch. 1  
Federal Acquisition Regulations (FAR);  
Final and Interim Rules**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

**Federal Acquisition Circular 97-19; Introduction**

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

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

**SUMMARY:** This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 97-19. The Councils drafted these FAR rules using plain language in accordance with the White House memorandum, Plain Language in Government Writing, dated June 1, 1998. The Councils wrote all new and revised text using plain language. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including

the SECG, is available via the Internet at <http://www.arnet.gov/far>.

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

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 97-19 and specific FAR case numbers. Interested parties may also visit our website at <http://www.arnet.gov/far>.

Item	Subject	FAR case	Analyst
I	Contract Bundling	1997-306 (97-306)	De Stefano.
II	North American Industry Classification System (NAICS) (Interim)	2000-604	Moss.
III	Liquidated Damages	1999-003	Moss.
IV	Service Contract Act, Commercial Item Subcontracts	1998-605	Klein.
V	Small Business Competitiveness Demonstration Program	1999-012	Moss.
VI	Construction Industry Payment Protection Act of 1999	1999-302	De Stefano.
VII	Deferred Research and Development (R&D) Costs	1999-013	Nelson.
VIII	Time-and-Materials or Labor Hours	1999-606	Klein.
IX	Repeal of Reporting Requirements under Public Law 85-804	2000-006	Klein.
X	Technical Amendments		

**SUPPLEMENTARY INFORMATION:**

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Federal Acquisition Circular 97-19 amends the FAR as specified below:

**Item I—Contract Bundling (FAR Case 1997-306 (97-306))**

This final rule converts the interim rule published as Item III of FAC 97-15 to a final rule with minor changes. The rule amends the FAR to implement Sections 411-417 of the Small Business Reauthorization Act of 1997. Sections 411-417 amend Title 15 of the United States Code to define “contract bundling,” and to require agencies to avoid unnecessary bundling that precludes small business participation in the performance of Federal contracts.

This rule affects all contracting officers that may combine requirements that were previously awarded to a small business or requirements for which a small business could have competed. In accordance with the statute and Small Business Administration regulations, agencies must establish procedures for processing bundled requirements to ensure maximum small business participation in bundled acquisitions.

Specifically, agencies and contracting officers must—

- Perform market research when bundled requirements are anticipated;
- Justify bundling in acquisition strategies;
- Meet specific estimated benefit thresholds before bundling requirements;
- Assess the impact of bundling on small businesses;
- Submit solicitations containing bundled requirements to the Small Business Administration (SBA) procurement center representatives for review; and
- Include, in negotiated competitions for bundled requirements, a source selection factor for the offerors’ proposed use of small businesses as subcontractors and their past performance in meeting subcontracting goals.

**Item II—North American Industry Classification System (NAICS) (FAR Case 2000-604)**

This interim rule revises the FAR to convert size standards and other programs in the FAR that are currently based on the Standard Industrial Classification (SIC) system to the North American Industry Classification System (NAICS). NAICS is a new system that classifies establishments according

to how they conduct their economic activity. It is a significant improvement over the SIC because it more accurately identifies industries. Beginning October 1, 2000, NAICS will be used to establish the size standards for acquisitions. In addition, the interim rule converts the designated industry groups in FAR 19.1005 to NAICS and requires agencies to report contract actions using the NAICS code rather than the SIC code.

**Item III—Liquidated Damages (FAR Case 1999-003)**

This final rule clarifies coverage on liquidated damages. This rule will make it easier for contracting officers to understand the policy for administering liquidated damages. The only substantive change is at FAR 11.501(d). The authority to approve reductions in or waivers to liquidated damages was changed from the Comptroller General to the Commissioner, Financial Management Service.

**Item IV—Service Contract Act, Commercial Item Subcontracts (FAR Case 1998-605)**

This final rule deletes the Service Contract Act of 1965 from the list of laws inapplicable to subcontracts for commercial items. FAR 12.504(a) contains this list.

**Item V—Small Business Competitiveness Demonstration Program (FAR Case 1999-012)**

This final rule converts the interim rule published as Item I of FAC 97-16 to a final rule without change.

The rule amends FAR Part 19 to clarify language pertaining to the Competitiveness Demonstration Program, consistent with revisions to the Program that were required by the OFPP and SBA joint final policy directive dated May 25, 1999. The rule revises FAR Subpart 19.10 to—

1. Advise the contracting officer to consider the 8(a) Program and HUBZone Program when there is not a reasonable expectation that offers will be received from two or more emerging small businesses; and

2. Add a new section 19.1006, Exclusions, to reflect the exclusions of orders under the Federal Supply Schedule Program and contract awards to educational and nonprofit institutions or governmental entities.

**Item VI—Construction Industry Payment Protection Act of 1999 (FAR Case 1999-302)**

This final rule amends FAR 28.102-2 and the clauses at 52.228-13, 52.228-15, and 52.228-16 to implement the Construction Industry Payment Protection (CIPP) Act of 1999. The CIPP Act amends the Miller Act to provide that the amount of a payment bond must equal the total amount payable by the terms of the contract, unless the contracting officer determines that a payment bond in that amount is impractical. The final rule also provides enhanced payment protection for Government contracts not subject to the Miller Act. The contracting officer must determine the appropriate amount of payment protection in each construction contract that exceeds \$25,000, and in any other contract that requires a performance bond in accordance with FAR 28.103-2.

**Item VII—Deferred Research and Development (R&D) Costs (FAR Case 1999-013)**

This final rule amends the FAR by clarifying and simplifying the “deferred research and development costs” cost principle at FAR 31.205-48. The rule will only affect contracting officers that price contracts using cost analysis, or that are required by a contract clause to use cost principles for the determination, negotiation, or allowance of contractor costs.

**Item VIII—Time-and-Materials or Labor Hours (FAR Case 1999-606)**

This final rule clarifies the requirements regarding changes to time-and-materials and labor-hour contracts. The rule changes the clause at FAR 52.243-3, Changes—Time-and-Materials or Labor-Hours, to be consistent with Alternate II of the clause at FAR 52.243-1, Changes—Fixed-Price. Alternate II is used in service contracts and most of the work performed under time-and-materials or labor-hour contracts also involves services.

**Item IX—Repeal of Reporting Requirements under Public Law 85-804 (FAR Case 2000-006)**

This final rule amends the FAR to implement paragraph 901(r)(1) of the Federal Reports Elimination Act of 1998 (Pub. L. 105-362). Paragraph 901(r)(1) repealed section 4 of Public Law 85-804 (50 U.S.C. 1434). Section 4 required each department and agency to report annually to Congress any contract action in excess of \$50,000 issued under the authority of this law. The rule revises FAR 50.000 to update the reference to Public Law 85-804 and eliminates the reporting requirements at FAR Part 50.104. Agencies are no longer required to submit to Congress annually a report of actions taken on requests for relief under the authority of Public Law 85-804.

**Item X—Technical Amendments**

These amendments update references and make editorial changes at sections 3.104-5, 4.803 and 22.400.

Dated: July 19, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

**Federal Acquisition Circular**

Federal Acquisition Circular (FAC) 97-19 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

All Federal Acquisition Regulation (FAR) changes and other directive material contained in FAC 97-19 are effective [insert date 60 days after publication in the Federal Register], except for the following items:

Items I, V, VI, and X are effective [insert date of publication in the Federal Register].

Item IV is effective [insert date 30 days after publication in the Federal Register].

Item II is effective October 1, 2000.

Each rule is applicable to solicitations issued on or after the rule's effective date.

Dated: July 19, 2000.

Deidre A. Lee,

*Director, Defense Procurement.*

**Federal Acquisition Circular**

Dated: July 19, 2000.

David A. Drabkin,

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

**Federal Acquisition Circular**

Dated: July 18, 2000.

R. Scott Thompson,

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

[FR Doc. 00-18667 Filed 7-25-00; 8:45 am]

**BILLING CODE 6820-EP-P**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 2, 5, 7, 10, 15, and 19**

**[FAC 97-19; FAR Case 1997-306 (97-306); Item I]**

**RIN 9000-AI55**

**Federal Acquisition Regulation; Contract Bundling**

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

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Sections 411-417 of the Small Business Reauthorization Act of 1997. Sections 411-417 amend Title 15 of the United States Code to define “contract bundling,” and to require agencies to avoid unnecessary bundling that precludes small business participation in the performance of Federal contracts.

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

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501-1758. Please cite FAC 97-19, FAR case 1997-306.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published an interim rule in the Federal Register at 64 FR 72441, December 27, 1999. The interim rule is converted to a final rule, with changes, and amends FAR Parts 2, 4, 5, 7, 10, 15, and 19 to implement Sections 411-417 of the Small Business Reauthorization Act of 1997, Pub. L. 105-135, and the Small Business Administration (SBA) interim rule published in the Federal Register at 64 FR 57366, October 25, 1999.

We received comments from six respondents in response to the interim rule and considered them in drafting the final rule.

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

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, et seq., applies to this final rule. The Councils prepared a Final Regulatory Flexibility Analysis (FRFA). The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration. The FRFA is summarized as follows:

This rule amends FAR Parts 2, 4, 5, 7, 10, 15, and 19 to implement Sections 411-417 of the Small Business Reauthorization Act of 1997, Pub. L. 105-135. Sections 411-417 amend Title 15 of the United States Code to define "contract bundling," and to require agencies to avoid unnecessary bundling that precludes small business participation in the performance of Federal contracts.

The objective of the rule is to establish agency procedures for processing bundled requirements and to ensure maximum small business participation in bundled acquisitions. Agencies must—

- Perform market research when bundled requirements are anticipated;
• Justify bundling in acquisition strategies;
• Meet specific estimated benefit thresholds before bundling requirements;
• Assess the impact of bundling on small businesses;
• Submit solicitations containing bundled requirements to the Small Business Administration (SBA) procurement center representatives for review; and
• Include, in negotiated competitions for bundled requirements, a source selection factor for the offerors' proposed use of small businesses as subcontractors and their past performance in meeting subcontracting goals.

These objectives are stated in Sections 411-417 of Pub. L. 105-135 and in SBA's implementing regulations, published in the Federal Register at 64 FR 57366, October 25, 1999. We published an interim rule in the

Federal Register at 64 FR 72441, December 27, 1999. Six respondents provided public comments. There are no practical alternatives that will accomplish the objective of this rule (i.e., to ensure maximum participation of small businesses in Federal contracting as agencies combine requirements in the face of downsizing and other cost-saving measures). No viable alternatives were proposed during the public comment period.

Interested parties may obtain a copy of the FRFA from the FAR Secretariat.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR parts 2, 5, 7, 10, 15, and 19

Government procurement.

Dated: July 19, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final With Changes

Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR parts 2, 4, 5, 7, 10, 15, and 19 which was published in the Federal Register at 64 FR 72441, December 27, 1999, as a final rule with the following changes:

1. The authority citation for 48 CFR parts 2, 5, 7, 10, 15, and 19 continues to read as follows:

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

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by revising the definition "Bundled contract" to read as follows:

2.101 Definitions.

\* \* \* \* \*

Bundled contract means a contract where the requirements have been consolidated by bundling. (See the definition of bundling.)

\* \* \* \* \*

PART 5—PUBLICIZING CONTRACT ACTIONS

3. In section 5.206, revise the introductory text of paragraph (a) to read as follows:

5.206 Notices of subcontracting opportunities.

(a) The following entities may use a CBD notice to seek competition for subcontracts, to increase participation

by qualified HUBZone small business, small, small disadvantaged, and small women-owned business concerns, and to meet established subcontracting plan goals:

\* \* \* \* \*

PART 7—ACQUISITION PLANNING

4. Amend section 7.107 by revising the section heading and paragraphs (b)(2) and (h) to read as follows:

7.107 Additional requirements for acquisitions involving bundling.

\* \* \* \* \*

(b) \* \* \*

(2) Five percent of the estimated contract value (including options) or \$7.5 million, whichever is greater, if the value exceeds \$75 million.

\* \* \* \* \*

(h) The requirements of this section, except for paragraph (e), do not apply if a cost comparison analysis will be performed in accordance with OMB Circular A-76.

PART 10—MARKET RESEARCH

5. In section 10.001, revise paragraph (c) to read as follows:

10.001 Policy.

\* \* \* \* \*

(c) If an agency contemplates awarding a bundled contract, the agency—

(1) When performing market research, should consult with the local Small Business Administration procurement center representative (PCR) or, if a PCR is not assigned to the procuring activity, the SBA Office of Government Contracting Area Office serving the area in which the procuring activity is located; and

(2) At least 30 days before release of the solicitation—

(i) Must notify any affected incumbent small business concerns of the Government's intention to bundle the requirement; and

(ii) Should notify any affected incumbent small business concerns of how the concerns may contact the appropriate Small Business Administration representative.

PART 15—CONTRACTING BY NEGOTIATION

6. Amend section 15.305 by revising paragraph (a)(5) to read as follows:

15.305 Proposal evaluation.

(a) \* \* \*

(5) Small business subcontracting evaluation. Solicitations must be structured to give offers from small

business concerns the highest rating for the evaluation factors in 15.304(c)(3)(iii) and (c)(5).

\* \* \* \* \*

## PART 19—SMALL BUSINESS PROGRAMS

7. Amend section 19.101 by adding paragraph (g)(5) to read as follows:

### 19.101 Explanation of terms.

\* \* \* \* \*

(g) \* \* \*

(5) *Size determination for teaming arrangements.* For size determination purposes, apply the size standard tests in (g)(1)(i) and (ii) of this section when a teaming arrangement of two or more business concerns submits an offer, as appropriate.

\* \* \* \* \*

8. Amend section 19.202–1 by revising paragraph (e)(1)(iii) to read as follows:

### 19.202–1 Encouraging small business participation in acquisitions.

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(iii) The proposed acquisition is for a bundled requirement. (See 10.001(c)(2)(i) for mandatory 30-day notice requirement to incumbent small business concerns.)

\* \* \* \* \*

[FR Doc. 00–18668 Filed 7–25–00; 8:45 am]

BILLING CODE 6820–EP–P

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 12, 19, 23, 52, and 53

[FAC 97–19; FAR Case 2000–604; Item II]

RIN 9000–A175

### Federal Acquisition Regulation; North American Industry Classification System (NAICS)

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

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim

rule amending the Federal Acquisition Regulation (FAR) to convert size standards and other programs in the FAR based on the Standard Industrial Classification (SIC) system to the North American Industry Classification System (NAICS).

**DATES:** *Effective Date:* October 1, 2000.

*Comment Date:* Interested parties should submit comments to the FAR Secretariat at the address shown below on or before September 25, 2000 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: farcase.2000–604@gsa.gov

Please submit comments only and cite FAC 97–19, FAR case 2000–604 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. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 97–19, FAR case 2000–604.

### SUPPLEMENTARY INFORMATION:

#### A. Background

This interim rule amends the FAR to convert size standards and other programs in the FAR that are based on the Standard Industrial Classification (SIC) system to the North American Industry Classification System (NAICS).

The Small Business Administration (SBA) amended its regulations to convert small business size standards from the Standard Industrial Classification (SIC) System to the North American Industry Classification System (NAICS). These new size standards were published in the **Federal Register** at 65 FR 30836, May 15, 2000, and are effective on October 1, 2000. NAICS is a new system that classifies business concerns according to how they conduct their economic activity. SBA has determined that NAICS is a better description of industries in the U.S. economy than the SIC system for purposes of establishing size standards. This interim rule adopts the NAICS-based size standards effective October 1, 2000.

This rule conforms the FAR to the final SBA size standards and converts other programs in the FAR currently based on SIC codes to NAICS codes. These programs include the Small Business Competitiveness

Demonstration Program at Subpart 19.10, the Price Evaluation Adjustment for Small Disadvantaged Business Concerns at Subpart 19.11, the Small Disadvantaged Business Participation Program at Subpart 19.12, and the Historically Underutilized Business Zone (HUBZone) Program at Subpart 19.13.

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

#### B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the coding changes are primarily internal to the Government. External uses of the codes under the small business subcontracting program and small disadvantaged business participation programs are primarily limited to large businesses. This rule includes implementation of SBA's final rule, and SBA has certified that the impact of the SIC to NAICS change on each business will not be substantial. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 97–19, FAR case 2000–604), in correspondence.

#### C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (Pub. L. 104–13) applies; however, this interim rule does not impose new reporting and recordkeeping requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* This rule will require restructuring of contractors' record systems to collect data on small disadvantaged businesses under small business subcontracting plans and small disadvantaged business participation plans by NAICS rather than SIC. Because this merely involves use of a different industry classification system, this interim rule does not affect existing OMB clearances (9000–0006, 9000–0007, and 9000–0150).

#### 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 for 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 because the Small Business Administration (SBA) issued a final rule on May 15, 2000, providing a new size standards listing that is based on NAICS rather than SIC codes. The SBA rule requires Federal agencies to use the new size standards, beginning October 1, 2000, to determine whether a business is a small business concern. Changes to the FAR are needed to establish policy for use of the new size standards in Government acquisitions. The required implementation date of October 1, 2000, does not permit time to issue a proposed FAR rule and evaluate public comments. However, pursuant to Public Law 98-577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

**List of Subjects in 48 CFR Parts 5, 12, 19, 23, 52, and 53**

Government procurement.  
Dated: July 19, 2000.

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

Therefore, DoD, GSA, and NASA amend 48 CFR parts 5, 12, 19, 23, 52, and 53 as set forth below:

1. The authority citation for 48 CFR parts 5, 12, 19, 23, 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 5—PUBLICIZING CONTRACT ACTIONS**

2. Amend section 5.205 by revising paragraph (f)(2) to read as follows:

**5.205 Special situations.**

\* \* \* \* \*

(f) \* \* \*

(2) Specifying the North American Industry Classification System (NAICS) code;

\* \* \* \* \*

**PART 12—ACQUISITION OF COMMERCIAL ITEMS**

**12.603 [Amended]**

3. Amend section 12.603 in the first sentence of paragraph (c)(2)(iv) by removing “standard industrial classification” and adding, in its place, “NAICS”.

**PART 19—SMALL BUSINESS PROGRAMS**

4. Amend section 19.001 by revising the definition “Industry” to read as follows:

**19.001 Definitions.**

\* \* \* \* \*

*Industry*, as used in this part, means all concerns primarily engaged in similar lines of activity, as listed and described in the North American Industry Classification system (NAICS) manual (available via the Internet at <http://www.census.gov/epcd/www/naics.html>).

\* \* \* \* \*

5. Amend section 19.102 by revising paragraphs (b)(1) and (h) to read as follows:

**19.102 Size standards.**

\* \* \* \* \*

(b) \* \* \*

(1) Classifying the product or service being acquired in the industry whose definition, as found in the North American Industry Classification System (NAICS) Manual (available via the Internet at <http://www.census.gov/epcd/www/naics.html>), best describes the principal nature of the product or service being acquired;

\* \* \* \* \*

(h) the industry size standards are published by the Small Business Administration and are available via the Internet at <http://www.sba.gov/size/NAICS-cover-page.htm>.

**19.201 [Amended]**

6. Amend section 19.201—  
a. In the first sentence of paragraph (b) by removing “Major Groups as contained in the Standard Industrial

Classification (SIC) manual” and adding, in its place, “North American Industry Classification System (NAICS) Industry Subsector”;

b. In the sixth sentence of paragraph (b) by removing “SIC MAJOR Group” and adding, in its place, “NAICS Industry Subsector”;

c. In the first sentence of the introductory text of paragraph (f)(1) by removing “major industry groups” and adding, in its place, “Industry subsectors”; and

d. In paragraphs (f)(1)(ii) and (f)(1)(iii) by removing “SIC Major Group” and adding, in their place, “Industry subsector”.

**19.303 Determining North American Industry Classification System (NAICS) codes and size standards.**

7. Amend section 19.303 by revising the section heading to read as set forth above; and in paragraph (a) by removing “standard industrial classification” and adding “NAICS” in its place.

**19.501 [Amended]**

8. Amend section 19.501 in paragraph (g) by removing “product classification” and adding “NAICS code” in its place.

**19.805-1 [Amended]**

9. Amend section 19.805-1 in paragraph (a)(2) by removing “standard industrial classification (SIC)” and adding “North American Industry Classification System (NAICS)” in its place.

**19.1002 [Amended]**

10. Amend section 19.1002 in the definition “Emerging small business” by removing “standard industrial classification” and adding “North American Industry Classification System (NAICS)” in its place.

11. Amend section 19.1005 by revising paragraph (a) to read as follows:

**19.1005 Applicability.**

(a) *Designated industry groups.*

NAICS code	NAICS description
<b>Construction</b>	
<b>Subsector 233—Building, Developing, and General Contracting</b>	
23311 .....	Land Subdivision and Land Development.
23321 .....	Single Family Housing Construction.
23322 .....	Multifamily Housing Construction.
23331 .....	Manufacturing and Industrial Building Construction.
23332 .....	Commercial and Institutional Building Construction.

NAICS code	NAICS description
<b>Subsector 234—Heavy Construction</b>	
23411 .....	Highway and Street Construction.
23412 .....	Bridge and Tunnel Construction.
23491 .....	Water, Sewer, and Pipeline Construction.
23492 .....	Power and Communication Transmission Line Construction.
23493 .....	Industrial Nonbuilding Structure Construction.
23499 .....	All Other Heavy Construction.
<b>Subsector 235—Special Trade Contractors</b>	
23511 .....	Plumbing, Heating, and Air-Conditioning Contractors.
23521 .....	Painting and Wall Covering Contractors.
23531 .....	Electrical Contractors.
23541 .....	Masonry and Stone Contractors.
23542 .....	Drywall, Plastering, Acoustical, and Insulation Contractors.
23543 .....	Tile, Marble, Terrazzo, and Mosaic Contractors.
23551 .....	Carpentry Contractors.
23552 .....	Floor Laying and Other Floor Contractors.
23561 .....	Roofing, Siding, and Sheet Metal Contractors.
23571 .....	Concrete Contractors.
23581 .....	Water Well Drilling Contractors.
23591 .....	Structural Steel Erection Contractors.
23592 .....	Glass and Glazing Contractors.
23593 .....	Excavation Contractors.
23594 .....	Wrecking and Demolition Contractors.
23595 .....	Building Equipment and Other Machinery Installation Contractors.
23599 .....	All Other Special Trade Contractors.
<b>Nonnuclear Ship Repair</b>	
336611 .....	Ship Building and Repairing
<b>Architectural and Engineering Services (including surveying and mapping)</b>	
54131 .....	Architectural Services.
54133 .....	Engineering Services.
54136 .....	Geophysical Surveying and Mapping Services.
54137 .....	Surveying and Mapping (except Geophysical) Services.
<b>Refuse Systems and Related Services</b>	
562111 .....	Solid Waste Collection.
562119 .....	Other Waste Collection.
562219 .....	Other Nonhazardous Waste Treatment and Disposal.

\* \* \* \* \*

12. Revise the introductory text of section 19.1201 to read as follows:

**19.1201 General.**

This subpart addresses the evaluation of the extent of participation of small disadvantaged business (SDB) concerns in performance of contracts in the North American Industry Classification System (NAICS) Industry Subsectors as determined by the Department of Commerce (see 19.201(b)), and to the extent authorized by law. Two

mechanisms are addressed in this subpart—

\* \* \* \* \*

13. Amend section 19.1306 by revising paragraph (a)(2)(i) to read as follows:

**19.1306 HUBZone sole source awards.**

(a) \* \* \*

(2) \* \* \*

(i) \$5,000,000 for a requirement within the North American Industry

Classification System (NAICS) codes for manufacturing; or

\* \* \* \* \*

**19.303, 19.803, 19.804–2, 19.804–3, 19.804–5, 19.804–6, 19.810, 19.1007, 19.1102, 19.1202–1, 19.1202–2, 19.1202–4, 19.1203, and 19.1306 [Amended]**

14. In addition to the amendments set forth above, in the table below, for each section indicated in the left column, remove the text indicated in the middle column from wherever it appears in the section, and add the text indicated in the right column:

Section	Remove	Add
19.303(c)(1) (twice); 19.303(c)(2)(ii)(B); 19.303(c)(3)(ii); 19.303(c)(4) (twice); 19.803(b)(4)(i)(B); 19.803(b)(4)(ii); 19.804–2(a)(3); 19.804–3(d) introductory text; 19.804–3(d)(1) (twice); 19.804–3(d)(2) (twice); 19.804–5(c); 19.804–6(c); 19.810(a)(3); 19.1007(a)(1).	SIC .....	NAICS.
19.1102(a); 19.1202–1; 19.1202–2(a) and introductory text of paragraph (b); 19.1202–4(a); 19.1203.	SIC Major Groups .....	NAICS Industry Subsector.
19.1306(a)(2)(ii) .....	SIC .....	NAICS.

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

15. Amend section 23.906 by revising paragraph (a)(2)(iv) to read as follows:

**23.906 Requirements.**

- (a) \* \* \*
- (2) \* \* \*

(iv) Do not fall within Standard Industrial Classification Code (SIC) major groups 20 through 39 or their corresponding North American Industry Classification System (NAICS) sectors 31 through 33; or

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

16. Amend section 52.212-1 by revising the date and paragraph (a) of the provision to read as follows:

**52.212-1 Instructions to Offerors—Commercial Items.**

\* \* \* \* \*

**Instructions to Offerors—Commercial Items (Oct. 2000)**

(a) *North American Industry Classification System (NAICS) code and small business size standard.* The NAICS code and small business size standard for this acquisition appear in Block 10 of the solicitation cover sheet (SF 1449). However, the small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.

\* \* \* \* \*

**52.212-3 [Amended]**

17. Amend section 52.212-3 by revising the date of the clause to read “(Oct 2000)”; and in paragraph (a) of the clause, in the definition “Emerging small business,” by removing “standard industrial classification” and adding, in its place, “NAICS”.

18. Amend section 52.219-1 by revising the date and paragraph (a)(1) of the provision to read as follows:

**52.219-1 Small Business Program Representations.**

\* \* \* \* \*

**Small Business Program Representations (Oct. 2000)**

(a)(1) The North American Industry Classification System (NAICS) code for this acquisition is—[insert NAICS code].

\* \* \* \* \*

19. Amend section 52.219-9 by revising the date and paragraph (j)(2) of the clause to read as follows:

**52.219-9 Small Business Subcontracting Plan.**

\* \* \* \* \*

**Small Business Subcontracting Plan (Oct. 2000)**

\* \* \* \* \*

(j) \* \* \* \* \*  
(2) *Standard Form 295, Summary Subcontract Report.* This report encompasses all of the contracts with the awarding agency. It must be submitted semi-annually for contracts with the Department of Defense and annually for contracts with civilian agencies. If the reporting activity is covered by a commercial plan, the reporting activity must report annually all subcontract awards under that plan. All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a breakout, in the Contractor’s format, of subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

\* \* \* \* \*

**52.219-19 [Amended]**

20. Amend section 52.219-19 by revising the date of the provision to read “(Oct. 2000)” and in paragraph (a) by removing “standard industrial classification” and adding, in its place, “North American Industry Classification System (NAICS)”.

**52.219-24 [Amended]**

21. Amend section 52.219-24 by—  
a. Revising the date of the provision to read “(Oct. 2000)”; and  
b. In paragraph (b) of the provision by removing “Standard Industrial Classification (SIC) Major Groups” and adding, in its place, “North American Industry Classification System (NAICS) Industry Subsectors”.

**52.219-26 [Amended]**

22. Amend section 52.219-26 by—  
a. Revising the date of the clause to read “(Oct. 2000);”  
b. In paragraph (a) of the clause by removing “Standard Industrial Classification (SIC) Major Groups” and adding, in its place, “North American Industry Classification System (NAICS) Industry Subsectors”; and

c. In paragraph (b) of the clause by removing “SIC Major Groups” and adding, in its place, “NAICS Industry Subsectors.”

23. Amend section 52.223-13 by revising the date of the provision and paragraph (b)(2)(iv) to read as follows:

**52.223-13 Certification of Toxic Chemical Release Reporting.**

\* \* \* \* \*

**Certification of Toxic Chemical Release Reporting (Oct. 2000)**

\* \* \* \* \*

- (b) \* \* \*
- (2) \* \* \*

(iv) The facility does not fall within Standard Industrial Classification Code (SIC) major groups 20 through 39 or their corresponding North American Industry Classification System (NAICS) sectors 31 through 33; or

\* \* \* \* \*

24. Amend section 52.223-14 by revising the date of the clause and paragraph (b)(4) to read as follows:

**52.223-14 Toxic Chemical Release Reporting.**

\* \* \* \* \*

**Toxic Chemical Release Reporting (Oct. 2000)**

- (b) \* \* \*

(4) The facility does not fall within Standard Industrial Classification Code (SIC) major groups 20 through 39 or their corresponding North American Industry Classification System (NAICS) sectors 31 through 33; or

\* \* \* \* \*

**PART 53—FORMS**

**53.204-2 [Amended]**

25. Amend section 53.204-2—  
a. In paragraph (a) by removing “(Rev. 10/97)” and adding in its place “(Rev 10/00)”; and  
b. In paragraph (b) by removing “(Rev. 5/96)” and adding in its place “(Rev 10/00)”.

**53.219 [Amended]**

26. Amend section 53.219 in paragraph (c) by removing “(1/99)” and adding in its place “(10/00)”.

27. Revise section 53.301-279 to read as follows:

BILLING CODE 6820-EP-P



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

FEDERAL PROCUREMENT DATA SYSTEM (FPDS) INDIVIDUAL CONTRACT ACTION REPORT (ICAR)			INTERAGENCY REPORT CONTROL NUMBER 0206-GSA-QU	
1. REPORTING AGENCY CODE (FIPS 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.)	
		A. Original B. Deleting C. Correcting		
9. KIND OF CONTRACT ACTION (1 Pos.)			10. DOLLARS OBLIGATED OR DEOBLIGATED THIS ACTION (Right justified; round to nearest 1000; truncate; use lead zeros, e.g., \$49,450 is reported as 0000049) (8 Pos.)	
A. Initial Letter Contract	B. Definitive Contract Superseding Letter Contract	C. New Definitive Contract	D. Purchase Orders/BPA Calls Using Simplified Acquisition Procedures	E. Order Under Single Award Indefinite Delivery Contract
F. Order Under BOA	G. Order/Modification Under Federal Schedule Contract	H. Modification	J. Termination for Default	K. Termination for Convenience
L. Order Under Multiple Award Contract	Z. Initial Load of Federal Schedule Contract			
11. TYPE OF OBLIGATION (1 Pos.)	12. PRINCIPAL PRODUCT OR SERVICE CODE (FPDS Product Service Code Manual) (4 Pos.)	13. PRINCIPAL NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS) CODE (6 Pos.)	14. COMMERCIAL ITEM ACQUISITION PROCEDURES (1 Pos.)	
A. Obligated B. Deobligated			Y - Yes N - No	
15. CONTRACTOR NAME (30 Pos.)				

16. CONTRACTOR IDENTIFICATION NUMBER (DUNS) (9 Pos.)	17a. PRINCIPAL PLACE OF PERFORMANCE (State and City Code FIPS 55)	17b. FOREIGN COUNTRY (FIPS 10) (2 Pos.)	18. CONTRACT FOR FOREIGN GOVT. OR INTERNATIONAL ORGANIZATION (1 Pos.)	
	STATE (2 Pos.)	CITY (5 Pos.)	Y - Yes N - No	
19. TARIFF OR REGULATED (Pre-CICA) (1 Pos.)	20. PERFORMANCE-BASED SERVICE CONTRACTING (PBSC) (1 Pos.)	21. BUNDLING OF CONTRACT REQUIREMENTS (1 Pos.)	22. COUNTRY OF MANUFACTURE (FIPS 10) (2 Pos.)	
Y - Yes N - No	Y - Yes N - No	Y - Yes N - No		
23. SYNOPSIS OF THIS PROCUREMENT PRIOR TO AWARD (1 Pos.)		24. TYPE OF CONTRACT OR MODIFICATION (1 Pos.)		
A. Synopsized Prior to Award	B. Not Synopsized Due to Urgency	C. Not Synopsized for Other Reasons	A. Fixed-Price Redetermination	S. Cost - No Fee
			J. Fixed-Price	T. Cost Sharing
			K. Fixed-Price with Economic Price Adjustment	U. Cost-Plus-Fixed-Fee
			L. Fixed-Price Incentive	V. Cost-Plus-Incentive
			R. Cost-Plus-Award-Fee	Y. Time and Materials
				Z. Labor Hour
25. CICA APPLICABILITY (1 Pos.)		26. SOLICITATION PROCEDURES (Complete only if Item 25 = A) (1 Pos.)		
A. CICA Applicable	D. Pre-CICA	A. Full and Open Competition - Sealed Bid	F. Multiple Award Schedule	G. Alternative Sources
B. Purchase Orders/BPA Calls Using Simplified Acquisition Procedures	E. Commercial Item Acquisition Procedures Under Test Program	B. Full and Open Competition - Competitive Proposal	H. Reserved	J. Reserved
C. Subject to Statute Other Than CICA		C. Full and Open Competition - Combination	K. Set-Aside	L. Other Than Full and Open Competition
		D. Architect - Engineer Procedures		
		E. Basic Research		
27. AUTHORITY FOR OTHER THAN FULL AND OPEN COMPETITION (Complete only if item 26 = L) (1 Pos.)		28. NUMBER OF OFFERS RECEIVED (Complete only if item 25 = A or E) (1 Pos.)	29. EXTENT COMPLETED (1 Pos.)	
A. Unique Source	J. Mobilization, Essential R&D Capability or Expert Services	A. 1	A. Competed Action	
B. Follow-on Contract	K. Reserved	B. 2-5	B. Not Available for Competition	
C. Unsolicited Research Proposal	L. International Agreement	C. 6-10	C. Follow-on to Competed Action	
D. Patent/Data Rights	M. Authorized by Statute	D. 11-15	D. Not Completed	
E. Utilities	N. Authorized for Resale	E. 16-20		
F. Standardization	P. National Security	F. 21-50		
G. Only One Source - Other	Q. Public Interest	G. Over 50		
H. Urgency				

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STANDARD FORM 279 (REV. 10-2000)  
Prescribed by GSA-FAR (48 CFR) 53.204-2(e)

<b>30. TYPE OF CONTRACTOR (1 Pos.)</b>		<b>31. WOMEN-OWNED BUSINESS (1 Pos.)</b>		<b>32. HUBZONE SMALL BUSINESS CONCERN (1 Pos.)</b>	
A. Small Disadvantaged Business B. Other Small Business C. Large Business D. JWOD Nonprofit Agency E. Educational Institution F. Hospital G. Nonprofit Organization H. Reserved		J. Reserved K. State/Local Government L. Foreign Contractor M. Domestic Contractor Performing Outside US U. Historically Black College/University or Minority Institution (HBCU/MI)		Y - Yes N - No	
<b>33A. HUBZONE PROGRAM (1 Pos.)</b>		<b>33B. SMALL DISADVANTAGED BUSINESS PROGRAMS (1 Pos.)</b>		<b>33C. OTHER PREFERENCE PROGRAMS (1 Pos.)</b>	
A. HUBZone Sole Source B. HUBZone Set-Aside C. HUBZone Price Evaluation Preference D. Combined HUBZone Preference/Small Disadvantaged Business Price Adjustment E. Not Applicable		A. 8(a) Contract Award B. 8(a) with HUBZone Priority C. SDB Set-Aside D. SDB Price Evaluation Adjustment E. SDB Participation Program F. Not Applicable		A. Directed to JWOD Nonprofit Agency B. Small Business Set-Aside C. Buy Indian/Self Determination D. No Preference/Not Listed E. Very Small Business Set-Aside	
<b>33D. HUBZONE PRICE EVALUATION PREFERENCE PERCENT DIFFERENCE (2 Pos.)</b>		<b>33E. SDB PRICE EVALUATION ADJUSTMENT PERCENT DIFFERENCE (2 Pos.)</b>		<b>34. SUBCONTRACTING PLAN (Small, Small Disadvantaged, and Women-Owned Small Business) (1 Pos.)</b>	
				A. Required B. Not Required	
<b>35. SUBJECT TO LABOR STATUTES (1 Pos.)</b>				<b>36. ESTIMATED CONTRACT COMPLETION DATE (4-digit year and 2-digit month, e.g., 200012) (6 Pos.)</b>	
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 Acts	
<b>38. COMMON PARENT'S NAME (30 Pos.)</b>				<b>39. COMMON PARENT'S TIN (9 Pos.)</b>	
<b>40. VETERAN-OWNED SMALL BUSINESS (VOSB) (1 Pos.)</b>			<b>41. MULTIPLE AWARD CONTRACT FAIR OPPORTUNITY (1 Pos.)</b>		
A. Service Disabled Veteran Owned Small Business B. Other Veteran Owned Small Business C. Not Veteran Owned Small Business			A. Fair Opportunity Process B. Urgency C. One/Unique Source D. Follow on Contract E. Minimum Guarantee F. Not Applicable		
<b>SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM (Applicable to AGR, DOD, DOE, DOI, DOT, EPA, GSA, HHS, NASA, and VA)</b>					
<b>42. DEMONSTRATION PROGRAM (1 Pos.)</b>		<b>43. EMERGING SMALL BUSINESS (1 Pos.)</b>		<b>44. EMERGING SMALL BUSINESS RESERVE AWARD (1 Pos.)</b>	
Y - Yes N - No		Y - Yes N - No		Y - Yes N - No	
<b>45. SIZE OF SMALL BUSINESS (1 Pos.)</b>					
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 P. \$2,000,001 - \$3,500,000 R. \$3,500,001 - \$5,000,000 S. \$5,000,001 - \$10,000,000 T. \$10,000,001 - \$17,000,000 Z. Over \$17,000,000		
<b>46. RESERVED FOR FPDS (10 Pos.)</b>					
<b>47. OPTIONAL REPORTED DATA ELEMENTS (100 Pos.)</b>				<b>48. FOR AGENCY INTERNAL USE</b>	
<b>49. CONTRACTING OFFICER OR REPRESENTATIVE</b>					
a. TYPED NAME		b. SIGNATURE		c. TELEPHONE	
				AREA CODE    NUMBER	
				d. DATE SUBMITTED	

STANDARD FORM 279 (10-2000) BACK

28. Revise section 53.301-281 to read as follows:

53.301-281 Federal Procurement Data System (FPDS) Summary Contract Action Report (\$25,000 or Less).

**FEDERAL PROCUREMENT DATA SYSTEM (FPDS)  
SUMMARY CONTRACT ACTION REPORT (\$25,000 OR LESS)  
(Dollars in thousands, rounded to the nearest thousand)**

**INTERAGENCY REPORT  
CONTROL NUMBER  
0208-GSA-QU**

<b>CIVILIAN AGENCIES</b>		<b>DEPARTMENT OF DEFENSE</b>	
Net dollars and number of actions where anticipated value of instrument is \$25,000 or less.		Net dollars and number of actions where amount obligated on action is \$25,000 or less.	
<b>a. REPORT PERIOD</b>	<b>b. REPORT TYPE (X one)</b>	<b>c. REPORTING AGENCY CODE (AFPS 95)</b>	
FY <input type="text"/>	QTR <input type="text"/>		
		<input type="checkbox"/> ORIGINAL <input type="checkbox"/> REVISION	
<b>d. REPORTING AGENCY NAME</b>		<b>e. CONTRACTING OFFICE CODE</b>	<b>f. CONTRACTING OFFICE NAME</b>

**PART I - PRIME CONTRACT ACTIONS OF \$25,000 OR LESS**

	PROCUREMENT METHOD	Number of Actions (a)	NET DOLLAR AMOUNTS (in thousands)				Total Dollars (f)
			Small Business Concerns (b)	Large Business Concerns (c)	Domestic Outside US/ Foreign (d)	Other Entities (e)	
<b>NEW AWARDS AND MODIFICATIONS</b>	1. Tariff or Regulated Acquisitions						
	2. Contract for Foreign Government or International Organization						
	3. Purchases Using Simplified Acquisition Procedures						
	4. Orders - GSA Federal Schedules						
	5. Orders - Other Federal Schedules						
	6. All Other Orders						
	7. Other Procurement Methods						
	8. <b>TOTAL NEW AWARDS AND MODIFICATIONS</b>						
<b>COMPETITION</b>	9. Competed						
	10. Not Competed						
	11. Not Available for Competition						
<b>MODIFICATIONS</b>	12. <b>TOTAL MODIFICATIONS (Excluding Line 3)</b>						

**PART II - SELECTED SOCIOECONOMIC STATISTICS (Includes both new awards and modifications)**

CATEGORY	Number of Actions (a)	Total Net Dollars (b)	CATEGORY	Number of Actions (a)	Total Net Dollars (b)
13. Small Business Set-Aside			20. HUBZone Small Business Concerns		
14. Small Business Concerns			21. Women-Owned Small Business Concerns		
15. 8(a) Contract Awards			22. JWOD Nonprofit Agency		
16. Small Disadvantaged Business Set-Aside			23. Service Disabled Veteran Owned Small Business		
17. Small Disadvantaged Business Concerns			24. Veteran Owned Small Business (VOSB)		
18. HBCU/MI					
19. HUBZone Program					

**g. PERSON SUBMITTING REPORT**

NAME	SIGNATURE	TELEPHONE		DATE SUBMITTED
		AREA CODE	NUMBER	

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**STANDARD FORM 281 (REV. 10-2000)**  
Prescribed by GSA-FAR (48 CFR) 53.204-2(b)

29. Revise section 53.302-312 to read as follows:



**GENERAL INFORMATION INSTRUCTIONS**

1. This form collects data on the participation of small disadvantaged business concerns in contracts that contain the clause at FAR 52.219-25, Small Disadvantaged Business Participation Program - Disadvantaged Status and Reporting.
2. Submit this report to the contracting officer. If your organization is required to report subcontracting data under an individual subcontracting plan, you may attach this report to the final SF 294, Subcontracting Report for Individual Contracts, submitted under the contract.
3. Report in whole dollars.

**SPECIFIC INSTRUCTIONS**

**Block 3.** Report the total dollar amount of participation of small disadvantaged business concerns under the contract cited in Block 2. Participation may be through subcontracting, teaming arrangement, joint ventures, or as the prime contractor (provided the prime contractor waived its right to a price evaluation adjustment).

**Block 4.** Report the participation, if any, by small disadvantaged business concerns in this contract at the prime contract level. All prime contract dollars must be reported under the North American Industrial Classification System (NAICS) assigned to the prime contract. Report the dollar amount and percentage of the total contract value.

**Block 5.** Report, by NAICS Industry Subsector, as determined by the Department of Commerce, the participation by small disadvantaged business concerns in this contract at the subcontract level. Report the dollar amount and percentage of the total contract value.

**Block 6.** Provide the name, telephone number, and e-mail address of the individual who can answer questions related to this report.

OPTIONAL FORM 312 (REV. 10-2000) BACK

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Parts 11, 22, 36, 49, and 52**

[FAC 97-19; FAR Case 1999-003; Item III]

RIN 9000-A163

**Federal Acquisition Regulation;  
Liquidated Damages**

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

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to rewrite guidance on liquidated damages in plain language.

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

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501-4764. Please cite FAC 97-19, FAR case 1999-003.

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

This final rule clarifies coverage on liquidated damages. This rule will make it easier for contracting officers to understand the policy for administering liquidated damages. The only substantive change is at FAR 11.501(d). The authority to approve reductions in or waivers to liquidated damages was changed from the Comptroller General to the Commissioner, Financial Management Service.

Four respondents submitted public comments to the proposed rule. The Councils considered all comments in drafting the final rule.

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

**B. Regulatory Flexibility Act**

The Department of Defense, the General Services Administration, and

the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule does not change existing practices. We did not receive any comments regarding this determination as a result of publication of the proposed rule in the **Federal Register** at 65 FR 2272, January 13, 2000.

**C. Paperwork Reduction Act**

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

**List of Subjects in 48 CFR Parts 11, 22, 36, 49, and 52**

Government procurement.

Dated: July 19, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 11, 22, 36, 49, and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 11, 22, 36, 49, and 52 continues to read as follows:

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

**PART 11—DESCRIBING AGENCY  
NEEDS**

2. Revise Subpart 11.5 to read as follows:

**Subpart 11.5—Liquidated Damages**

Sec.

- 11.500 Scope.
- 11.501 Policy.
- 11.502 Procedures.
- 11.503 Contract clauses.

**11.500 Scope.**

This subpart prescribes policies and procedures for using liquidated damages clauses in solicitations and contracts for supplies, services, research and development, and construction. This subpart does not apply to liquidated damages for subcontracting plans (see 19.705-7) or liquidated damages related to the Contract Work Hours and Safety Standards Act (see subpart 22.3).

**11.501 Policy.**

(a) The contracting officer must consider the potential impact on pricing, competition, and contract administration before using a liquidated

damages clause. Use liquidated damages clauses only when—

(1) The time of delivery or timely performance is so important that the Government may reasonably expect to suffer damage if the delivery or performance is delinquent; and

(2) The extent or amount of such damage would be difficult or impossible to estimate accurately or prove.

(b) Liquidated damages are not punitive and are not negative performance incentives (see 16.402-2). Liquidated damages are used to compensate the Government for probable damages. Therefore, the liquidated damages rate must be a reasonable forecast of just compensation for the harm that is caused by late delivery or untimely performance of the particular contract. Use a maximum amount or a maximum period for assessing liquidated damages if these limits reflect the maximum probable damage to the Government. Also, the contracting officer may use more than one liquidated damages rate when the contracting officer expects the probable damage to the Government to change over the contract period of performance.

(c) The contracting officer must take all reasonable steps to mitigate liquidated damages. If the contract contains a liquidated damages clause and the contracting officer is considering terminating the contract for default, the contracting officer should seek expeditiously to obtain performance by the contractor or terminate the contract and repurchase (see subpart 49.4). Prompt contracting officer action will prevent excessive loss to defaulting contractors and protect the interests of the Government.

(d) The head of the agency may reduce or waive the amount of liquidated damages assessed under a contract, if the Commissioner, Financial Management Service, or designee approves (see Treasury Order 145-10).

**11.502 Procedures.**

(a) Include the applicable liquidated damages clause and liquidated damages rates in solicitations when the contract will contain liquidated damages provisions.

(b) Construction contracts with liquidated damages provisions must describe the rate(s) of liquidated damages assessed per day of delay. The rate(s) should include the estimated daily cost of Government inspection and superintendence. The rate(s) should also include an amount for other expected expenses associated with delayed completion such as—

- (1) Renting substitute property; or
- (2) Paying additional allowance for living quarters.

#### 11.503 Contract clauses.

(a) Use the clause at 52.211-11, Liquidated Damages—Supplies, Services, or Research and Development, in fixed-price solicitations and contracts for supplies, services, or research and development when the contracting officer determines that liquidated damages are appropriate (see 11.501(a)).

(b) Use the clause at 52.211-12, Liquidated Damages—Construction, in solicitations and contracts for construction, other than cost-plus-fixed-fee, when the contracting officer determines that liquidated damages are appropriate (see 11.501(a)). If the contract specifies more than one completion date for separate parts or stages of the work, revise paragraph (a) of the clause to state the amount of liquidated damages for delay of each separate part or stage of the work.

(c) Use the clause at 52.211-13, Time Extensions, in solicitations and contracts for construction that use the clause at 52.211-12, Liquidated Damages—Construction, when that clause has been revised as provided in paragraph (b) of this section.

### PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

3. Revise 22.302 to read as follows:

#### 22.302 Liquidated damages and overtime pay.

(a) When an overtime computation discloses underpayments, the responsible contractor or subcontractor must pay the affected employee any unpaid wages and pay liquidated damages to the Government. The contracting officer must assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Act.

(b) If the contractor or subcontractor fails or refuses to comply with overtime pay requirements of the Act and the funds withheld by Federal agencies for labor standards violations do not cover the unpaid wages due laborers and mechanics and the liquidated damages due the Government, make payments in the following order—

(1) Pay laborers and mechanics the wages they are owed (or prorate available funds if they do not cover the entire amount owed); and

(2) Pay liquidated damages.

(c) If the head of an agency finds that the administratively determined liquidated damages due under paragraph (a) of this section are incorrect, or that the contractor or subcontractor inadvertently violated the Act despite the exercise of due care, the agency head may—

(1) Reduce the amount of liquidated damages assessed for liquidated damages of \$500 or less;

(2) Release the contractor or subcontractor from the liability for liquidated damages of \$500 or less; or

(3) Recommend that the Secretary of Labor reduce or waive liquidated damages over \$500.

(d) After the contracting officer determines the liquidated damages and the contractor makes appropriate payments, disburse any remaining assessments in accordance with agency procedures.

4. Sections 22.406-8 and 22.406-9 are revised to read as follows:

#### 22.406-8 Investigations.

Conduct labor standards investigations when available information indicates such action is warranted. In addition, the Department of Labor may conduct an investigation on its own initiative or may request a contracting agency to do so.

(a) *Contracting agency responsibilities.* Conduct an investigation when a compliance check indicates that substantial or willful violations may have occurred or violations have not been corrected.

(1) The investigation must—

(i) Include all aspects of the contractor's compliance with contract labor standards requirements;

(ii) Not be limited to specific areas raised in a complaint or uncovered during compliance checks; and

(iii) Use personnel familiar with labor laws and their application to contracts.

(2) Do not disclose contractor employees' oral or written statements taken during an investigation or the employee's identity to anyone other than an authorized Government official without that employee's prior signed consent.

(3) Send a written request to the Administrator, Wage and Hour Division, to obtain—

(i) Investigation and enforcement instructions; or

(ii) Available pertinent Department of Labor files.

(4) Obtain permission from the Department of Labor before disclosing material obtained from Labor Department files, other than computations of back wages and liquidated damages and summaries of

back wages due, to anyone other than Government contract administrators.

(b) *Investigation report.* The contracting officer must review the investigation report on receipt and make preliminary findings. The contracting officer normally must not base adverse findings solely on employee statements that the employee does not wish to have disclosed. However, if the investigation establishes a pattern of possible violations that are based on employees' statements that are not authorized for disclosure, the pattern itself may support a finding of noncompliance.

(c) *Contractor notification.* After completing the review, the contracting officer must—

(1) Provide the contractor any written preliminary findings and proposed corrective actions, and notice that the contractor has the right to request that the basis for the findings be made available and to submit written rebuttal information.

(2) Upon request, provide the contractor with rationale for the findings. However, under no circumstances will the contracting officer permit the contractor to examine the investigation report. Also, the contracting officer must not disclose the identity of any employee who filed a complaint or who was interviewed, without the prior consent of the employee.

(3)(i) The contractor may rebut the findings in writing within 60 days after it receives a copy of the preliminary findings. The rebuttal becomes part of the official investigation record. If the contractor submits a rebuttal, evaluate the preliminary findings and notify the contractor of the final findings.

(ii) If the contracting officer does not receive a timely rebuttal, the contracting officer must consider the preliminary findings final.

(4) If appropriate, request the contractor to make restitution for underpaid wages and assess liquidated damages. If the request includes liquidated damages, the request must state that the contractor has 60 days to request relief from such assessment.

(d) *Contracting officer's report.* After taking the actions prescribed in paragraphs (b) and (c) of this subsection—

(1) The contracting officer must prepare and forward a report of any violations, including findings and supporting evidence, to the agency head. Standard Form 1446, Labor Standards Investigation Summary Sheet, is the first page of the report; and

(2) The agency head must process the report as follows:

(j) The contracting officer must send a detailed enforcement report to the Administrator, Wage and Hour Division, within 60 days after completion of the investigation, if—

(A) A contractor or subcontractor underpaid by \$1,000 or more;

(B) The contracting officer believes that the violations are aggravated or willful (or there is reason to believe that the contractor has disregarded its obligations to employees and subcontractors under the Davis-Bacon Act);

(C) The contractor or subcontractor has not made restitution; or

(D) Future compliance has not been assured.

(ii) If the Department of Labor expressly requested the investigation and none of the conditions in paragraph (d)(2)(i) of this subsection exist, submit a summary report to the Administrator, Wage and Hour Division. The report must include—

(A) A summary of any violations;

(B) The amount of restitution paid;

(C) The number of workers who received restitution;

(D) The amount of liquidated damages assessed under the Contract Work Hours and Safety Standards Act;

(E) Corrective measures taken; and

(F) Any information that may be necessary to review any recommendations for an appropriate adjustment in liquidated damages.

(iii) If none of the conditions in paragraphs (d)(2)(i) or (ii) of this subsection are present, close the case and retain the report in the appropriate contract file.

(iv) If substantial evidence is found that violations are willful and in violation of a criminal statute, (generally 18 U.S.C. 874 or 1001), forward the report (supplemented if necessary) to the Attorney General of the United States for prosecution if the facts warrant. Notify the Administrator, Wage and Hour Division, when the report is forwarded for the Attorney General's consideration.

(e) *Department of Labor investigations.* The Department of Labor will furnish the contracting officer an enforcement report detailing violations found and any corrective action taken by the contractor, in investigations that disclose—

(1) Underpayments totaling \$1,000 or more;

(2) Aggravated or willful violations (or, when the contracting officer believes that the contractor has disregarded its obligations to employees and subcontractors under the Davis-Bacon Act); or

(3) Potential assessment of liquidated damages under the Contract Work Hours and Safety Standards Act.

(f) *Other investigations.* The Department of Labor will provide a letter summarizing the findings of the investigation to the contracting officer for all investigations that are not described in paragraph (e) of this subsection.

#### **22.406-9 Withholding from or suspension of contract payments.**

(a) *Withholding from contract payments.* If the contracting officer believes a violation exists (see 22.406-8), or upon request of the Department of Labor, the contracting officer must withhold from payments due the contractor an amount equal to the estimated wage underpayment and estimated liquidated damages due the United States under the Contract Work Hours and Safety Standards Act. (See 22.302.)

(1) If the contracting officer believes a violation exists or upon request of the Department of Labor, the contracting officer must withhold funds from any current Federal contract or Federally assisted contract with the same prime contractor that is subject to either Davis-Bacon Act or Contract Work Hours and Safety Standards Act requirements.

(2) If a subsequent investigation confirms violations, the contracting officer must adjust the withholding as necessary. However, if the Department of Labor requested the withholding, the contracting officer must not reduce or release the withholding without written approval of the Department of Labor.

(3) Use withheld funds as provided in paragraph (c) of this subsection to satisfy assessed liquidated damages, and unless the contractor makes restitution, validated wage underpayments.

(b) *Suspension of contract payments.* If a contractor or subcontractor fails or refuses to comply with the labor standards clauses of the Davis-Bacon Act and related statutes, the agency, upon its own action or upon the written request of the Department of Labor, must suspend any further payment, advance, or guarantee of funds until the violations cease or until the agency has withheld sufficient funds to compensate employees for back wages, and to cover any liquidated damages due.

(c) *Disposition of contract payments withheld or suspended.* (1) *Forwarding wage underpayments to the Secretary of the Treasury.* Upon final administrative determination, if the contractor or subcontractor has not made restitution, the contracting officer must forward to the appropriate disbursing office Standard Form (SF) 1093, Schedule of

Withholdings Under the Davis-Bacon Act (40 U.S.C. 276(a)) and/or Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333). Attach to the SF 1093 a list of the name, social security number, and last known address of each affected employee; the amount due each employee; employee claims if feasible; and a brief rationale for restitution. Also, the contracting officer must indicate if restitution was not made because the employee could not be located. The Government may assist underpaid employees in preparation of their claims. The disbursing office must submit the SF 1093 with attached additional data and the funds withheld (by check) to the Secretary of the Treasury.

(2) *Returning of withheld funds to contractor.* When funds withheld exceed the amount required to satisfy validated wage underpayments and assessed liquidated damages, return the funds to the contractor.

(3) *Limitation on forwarding or returning funds.* If the Department of Labor requested the withholding or if the findings are disputed (see 22.406-10(e)), the contracting officer must not forward the funds to the Secretary of the Treasury, or return them to the contractor without approval by the Department of Labor.

(4) *Liquidated damages.* Upon final administrative determination, the contracting officer must dispose of funds withheld or collected for liquidated damages in accordance with agency procedures.

### **PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**

#### **36.206 [Amended]**

5. Amend section 36.206 by removing “shall” and adding “must” in its place.

### **PART 49—TERMINATION OF CONTRACTS**

6. In section 49.402-7, revise paragraph (a); and amend paragraph (b) by removing “shall” and inserting “must” in its place. The revised text reads as follows:

#### **49.402-7 Other damages.**

(a) If the contracting officer terminates a contract for default or follows a course of action instead of termination for default (see 49.402-4), the contracting officer promptly must assess and demand any liquidated damages to which the Government is entitled under the contract. Under the contract clause at 52.211-11, these damages are in addition to any excess repurchase costs.

\* \* \* \* \*



7. Revise section 49.404 to read as follows:

**49.404 Surety-takeover agreements.**

(a) The procedures in this section apply primarily, but not solely, to fixed-price construction contracts terminated for default.

(b) Since the surety is liable for damages resulting from the contractor's default, the surety has certain rights and interests in the completion of the contract work and application of any undisbursed funds. Therefore, the contracting officer must consider carefully the surety's proposals for completing the contract. The contracting officer must take action on the basis of the Government's interest, including the possible effect upon the Government's rights against the surety.

(c) The contracting officer should permit surety offers to complete the contract, unless the contracting officer believes that the persons or firms proposed by the surety to complete the work are not competent and qualified or the proposal is not in the best interest of the Government.

(d) There may be conflicting demands for the defaulting contractor's assets, including unpaid prior earnings (retained percentages and unpaid progress estimates). Therefore, the surety may include a "takeover" agreement in its proposal, fixing the surety's rights to payment from those funds. The contracting officer may (but not before the effective date of termination) enter into a written agreement with the surety. The contracting officer should consider using a tripartite agreement among the Government, the surety, and the defaulting contractor to resolve the defaulting contractor's residual rights, including assertions to unpaid prior earnings.

(e) Any takeover agreement must require the surety to complete the contract and the Government to pay the surety's costs and expenses up to the balance of the contract price unpaid at the time of default, subject to the following conditions:

(1) Any unpaid earnings of the defaulting contractor, including retained percentages and progress estimates for work accomplished before termination, must be subject to debts due the Government by the contractor, except to the extent that the unpaid earnings may be used to pay the completing surety its actual costs and expenses incurred in the completion of the work, but not including its payments and obligations under the payment bond given in connection with the contract.

(2) The surety is bound by contract terms governing liquidated damages for delays in completion of the work, unless the delays are excusable under the contract.

(3) If the contract proceeds have been assigned to a financing institution, the surety must not be paid from unpaid earnings, unless the assignee provides written consent.

(4) The contracting officer must not pay the surety more than the amount it expended completing the work and discharging its liabilities under the defaulting contractor's payment bond. Payments to the surety to reimburse it for discharging its liabilities under the payment bond of the defaulting contractor must be only on authority of—

(i) Mutual agreement among the Government, the defaulting contractor, and the surety;

(ii) Determination of the Comptroller General as to payee and amount; or

(iii) Order of a court of competent jurisdiction.

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

8. Revise sections 52.211–11 through 52.211–13 to read as follows:

**52.211–11 Liquidated Damages—Supplies, Services, or Research and Development.**

As prescribed in 11.503(a), insert the following clause in solicitations and contracts:

**Liquidated Damages—Supplies, Services, or Research and Development (Sept. 2000)**

(a) If the Contractor fails to deliver the supplies or perform the services within the time specified in this contract, the Contractor shall, in place of actual damages, pay to the Government liquidated damages of \$□□ per calendar day of delay [*Contracting Officer insert amount*].

(b) If the Government terminates this contract in whole or in part under the Default—Fixed-Price Supply and Service clause, the Contractor is liable for liquidated damages accruing until the Government reasonably obtains delivery or performance of similar supplies or services. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.

(c) The Contractor will not be charged with liquidated damages when the delay in delivery or performance is beyond the control and without the fault or negligence of the Contractor as defined in the Default—Fixed-Price Supply and Service clause in this contract.

(End of clause)

**52.211–12 Liquidated Damages—Construction.**

As prescribed in 11.503(b), insert the following clause in solicitations and contracts:

**Liquidated Damages—Construction (Sept 2000)**

(a) If the Contractor fails to complete the work within the time specified in the contract, the Contractor shall pay liquidated damages to the Government in the amount of □□ [*Contracting Officer insert amount*] for each calendar day of delay until the work is completed or accepted.

(b) If the Government terminates the Contractor's right to proceed, liquidated damages will continue to accrue until the work is completed. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.

(End of clause)

**52.211–13 Time Extensions.**

As prescribed in 11.503(c), insert the following clause:

**Time Extensions (Sept 2000)**

Time extensions for contract changes will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of construction. The change order granting the time extension may provide that the contract completion date will be extended only for those specific elements related to the changed work and that the remaining contract completion dates for all other portions of the work will not be altered. The change order also may provide an equitable readjustment of liquidated damages under the new completion schedule.

(End of clause)

9. Revise section 52.222–4 to read as follows:

**52.222–4 Contract Work Hours and Safety Standards Act—Overtime Compensation.**

As prescribed in 22.305, insert the following clause:

**Contract Work Hours and Safety Standards Act—Overtime Compensation (Sept 2000)**

(a) *Overtime requirements.* No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.

(b) *Violation; liability for unpaid wages; liquidated damages.* The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards Act.

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy

any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or Federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards Act.

(d) *Payrolls and basic records.* (1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

(e) *Subcontracts.* The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts exceeding \$100,000 and require subcontractors to include these provisions in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

(End of clause)

[FR Doc. 00-18670 Filed 7-25-00; 8:45 am]

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 12 and 52

[FAC 97-19; FAR Case 1998-605; Item IV]

RIN 9000-A136

#### Federal Acquisition Regulation; Service Contract Act, Commercial Item Subcontracts

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

**ACTION:** Final rule.

**SUMMARY:** The Federal Acquisition Streamlining Act of 1994 (FASA) required the Federal Acquisition Regulatory Council (FAR Council) to include a list of laws that are inapplicable to subcontracts for the procurement of commercial items in the Federal Acquisition Regulation (FAR). The list was implemented and included the Service Contract Act (SCA). The FAR Council has reconsidered this issue and is removing the SCA from the list of laws inapplicable to subcontracts for commercial items.

**EFFECTIVE DATE:** August 25, 2000.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein at (202) 501-3775. Please cite FAC 97-19, FAR case 1998-605.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Section 8003(b) of FASA required the FAR Council to include in the FAR a list of existing provisions of law that are inapplicable to subcontracts for commercial items. FASA defined those laws to be any provision of law, as determined by the FAR Council, that sets forth policies, provisions, requirements, or restrictions for the procurement of property or services, except those that provided for criminal or civil penalties or were specifically by law made applicable to contracts for the procurement of commercial items. In implementing this section of FASA, the FAR Council included the SCA on the list of laws inapplicable to commercial subcontracts in the final FAR rule (60 FR 48231, September 18, 1995).

In the period since publication of the FAR rule, the FAR Council, in consultation with the Department of Labor (DoL), has concluded that it is not in the best interest of the Government to retain the SCA on the list of laws that are inapplicable to all subcontracts for commercial items. The FAR Council agrees that any exemption from the coverage of the SCA for subcontracts for the acquisition of commercial items or components should be accomplished under the Secretary of Labor's authority in the SCA.

The FAR Council has forwarded recommendations to the Secretary of Labor for consideration in formulating a proposed rule regarding exemptions from coverage under the SCA for commercial items. When the proposal is finalized, DoL will publish the proposed rule, to be issued under the Secretary's authority, in the **Federal Register** for

public comment. Following the completion of that rulemaking, the FAR will be amended accordingly.

With respect to other labor laws, the Walsh-Healey Act and the certification and contract clause requirements of the Contract Work Hours and Safety Standards Act were made inapplicable to commercial item contracts by the September 18, 1995, FAR final rule referenced above. However, the Walsh-Healey Act and the Contract Work Hours and Safety Standards Act provide statutory exemptions for purchases in the open market. The listing of these statutes in the FAR with respect to their inapplicability to commercial item contracts was designed to reflect the existing statutory open market exemptions.

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

##### B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR parts 12 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97-19, FAR case 1998-605), in correspondence.

##### C. Paperwork Reduction Act

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

##### List of Subjects in 48 CFR Parts 12 and 52

Government procurement.

Dated: July 19, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, 48 CFR parts 12 and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 12 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 12—ACQUISITION OF COMMERCIAL ITEMS****12.504 [Amended]**

2. Amend section 12.504 by removing paragraph (a)(7) and redesignating paragraphs (a)(8) through (a)(12) as (a)(7) through (a)(11), respectively.

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

3. Amend section 52.212–5 by revising the clause date to read “(AUG 2000)”; in paragraph (e)(3) by removing “and”; in paragraph (e)(4) by removing the period at the end and adding “; and”; and by adding paragraph (e)(5) to read as follows:

**52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.**

\* \* \* \* \*

(e) \* \* \*

(5) 52.222–41, Service Contract Act of 1965, As Amended (41 U.S.C. 351, *et seq.*).

\* \* \* \* \*

[FR Doc. 00–18671 Filed 7–25–00; 8:45 am]

BILLING CODE 6820–EP–P

**DEPARTMENT OF DEFENSE****GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Part 19**

[FAC 97–19; FAR Case 1999–012; Item V]

RIN 9000–A164

**Federal Acquisition Regulation; Small Business Competitiveness Demonstration Program**

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

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement the Office of Federal Procurement Policy (OFPP) and Small Business Administration (SBA) final policy directive to provide updated guidance on the Small Business Competitiveness Demonstration Program.

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

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 97–19, FAR case 1999–012.

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

This final rule amends FAR Part 19 to provide updated guidance regarding the Small Business Competitiveness Demonstration Program (Program). The Program was originally established in 1988 by Title VII of Public Law 100–656, as amended, and subsequently implemented in the FAR. As statutory amendments were made to the Program, OFPP issued conforming modifications to its policy directive. With the enactment of Public Law 105–135, the Small Business Reauthorization Act of 1997, the Program was made permanent. The OFPP and SBA published a joint final policy directive on the Program in the *Federal Register* at 64 FR 29693, June 2, 1999. DoD, GSA, and NASA published a FAR interim rule in the *Federal Register* at 65 FR 16274, March 27, 2000. The Councils considered all comments in the development of the final rule. The Councils have agreed to convert the interim rule to a final rule without change.

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

**B. Regulatory Flexibility Act**

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely makes ministerial changes to the existing language and does not change existing policy.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act (Pub. L. 104–13) does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 19**

Government procurement.

Dated: July 19, 2000.

**Edward C. Loeb,***Director, Federal Acquisition Policy Division.***Interim Rule Adopted as Final Without Change**

Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR part 19, which was published in the *Federal Register* at 65 FR 16274, March 27, 2000, as a final rule without change.

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

[FR Doc. 00–18672 Filed 7–25–00; 8:45 am]

BILLING CODE 6820–EP–P

**DEPARTMENT OF DEFENSE****GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 28 and 52**

[FAC 97–19; FAR Case 1999–302; Item VI]

RIN 9000–A160

**Federal Acquisition Regulation; Construction Industry Payment Protection Act of 1999**

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

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement the Construction Industry Payment Protection (CIPP) Act of 1999. The CIPP Act amends the Miller Act to provide that the amount of a payment bond must equal the total amount payable by the terms of the contract, unless the contracting officer determines that a payment bond in that amount is impractical. The final rule also provides enhanced payment protection for Government contracts not subject to the Miller Act.

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

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst,

at (202) 501-1758. Please cite FAC 97-19, FAR case 1999-302.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This final rule amends FAR 28.102 and the clauses at 52.228-13, 52.228-15, and 52.228-16 to implement the CIPP Act (Pub. L. 106-49) and to enhance payment protection for Government contracts not subject to the Miller Act.

The Miller Act (40 U.S.C. 270a, *et seq.*) requires contractors performing Government construction contracts that exceed \$100,000 to furnish performance and payment bonds. Previously, the required payment bond did not exceed 50 percent of the contract price, and was capped at a ceiling of \$2.5 million.

The CIPP Act substitutes a requirement that the payment bond generally must equal the contract price. In addition, the CIPP Act makes two procedural changes to the Miller Act, adding a requirement regarding subcontractor waiver of the right to sue on the payment bond, and modernizing the requirements for the delivery of notice by subcontractors having right of action on the payment bond.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 64 FR 72828, December 28, 1999. Ten respondents submitted comments on the proposed rule. The Councils have considered all of these comments in formulation of the final rule.

The final rule makes minor editorial changes to the clause prescriptions at FAR 28.102-3, and includes additional information in the clause at FAR 52.228-15, Performance and Payment Bonds—Construction, providing notice of limitations on subcontractor waiver of protection (40 U.S.C. 270b(c)).

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

**B. Regulatory Flexibility Act**

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule. The Councils prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with 5 U.S.C. 604. Interested parties may obtain a copy of the FRFA from the FAR Secretariat. The FRFA is summarized as follows:

The primary objective of this rule is to enhance payment protection for subcontractors that furnish labor or materials on Government construction contracts. There were no issues raised by the public in response to the Initial Regulatory Flexibility

Analysis. The rule will require all contractors to which the Government awards construction contracts exceeding \$25,000 to obtain a payment bond equal to the contract price, unless the contracting officer determines that to be impractical or unnecessary. The rule is expected to benefit subcontractors seeking payment, without resulting in substantial price increases for the prime contractor obtaining the increased payment protection. We estimate that the Executive branch of the Government annually awards 54,000 construction contracts exceeding \$25,000, of which half (27,000 contracts) are awarded to approximately 7,500 small business firms. We estimate that approximately 60,000 small business subcontractors could benefit from increased payment protection.

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

**C. Paperwork Reduction Act**

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

**List of Subjects in 48 CFR Parts 28 and 52**

Government procurement.

Dated: July 19, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA amend 48 CFR parts 28 and 52 as set forth below:

1. The authority citation for 48 CFR parts 28 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 28—BONDS AND INSURANCE**

**28.101-2 [Amended]**

2. Amend section 28.101-2 in the first sentence of paragraph (b) by removing “(see 28.102-2(c))” and adding in its place “(see 28.102-2(a))”.

3. Revise section 28.102-2 to read as follows:

**28.102-2 Amount required.**

(a) *Definition.* As used in this subsection—

*Original contract price* means the award price of the contract; or, for requirements contracts, the price payable for the estimated total quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any

options, except those options exercised at the time of contract award.

(b) Contracts exceeding \$100,000 (Miller Act).

(1) *Performance bonds.* Unless the contracting officer determines that a lesser amount is adequate for the protection of the Government, the penal amount of performance bonds must equal—

(i) 100 percent of the original contract price; and

(ii) If the contract price increases, an additional amount equal to 100 percent of the increase.

(2) *Payment bonds.* (i) Unless the contracting officer makes a written determination supported by specific findings that a payment bond in this amount is impractical, the amount of the payment bond must equal—

(A) 100 percent of the original contract price; and

(B) If the contract price increases, an additional amount equal to 100 percent of the increase.

(ii) The amount of the payment bond must be no less than the amount of the performance bond.

(c) *Contracts exceeding \$25,000 but not exceeding \$100,000.* Unless the contracting officer determines that a lesser amount is adequate for the protection of the Government, the penal amount of the payment bond or the amount of alternative payment protection must equal—

(1) 100 percent of the original contract price; and

(2) If the contract price increases, an additional amount equal to 100 percent of the increase.

(d) *Securing additional payment protection.* If the contract price increases, the Government must secure any needed additional protection by directing the contractor to—

(1) Increase the penal sum of the existing bond;

(2) Obtain an additional bond; or

(3) Furnish additional alternative payment protection.

(e) *Reducing amounts.* The contracting officer may reduce the amount of security to support a bond, subject to the conditions of 28.203-5(c) or 28.204(b).

4. In section 28.102-3, revise the section heading and paragraph (a); and add a sentence to the end of paragraph (b) to read as follows:

**28.102-3 Contract clauses.**

(a) Insert a clause substantially the same as the clause at 52.228-15, Performance and Payment Bonds—Construction, in solicitations and contracts for construction that contain a requirement for performance and

payment bonds if the resultant contract is expected to exceed \$100,000. The contracting officer may revise paragraphs (b)(1) and/or (b)(2) of the clause to establish a lower percentage in accordance with 28.102-2(b). If the provision at 52.228-1 is not included in the solicitation, the contracting officer must set a period of time for return of executed bonds.

(b) \* \* \* The contracting officer may revise paragraph (b) of the clause to establish a lower percentage in accordance with 28.102-2(c).

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

### 52.228-13 [Amended]

5. Amend section 52.228-13 by revising the date of the clause to read "(July 2000)"; and in paragraph (b) of the clause by removing "50" and adding "100" in its place.

6. Revise section 52.228-15 to read as follows:

#### 52.228-15 Performance and Payment Bonds—Construction.

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

Performance and Payment Bonds—Construction (July 2000)

(a) *Definitions.* As used in this clause—  
*Original contract price* means the award price of the contract; or, for requirements contracts, the price payable for the estimated total quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

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

(1) *Performance bonds (Standard Form 25).* The penal amount of performance bonds at the time of contract award shall be 100 percent of the original contract price.

(2) *Payment Bonds (Standard Form 25-A).* The penal amount of payment bonds at the time of contract award shall be 100 percent of the original contract price.

(3) *Additional bond protection.* (i) The Government may require additional performance and payment bond protection if the contract price is increased. The increase in protection generally will equal 100 percent of the increase in contract price.

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

(c) *Furnishing executed bonds.* The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within the time period specified in the Bid

Guarantee provision of the solicitation, or otherwise specified by the Contracting Officer, but in any event, before starting work.

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

(e) *Notice of subcontractor waiver of protection (40 U.S.C. 270b(c)).* Any waiver of the right to sue on the payment bond is void unless it is in writing, signed by the person whose right is waived, and executed after such person has first furnished labor or material for use in the performance of the contract.

(End of clause)

7. In section 52.228-16, revise the date of the clause and paragraph (a); in paragraph (b) add "original" before the word "contract", twice; and revise paragraph (d) and Alternate I to read as follows:

#### 52.228-16 Performance and Payment Bonds—Other Than Construction.

\* \* \* \* \*

Performance and Payment—Bonds Other Than Construction (July 2000)

(a) *Definitions.* As used in this clause—  
*Original contract price* means the award price of the contract or, for requirements contracts, the price payable for the estimated quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

\* \* \* \* \*

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

\* \* \* \* \*

(End of clause)

*Alternate I (July 2000).* As prescribed in 28.103-4, substitute the following paragraphs (b) and (d) for paragraphs (b) and (d) of the basic clause:

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

(d) The Government may require additional performance bond protection if

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

[FR Doc. 00-18673 Filed 7-25-00; 8:45 am]

BILLING CODE 6820-EP-P

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 31

[FAC 97-19; FAR Case 1999-013; Item VII]

RIN 9000-A162

#### Federal Acquisition Regulation; Deferred Research and Development (R&D) Costs

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

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify and simplify the "Deferred research and development costs" cost principle.

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

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 97-19, FAR case 1999-013.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 4328, January 26, 2000. The proposed rule clarified and simplified the cost principle at FAR 31.205-48, Deferred research and development costs, by—

- Deleting the second sentence addressing precontract costs, as these types of costs are adequately addressed at FAR 31.205-32, Precontract costs;
- Revising the last sentence to more clearly indicate that incurred costs in excess of the contract price or grant amount for research and development (R&D) effort are unallowable and

accordingly, not reimbursable by the Government; and

- Making several editorial changes.

Three respondents submitted public comments to the proposed rule. The Councils considered all comments before agreeing to convert the proposed rule to a final rule without change.

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

**B. Regulatory Flexibility Act**

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because 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 information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 31**

Government procurement.

Dated: July 19, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA amend 48 CFR part 31 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. Revise section 31.205–48 to read as follows:

**31.205–48 Deferred research and development costs.**

*Research and development*, as used in this section, means the type of technical effort described in 31.205–18 but sponsored by a grant or required in the performance of a contract. When costs are incurred in excess of either the price

of a contract or amount of a grant for research and development effort, the excess is unallowable under any other Government contract.

[FR Doc. 00–18674 Filed 7–25–00; 8:45 am]

**BILLING CODE 6820–EP–P**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 43 and 52**

[FAC 97–19; FAR Case 1999–606; Item VIII]

**RIN 9000–AI65**

**Federal Acquisition Regulation; Time-and-Materials or Labor-Hours**

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

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify the requirements regarding changes to time-and-materials and labor-hour contracts.

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

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501–3775. Please cite FAC 97–19, FAR case 1999–606.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This final rule clarifies the requirements regarding changes to time-and-materials and labor-hour contracts. The rule changes the clause at FAR 52.243–3, Changes—Time-and-Materials or Labor-Hours, to be consistent with Alternate II of the clause at FAR 52.243–1, Changes—Fixed-Price. Alternate II is used in service contracts and most of the work performed under time-and-materials or labor-hour contracts also involves services.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 3762, January 24, 2000. One respondent submitted comments on the proposed rule. The comments were

considered in the development of the final rule.

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

**B. Regulatory Flexibility Act**

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because contractors are entitled to an equitable adjustment to contract terms and conditions if a change order is issued under the Changes clause of the contract.

**C. Paperwork Reduction Act**

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

**List of Subjects in 48 CFR Parts 43 and 52**

Government procurement.

Dated: July 19, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA amend 48 CFR parts 43 and 52 as set forth below:

1. The authority citation for 48 CFR parts 43 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 43—CONTRACT MODIFICATIONS**

2. Amend section 43.205 by revising paragraph (c) to read as follows:

**43.205 Contract clauses.**

\* \* \* \* \*

(c) Insert the clause at 52.243–3, Changes—Time-and-Materials or Labor-Hours, in solicitations and contracts when a time-and-materials or labor-hour contract is contemplated. The contracting officer may vary the 30-day period in paragraph (c) of the clause according to agency procedures.

\* \* \* \* \*

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

3. Revise section 52.243-3 to read as follows:

**52.243-3 Changes—Time-and-Materials or Labor-Hours.**

As prescribed in 43.205(c), insert the following clause:

Changes—Time-and-Materials or Labor-Hours (Sept 2000)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (*i.e.*, hours of the day, days of the week, etc.).
- (3) Place of performance of the services.
- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.
- (5) Method of shipment or packing of supplies.
- (6) Place of delivery.
- (7) Amount of Government-furnished property.

(b) If any change causes an increase or decrease in any hourly rate, the ceiling price, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the Contracting Officer will make an equitable adjustment in any one or more of the following and will modify the contract accordingly:

- (1) Ceiling price.
- (2) Hourly rates.
- (3) Delivery schedule.
- (4) Other affected terms.

(c) The Contractor shall assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) Failure to agree to any adjustment will be a dispute under the Disputes clause. However, nothing in this clause excuses the Contractor from proceeding with the contract as changed.

(End of clause)

[FR Doc. 00-18675 Filed 7-25-00; 8:45 am]

BILLING CODE 6820-EP-P

**DEPARTMENT OF DEFENSE****GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Part 50**

[FAC 97-19; FAR Case 2000-006; Item IX]

RIN 9000-AI85

**Federal Acquisition Regulation; Repeal of Reporting Requirements under Public Law 85-804**

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

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to implement paragraph 901(r)(1) of the Federal Reports Elimination Act of 1998 (Pub. L. 105-362), that repealed section 4 of Public Law 85-804 (50 U.S.C. 1434). Section 4 required each department and agency to report annually to Congress any contract action in excess of \$50,000 issued under the authority of this law.

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

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501-3775. Please cite FAC 97-19, FAR case 2000-006.

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

The final rule revises FAR 50.000 to update the reference to Public Law 85-804 and eliminates the reporting requirements at FAR 50.104. Agencies are no longer required to submit to Congress annually a report of actions taken on requests for relief under the authority of Public Law 85-804.

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

**B. Regulatory Flexibility Act**

The 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, the Councils will consider comments from small entities concerning the affected FAR Part 50 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97-19, FAR case 2000-006), in correspondence.

**C. Paperwork Reduction Act**

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

**List of Subjects in 48 CFR Part 50**

Government procurement.

Dated: July 19, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA amend 48 CFR part 50 as set forth below:

**PART 50—EXTRAORDINARY CONTRACTUAL ACTIONS**

1. The authority citation for 48 CFR part 50 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. Revise section 50.000 to read as follows:

**50.000 Scope of part.**

This part prescribes policies and procedures for entering into, amending, or modifying contracts in order to facilitate the national defense under the extraordinary emergency authority granted by Public Law 85-804 (50 U.S.C. 1431-1434), referred to in this part as the "Act", and Executive Order 10789, dated November 14, 1958, referred to in this part as "the Executive order". It does not cover advance payments (see subpart 32.4).

**50.104 [Removed and Reserved]**

3. Remove and reserve section 50.104. [FR Doc. 00-18676 Filed 7-25-00; 8:45 am]

BILLING CODE 6820-EP-P

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 4 and 22**

[FAC 97-19; Item X]

**Federal Acquisition Regulation; Technical Amendments**

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

**ACTION:** Technical amendments.

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

**EFFECTIVE DATE:** July 26, 2000.

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

**List of Subjects in 48 CFR Parts 4 and 22**

Government procurement.

Dated: July 19, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA amend 48 CFR parts 4 and 22:

1. The authority citation for 48 CFR parts 4 and 22 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**

**4.803 [Amended]**

2. Amend section 4.803 in paragraph (a)(35) by removing the second sentence.

**PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS**

3. Amend the parenthetical in section 22.400 by removing “Construction” and adding “Construction, alteration, or repair” in its place.

[FR Doc. 00-18677 Filed 7-25-00; 8:45 am]

**BILLING CODE 6820-EP-P**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

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

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

and National Aeronautics and Space Administration (NASA).

**ACTION:** Small Entity Compliance Guide.

**SUMMARY:** This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 97-19 which amend the FAR. An asterisk (\*) next to a rule indicates that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 97-19 which precedes this document. These documents are also available via the Internet at <http://www.arnet.gov/far>.

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

LIST OF RULES IN FAC 97-19

Item	Subject	FAR case	Analyst
I .....	Contract Bundling* .....	1997-306 (97-306)	De Stefano
II .....	North American Industry Classification System (NAICS) (Interim) .....	2000-604	Moss
III .....	Liquidated Damages .....	1999-003	Moss
IV .....	Service Contract Act, Commercial Item Subcontracts .....	1998-605	Klein
V .....	Small Business Competitiveness Demonstration Program .....	1999-012	Moss
VI .....	Construction Industry Payment Protection Act of 1999* .....	1999-302	De Stefano
VII .....	Deferred Research and Development (R&D) Costs 1999-013 Nelson.		
VIII .....	Time-and-Materials or Labor Hours .....	1999-606	Klein
IX .....	Repeal of Reporting Requirements under Public Law 85-804 .....	2000-006	Klein

**Item I—Contract Bundling (FAR Case 1997-306 (97-306))**

This final rule converts the interim rule published as Item III of FAC 97-15 to a final rule with minor changes. The rule amends the FAR to implement Sections 411-417 of the Small Business Reauthorization Act of 1997. Sections 411-417 amend Title 15 of the United States Code to define “contract bundling,” and to require agencies to avoid unnecessary bundling that

precludes small business participation in the performance of Federal contracts.

This rule affects all contracting officers that may combine requirements that were previously awarded to a small business or requirements for which a small business could have competed. In accordance with the statute and Small Business Administration regulations, agencies must establish procedures for processing bundled requirements to ensure maximum small business participation in bundled acquisitions.

Specifically, agencies and contracting officers must—

- Perform market research when bundled requirements are anticipated;
- Justify bundling in acquisition strategies;
- Meet specific estimated benefit thresholds before bundling requirements;
- Assess the impact of bundling on small businesses;
- Submit solicitations containing bundled requirements to the Small Business Administration (SBA)



procurement center representatives for review; and

- Include, in negotiated competitions for bundled requirements, a source selection factor for the offerors' proposed use of small businesses as subcontractors and their past performance in meeting subcontracting goals.

#### **Item II—North American Industry Classification System (NAICS) (FAR Case 2000-604)**

This interim rule revises the FAR to convert size standards and other programs in the FAR that are currently based on the Standard Industrial Classification (SIC) system to the North American Industry Classification System (NAICS). NAICS is a new system that classifies establishments according to how they conduct their economic activity. It is a significant improvement over the SIC because it more accurately identifies industries. Beginning October 1, 2000, NAICS will be used to establish the size standards for acquisitions. In addition, the interim rule converts the designated industry groups in FAR 19.1005 to NAICS and requires agencies to report contract actions using the NAICS code rather than the SIC code.

#### **Item III—Liquidated Damages (FAR Case 1999-003)**

This final rule clarifies coverage on liquidated damages. This rule will make it easier for contracting officers to understand the policy for administering liquidated damages.

The only substantive change is at FAR 11.501(d). The authority to approve reductions in or waivers to liquidated damages was changed from the Comptroller General to the Commissioner, Financial Management Service.

#### **Item IV—Service Contract Act, Commercial Item Subcontracts (FAR Case 1998-605)**

This final rule deletes the Service Contract Act of 1965 from the list of laws inapplicable to subcontracts for commercial items. FAR 12.504(a) contains this list.

#### **Item V—Small Business Competitiveness Demonstration Program (FAR Case 1999-012)**

This final rule converts the interim rule published as Item I of FAC 97-16 to a final rule without change.

The rule amends FAR Part 19 to clarify language pertaining to the Competitiveness Demonstration Program, consistent with revisions to the Program that were required by the OFPP and SBA joint final policy directive dated May 25, 1999. The rule revises FAR Subpart 19.10 to—

1. Advise the contracting officer to consider the 8(a) Program and HUBZone Program when there is not a reasonable expectation that offers will be received from two or more emerging small businesses; and
2. Add a new section 19.1006, Exclusions, to reflect the exclusions of orders under the Federal Supply Schedule Program and contract awards to educational and nonprofit institutions or governmental entities.

#### **Item VI—Construction Industry Payment Protection Act of 1999 (FAR Case 1999-302)**

This final rule amends FAR 28.102-2 and the clauses at 52.228-13, 52.228-15, and 52.228-16 to implement the Construction Industry Payment Protection (CIPP) Act of 1999. The CIPP Act amends the Miller Act to provide that the amount of a payment bond must equal the total amount payable by the terms of the contract, unless the contracting officer determines that a payment bond in that amount is impractical. The final rule also provides enhanced payment protection for Government contracts not subject to the Miller Act. The contracting officer must determine the appropriate amount of payment protection in each construction contract that exceeds \$25,000, and in any other contract that requires a performance bond in accordance with FAR 28.103-2.

#### **Item VII—Deferred Research and Development (R&D) Costs (FAR Case 1999-013)**

This final rule amends the FAR by clarifying and simplifying the “deferred research and development costs” cost principle at FAR 31.205-48. The rule will only affect contracting officers that price contracts using cost analysis, or that are required by a contract clause to use cost principles for the determination, negotiation, or allowance of contractor costs.

#### **Item VIII—Time-and-Materials or Labor Hours (FAR Case 1999-606)**

This final rule clarifies the requirements regarding changes to time-and-materials and labor-hour contracts. The rule changes the clause at FAR 52.243-3, Changes—Time-and-Materials or Labor-Hours, to be consistent with Alternate II of the clause at FAR 52.243-1, Changes—Fixed-Price. Alternate II is used in service contracts and most of the work performed under time-and-materials or labor-hour contracts also involves services.

#### **Item IX—Repeal of Reporting Requirements under Public Law 85-804 (FAR Case 2000-006)**

This final rule amends the FAR to implement paragraph 901(r)(1) of the Federal Reports Elimination Act of 1998 (Pub. L. 105-362). Paragraph 901(r)(1) repealed section 4 of Public Law 85-804 (50 U.S.C. 1434). Section 4 required each department and agency to report annually to Congress any contract action in excess of \$50,000 issued under the authority of this law. The rule revises FAR 50.000 to update the reference to Public Law 85-804 and eliminates the reporting requirements at FAR Part 50.104. Agencies are no longer required to submit to Congress annually a report of actions taken on requests for relief under the authority of Public Law 85-804.

Dated: July 19, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*  
[FR Doc. 00-18678 Filed 7-25-00; 8:45 am]

**BILLING CODE 6820-EP-P**