



Federal Register

**Tuesday,
October 5, 2004**

Part III

**Department of
Defense**

**General Services
Administration**

**National Aeronautics
and Space
Administration**

**48 CFR Chapter 1 et al.
Federal Acquisition Circular 2001–25;
Introduction; Final and Interim Rules**

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 2001–25; 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, and technical amendments and corrections.

SUMMARY: This document summarizes the Federal Acquisition regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2001–25. 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.acqnet.gov/far>.

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

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, at (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2001–25 and specific FAR case number(s). Interested parties may also visit our Web site at <http://www.acqnet.gov/far>.

Item	Subject	FAR case	Analyst
I	Elimination of the Standard Form 1417	2002–017	Davis.
II	Free Trade Agreements—Chile and Singapore, and Trade Agreements Thresholds	2003–016	Davis.
III	Telecommuting for Federal Contractors (Interim)	2003–035	Zaffos.
IV	Section 508 Micropurchase Exemption (Interim)	2004–020	Nelson.
V	Technical Amendments.		

SUPPLEMENTARY INFORMATION:

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

FAC 2001–25 amends the FAR as specified below:

Item I—Elimination of the Standard Form 1417 (FAR Case 2002–017)

This final rule eliminates the use of the Standard Form 1417, Pre-Solicitation Notice (Construction Contract), in contracts for construction, alteration or repair, dismantling, demolition, or removal of improvements. The use of this form has become unnecessary because contracting officers provide access to presolicitation notices through the Governmentwide point of entry (GPE) via the Internet at <http://www.fedbizopps.gov> pursuant to FAR 5.204. Elimination of the form increases reliance on electronic business practices and reduces the estimated information collection requirement burden hours imposed on offerors.

Item II—Free Trade Agreements—Chile and Singapore, and Trade Agreements Thresholds (FAR Case 2003–016)

The interim rule to implement new Free Trade Agreements with Chile and Singapore, published in the **Federal Register** at 69 FR 1050, January 7, 2004, is converted to a final rule with changes. The interim rule included in each Trade Agreements clause the statement that United States law will apply to resolve any claim of breach of contract. At the

request of the Department of Justice, the final rule relocates this statement into a separate clause to be included in all contracts. All contracting officers must be aware of this new requirement.

Item III—Telecommuting for Federal Contractors (FAR Case 2003–025) (Interim)

This interim rule addresses telecommuting by employees of Federal contractors. This rule implements Section 1428 of the Services Acquisition Reform Act of 2003 (Title XIV of Public Law 108–136), which prohibits agencies from including a requirement in a solicitation that precludes an offeror from permitting its employees to telecommute or, when telecommuting is not precluded, from unfavorably evaluating an offeror’s proposal that includes telecommuting unless it would adversely affect agency requirements, such as security. Contracting officers awarding service contracts should familiarize themselves with this rule.

Item IV—Section 508 Micropurchase Exemption (FAR Case 2004–020) (Interim)

This interim rule extends from October 1, 2004, to April 1, 2005, the micropurchase exception from the requirement to purchase electronic and information technology that provides individuals with disabilities better access to and use of information and data, as required by Section 508 of the Rehabilitation Act of 1973. The extension will provide agencies time to update their purchase card training modules on the 508 requirements and train their personnel. This rule is of

special interest to contracting officers who purchase electronic and information technology.

Item V—Technical Amendments

Editorial changes are made at FAR 14.403(c), 52.212–5(b)(34)(ii), 52.215–15(b)(2), 52.217–5, and 52.219–4(d)(3) to update various references.

Dated: September 28, 2004.

Ralph J. De Stefano,

Acting Director, Contract Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001–25 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2001–25 is effective October 5, 2004, except for Item I, which is effective November 4, 2004.

Dated: September 22, 2004.

Vincent J. Feck,

Lt Col USAF, Acting Director, Defense Procurement and Acquisition Policy.

Dated: September 8, 2004.

David A. Drabkin,

Senior Procurement Executive, Office of the Chief Acquisition Officer, General Services Administration.

Dated: September 7, 2004.

Tom Luedtke,

Deputy Chief Acquisition Officer, National Aeronautics and Space Administration.

[FR Doc. 04–22243 Filed 10–4–04; 8:45 am]

BILLING CODE 6820–EP–M

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 1, 13, 19, 36 and 53**

[FAC 2001–25; FAR Case 2002–017; Item I]

RIN 9000–AJ73

**Federal Acquisition Regulation;
Elimination of Standard Form 1417**

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 eliminate the use of the Standard Form (SF) 1417, Pre-Solicitation Notice (Construction Contract).

DATES: *Effective Date:* November 4, 2004.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia Davis, Procurement Analyst, at (202) 219–0202. Please cite FAC 2001–25, FAR case 2002–017.

SUPPLEMENTARY INFORMATION:**A. Background**

This final rule amends FAR parts 1, 13, 19, 36, and 53, deleting the prescription for the use of the SF 1417. This final rule eliminates the use of this form in contracts for construction, alteration or repair, dismantling, demolition, or removal of improvements. The use of the form has become unnecessary because contracting officers are required to provide access to presolicitation notices through the Governmentwide point of entry (GPE) via the Internet at <http://www.fedbizopps.gov> pursuant to FAR 5.204. This FAR change to eliminate the SF 1417 complements the efforts to increase reliance on electronic business practices in procurement in furtherance of the Administration's commitment to create a citizen-centric E-Government, as outlined in the President's Management Agenda. DOD, GSA, and NASA published a proposed rule in the

Federal Register at 68 FR 54294, September 16, 2003. No public comments were received. The Councils agree to convert this proposed rule to a final rule with technical editorial changes.

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 changes are not imposing any additional burden on small business. Small businesses are already aware of the publicizing medium the Government uses via the Internet and have made the necessary adaptation to keep abreast of business opportunities disseminated therein.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000–0037. This change has reduced the paperwork burden and no additional approval from OMB is required. The collection will be revised to reflect this reduction.

This final rule eliminates the use of Standard Form 1417 in contracts for construction, alteration or repair, dismantling, demolition, or removal of improvements but not the requirement for contracting officers to provide access to presolicitation notices through the Governmentwide point of entry via the Internet at <http://www.fedbizopps.gov>.

Requester may obtain a copy of the information collection from the General Services Administration, FAR Secretariat (V), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–0037, Presolicitation Notice and Response, Standard Form 1417, in all correspondence.

List of Subjects in 48 CFR Parts 1, 13, 19, 36 and 53

Government procurement.

Dated: September 28, 2004.

Ralph J. De Stefano,

Acting Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 13, 19, 36, and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 13, 19, 36, and 53 is revised to read as follows:

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

**PART 1—FEDERAL ACQUISITION
REGULATIONS SYSTEM****1.106 [Amended]**

■ 2. Amend section 1.106 in the table following the introductory paragraph by removing FAR segment “36.701” and its corresponding OMB Control Number “9000–0037” removing FAR segment “53.236–1(a)” and its corresponding OMB Control Number “9000–0037”; and removing FAR segment “SF 1417” and its corresponding OMB Control Number “9000–0037”.

**PART 13—SIMPLIFIED ACQUISITION
PROCEDURES****13.003 [Amended]**

■ 3. Amend section 13.003 in paragraph (g)(1) by removing “36.701(b)” and adding “36.701(a)” in its place.

**PART 19—SMALL BUSINESS
PROGRAMS****19.811–1 [Amended]**

■ 4. Amend section 19.811–1 in the last sentence of paragraph (a) by removing “36.701(b)” and adding “36.701(a)” in its place.

**PART 36—CONSTRUCTION AND
ARCHITECT ENGINEER CONTRACTS****36.213–2 [Amended]**

■ 5. Amend section 36.213–2—
■ a. In the first sentence of paragraph (a) by removing “send” and adding “issue” in its place; and removing “to prospective bidders”;
■ b. By removing paragraph (b)(6) and redesignating paragraphs (b)(7), (b)(8), and (b)(9) as (b)(6), (b)(7), and (b)(8), respectively.

36.701 [Amended]

■ 6. Amend section 36.701 by removing paragraph (a) and redesignating paragraphs (b), (c), (d), and (e) as (a), (b), (c), and (d), respectively.

PART 53—FORMS**53.213 [Amended]**

■ 7. Amend section 53.213 in paragraph (f)(4) by removing “36.701(c)” and adding “36.701(b)” in its place.

53.236-1 [Amended]

■ 8. Amend section 53.236-1 by removing paragraph (a) and redesignating paragraphs (b), (c), (d), (e), (f), and (g) as (a), (b), (c), (d), (e), and (f), respectively; in newly redesignated paragraph (a) by removing “36.701(e)” and adding “36.701(d)” in its place; in newly redesignated paragraph (d)(2) by removing “36.701(b)” and adding “36.701(a)” in its place; in newly redesignated paragraph (e)(2) by removing “36.701(c)” and adding “36.701(b)” in its place; and in newly redesignated paragraph (f) by removing “36.701(d)” and adding “36.701(c)” in its place.

53.301-1417 [Removed]

■ 9. Remove section 53.301-1417.
[FR Doc. 04-22244 Filed 10-4-04; 8:45 am]
BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 5, 12, 13, 14, 17, 19, 22,
25, 33, and 52**

[FAC 2001-25; FAR Case 2003-016; Item II]

RIN 9000-AJ87

**Federal Acquisition Regulation; Free
Trade Agreements-Chile and
Singapore, and Trade Agreements
Thresholds**

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed to convert to a final rule, with changes, an interim rule amending the Federal Acquisition Regulation (FAR). The interim rule implemented new Free Trade Agreements with Chile and Singapore, as approved by Congress (Public Laws 108-77 and 108-78). The interim rule also implemented new dollar thresholds for application of trade agreements.

DATES: *Effective Date:* October 5, 2004.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia Davis,

Procurement Analyst, at (202) 219-0202. Please cite FAC 2001-25, FAR case 2003-016.

SUPPLEMENTARY INFORMATION:**A. Background**

The Free Trade Agreements with Chile and Singapore waive the applicability of the Buy American Act for some foreign supplies and construction materials from Chile and Singapore, and specify procurement procedures designed to ensure fairness, applicable to the acquisition of supplies and services (see the Government Procurement provisions at Chapters 9 and 13, respectively, of the trade agreements). The interim rule was published in the **Federal Register** at 69 FR 1050, January 7, 2004. One public comment was received. To implement Section 106 of the authorizing acts, the interim rule added the statement “United States law will apply to resolve any claim of breach of contract.” to the Buy American Act/Trade Agreements clauses at FAR 52.225-3, 52.225-5, and 52.225-11. The Department of Justice noted that Section 106 of each authorizing act applies to all contracts entered into by any agency of the United States. Therefore, the Department of Justice recommended that the statement be a separate clause, included in every contract. The Councils concur. The final rule removes the statement of applicability of U.S. law from FAR clauses 52.225-3, 52.225-5, and 52.225-11, and creates a new clause at FAR 52.233-4, *Applicable Law for Breach of Contract Claim*, to include the statement of applicability of U.S. law in every contract subject to the FAR.

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.* Although the interim rule opened up Government procurement to the products of Chile, there will not be any significant economic impact on U.S. small businesses. The Department of Defense only applies the trade agreements to the non-defense items listed at DFARS 225.401-70, and acquisitions under

\$100,000 that are set aside for small businesses are exempt. We did not receive any comments on this issue from small business concerns or other interested parties.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Numbers 9000-0130, 9000-0025, and 9000-0141, respectively.

**List of Subjects in 48 CFR Parts 5, 12,
13, 14, 17, 19, 22, 25, 33, and 52**

Government procurement.

Dated: September 28, 2004.

Ralph J. De Stefano,

Acting Director, Contract Policy Division.

**Interim Rule Adopted as Final with
Changes**

■ Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR parts 5, 12, 13, 14, 17, 19, 22, 25, and 52, which was published in the **Federal Register** at 69 FR 1050, January 7, 2004, as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 5, 12, 13, 14, 17, 19, 22, 25, 33, and 52 is revised to read as follows:

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

**PART 33—PROTESTS, DISPUTES,
AND APPEALS**

■ 2. Revise the section heading and text of section 33.215 to read as follows:

33.215 Contract clauses.

(a) Insert the clause at 52.233-1, *Disputes*, in solicitations and contracts, unless the conditions in 33.203(b) apply. If it is determined under agency procedures that continued performance is necessary pending resolution of any claim arising under or relating to the contract, the contracting officer shall use the clause with its Alternate I.

(b) Insert the clause at 52.233-4 in all solicitations and contracts.

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

■ 3. Amend section 52.212-5 by-

■ a. Revising the date of the clause and paragraph (a); and

■ b. Removing “(Jan 2004)” from paragraph (b)(23)(i) of the clause and adding “(OCT 2004)” in its place; and removing “(June 2004)” from paragraph (b)(24) of the clause and adding “(OCT 2004)” in its place. The revised text reads as follows:

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

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS-COMMERCIAL ITEMS (OCT 2004)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) 52.233-3, Protest After Award (AUG 1996) (31 U.S.C. 3553).

(2) 52.233-4, Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78).

* * * * *

■ 4. Amend section 52.213-4 by revising the date of the clause; and by adding paragraph (a)(1)(vi) to read as follows:

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

* * * * *

TERMS AND CONDITIONS-SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL ITEMS) (OCT 2004)

(a) * * *

(1) * * *

(vi) 52.233-4, Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78).

* * * * *

52.225-3 [Amended]

■ 5. Amend section 52.225-3 by revising the date of the clause to read "(OCT 2004)"; and removing paragraph (d) of the clause.

52.225-5 [Amended]

■ 6. Amend section 52.225-5 by revising the date of the clause to read "(OCT 2004)"; and removing paragraph (c) of the clause.

52.225-11 [Amended]

■ 7. Amend section 52.225-11 by revising the date of the clause to read "(OCT 2004)"; and removing paragraph (e) of the clause.

■ 8. Add section 52.233-4 to read as follows:

52.233-4 Applicable Law for Breach of Contract Claim.

As prescribed in 33.215(b), insert the following clause:

APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004)

United States law will apply to resolve any claim of breach of this contract.

(End of clause)

[FR Doc. 04-22245 Filed 10-4-04; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 7, 11, 13, 15

[FAC 2001-25; FAR Case 2003-025; Item III]

RIN 9000-AK03

Federal Acquisition Regulation; Telecommuting for Federal Contractors

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

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 1428 of the Services Acquisition Reform Act of 2003, Title XIV of Public Law 108-136, Authorization of

Telecommuting for Federal Contractors.

DATES: *Effective Date:* October 5, 2004. *Comment Date:* Interested parties should submit comments to the FAR Secretariat at the address shown below on or before December 6, 2004 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2001-25, FAR case 2003-025, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Agency Web Site: <http://www.acqnet.gov/far/ProposedRules/proposed.htm>. Click on the FAR Case number to submit comments.

- E-mail: farcase.2003-025@gsa.gov. Include FAC 2001-25, FAR case 2003-025, in the subject line of the message.

- Fax: 202-501-4067.

- Mail: General Services Administration, Regulatory Secretariat (V), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2001-25, FAR case 2003-025, in all correspondence related to this case. All comments received will be posted without change to <http://www.acqnet.gov/far/ProposedRules/proposed.htm>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Gerald Zaffos, Procurement Analyst, at (202) 208-6091. Please cite FAC 2001-25, FAR case 2003-025.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule implements Section 1428 of the Services Acquisition Reform Act of 2003 (Title XIV of Public Law 108-136). Section 1428 requires the amendment of the FAR to permit telecommuting by employees of Federal Government contractors in the performance of contracts entered into with executive agencies. Specifically, Section 1428 states that solicitations for the acquisition of property or services may not include any requirement or evaluation criteria that would render an offeror ineligible to enter into a contract because it proposes to permit its employees to telecommute, unless the contracting officer determines that the requirements of the agency, including security requirements, cannot be met if telecommuting is permitted. The contracting officer must document in writing the basis for the determination. Also, the solicitation cannot contain any evaluation criteria that would reduce the scoring of an offer because the offeror proposes to permit its employees to telecommute, unless the contracting officer determines that the requirements of the agency, including security requirements, would be adversely impacted if telecommuting is allowed. The contracting officer must document in writing the basis for this determination as well.

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 by not automatically prohibiting telecommuting, the Government will be making it easier for small businesses to recruit and maintain employees for work on Government contracts. Until now, there has been no Governmentwide policy or practice concerning contractor employee telecommuting. This rule will not be a major change, but instead a small

positive benefit to small businesses. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 7, 11, 13, and 15 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, et seq. (FAC 2001-25, FAR case 2003-025), in correspondence.

C. Paperwork Reduction Act

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

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because this statute requires that the FAR be amended no later than 180 days after enactment. The statute was enacted on November 24, 2003, which required amending the FAR by May 22, 2004. 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 7, 11, 13, and 15

Government procurement.

Dated: September 28, 2004.

Ralph J. De Stefano,

Acting Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 7, 11, 13, and 15 as set forth below:

■ 1. The authority citation for 48 CFR parts 7, 11, 13, and 15 is revised to read as follows:

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

PART 7—ACQUISITION PLANNING

■ 2. Add section 7.108 to read as follows:

7.108 Additional requirements for telecommuting.

In accordance with section 1428 of Public Law 108-136, an agency shall generally not discourage a contractor from allowing its employees to

telecommute in the performance of Government contracts. Therefore, agencies shall not—

(a) Include in a solicitation a requirement that prohibits an offeror from permitting its employees to telecommute unless the contracting officer first determines that the requirements of the agency, including security requirements, cannot be met if telecommuting is permitted. The contracting officer shall document the basis for the determination in writing and specify the prohibition in the solicitation; or

(b) When telecommuting is not prohibited, unfavorably evaluate an offer because it includes telecommuting, unless the contracting officer first determines that the requirements of the agency, including security requirements, would be adversely impacted if telecommuting is permitted. The contracting officer shall document the basis for the determination in writing and address the evaluation procedures in the solicitation.

PART 11—DESCRIBING AGENCY NEEDS

■ 3. Amend section 11.002 by adding paragraph (g) to read as follows:

11.002 Policy.

* * * * *

(g) Agencies shall not include in a solicitation a requirement that prohibits an offeror from permitting its employees to telecommute unless the contracting officer executes a written determination in accordance with FAR 7.108(a).

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 4. Amend section 13.106-2 by redesignating paragraphs (b)(2) and (b)(3) as (b)(3) and (b)(4), respectively, and adding a new paragraph (b)(2) to read as follows:

13.106-2 Evaluation of quotations or offers.

* * * * *

(b) * * *

(2) If telecommuting is not prohibited, agencies shall not unfavorably evaluate an offer because it includes telecommuting unless the contracting officer executes a written determination in accordance with FAR 7.108(b).

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

■ 5. Amend section 15.304 by adding paragraph (c)(6) to read as follows:

15.304 Evaluation factors and significant subfactors.

* * * * *

(c) * * *

(6) If telecommuting is not prohibited, agencies shall not unfavorably evaluate an offer that includes telecommuting unless the contracting officer executes a written determination in accordance with FAR 7.108(b).

* * * * *

[FR Doc. 04-22246 Filed 10-4-04; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 39

[FAC 2001-25; FAR Case 2004-020; Item IV]

RIN 9000-AK05

Federal Acquisition Regulations; Section 508 Micropurchase Exemption

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 extend the micropurchase exemption for purchasing electronic and information technology (EIT) that conforms to the requirements of Section 508 of the Rehabilitation Act of 1973 from October 1, 2004, to April 1, 2005. No further extensions will be granted. The extension until April 1, 2005, will provide agencies time to update their purchase card training modules on the 508 requirements and train their personnel.

DATES: *Effective Date:* October 5, 2004.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before December 6, 2004 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2001-25, FAR case 2004-020 by any of the following methods:

• Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

• Agency Web Site: <http://www.acqnet.gov/far/ProposedRules/proposed.htm>. Click on the FAR case number to submit comments.

• E-mail: farcase.2004-020@gsa.gov. Include FAC 2001-25, FAR case 2004-020 in the subject line of the message.

• Fax: 202-501-4067.

• Mail: General Services

Administration, Regulatory Secretariat (V), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2001-25, FAR case 2004-020, in all correspondence related to this case. All comments received will be posted without change to <http://www.acqnet.gov/far/ProposedRules/proposed.htm>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 2001-25, FAR case 2004-020.

SUPPLEMENTARY INFORMATION:

A. Background

Section 508 of the Rehabilitation Act of 1973 requires that the Electronic and Information Technology (EIT) developed, procured, maintained, or used by the Federal Government provide individuals with disabilities access to and use of information and data that is comparable to the access and use of information and data by individuals without disabilities. The law was implemented first through standards developed by the Architectural and Transportation Barriers Compliance Board, ("Access Board") and then incorporated into the FAR.

Initially, the FAR exempted micropurchases from the 508 requirements until January 1, 2003. (See FAR Case 1999-607, 66 FR 20894, April 25, 2001.) The rule's preamble gave notice that the Government would revisit the issue prior to the sunset date. This deadline was extended (FAR Case 2002-012, 67 FR 80321, December 31, 2002 and 68 FR 43872, July 24, 2003) and is due to expire October 1, 2004.

The FAR Council is extending the micropurchase exception from October 1, 2004, to April 1, 2005, and no additional extensions will be granted. Agencies have had three years of experience with Section 508, and

industry continues to make investments in accessible technology to support the requirements. The extension until April 1, 2005, will provide agencies time to update their purchase card training modules on the 508 requirements and train their personnel. Free, online training developed by GSA, in collaboration with the Section 508 Executive Steering Committee, is available at <http://www.section508.gov>.

The FAR Council received public comments on the first extension to October 1, 2004. None of the comments received took issue with extending the micropurchase exemption. Extending the micropurchase exemption will not cause a significant impact on the disability community or industry.

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 proposed rule continues the status quo for another six months. When the FAR Council last extended the exception through October 1, 2004, none of the comments received took issue with extending the micropurchase exception. Also, extending the micropurchase exception will not cause a significant impact on the disability community or industry.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Part 39 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 2001-25, FAR case 2004-020), in correspondence.

C. Paperwork Reduction Act

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

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator

of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the rule extends an exception that would otherwise impose training burdens that the acquisition community may be challenged to meet by October 1, 2004. The extension until April 1, 2005, will provide agencies time to update their purchase card training modules on the 508 requirements and train their personnel. 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 Part 39

Government procurement.

Dated: September 28, 2004.

Ralph J. De Stefano,

Acting Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 39 as set forth below:

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

■ 1. The authority citation for 48 CFR part 39 is revised to read as follows:

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

39.204 [Amended]

■ 2. Amend section 39.204 in the first sentence of paragraph (a) by removing "October 1, 2004" and adding "April 1, 2005" in its place.

[FR Doc. 04-22247 Filed 10-4-04; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 14 and 52

[FAC 2001-25; Item V]

Federal Acquisition Regulation; Technical Amendments

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

ACTION: Final rule.

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

DATES: *Effective Date:* October 5, 2004.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. Please cite FAC 2001-25, Technical Amendments.

List of Subjects in 48 CFR Parts 14 and 52

Government procurement.

Dated: September 28, 2004.

Ralph J. De Stefano,

Acting Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 14 and 52 as set forth below:

■ 1. The authority citations for 48 CFR parts 14 and 52 are revised to read as follows:

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

PART 14—SEALED BIDDING

■ 2. In section 14.403, revise paragraph (c) to read as follows:

14.403 Recording of Bids.

* * * * *

(c) The forms identified in paragraph (a) of this section need not be used by the Defense Energy Support Center for acquisitions of coal or petroleum products or by the Defense Supply Center Philadelphia for perishable subsistence items.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.212-5 [Amended]

■ 3. Amend section 52.212-5 in paragraph (b)(34)(ii) by removing “(Apr 1984)” and adding “(Apr 2003)” in its place.

52.215-15 [Amended]

■ 4. Amend section 52.215-15 by revising the date of the clause to read “(OCT 2004)”.

52.217-5 [Amended]

■ 5. Amend section 52.217-5 in the introductory paragraph by removing “17.208(c)(1)” and adding “17.208(c)” in its place.

52.219-4 [Amended]

■ 6. Amend section 52.219-4 by revising the date of the clause to read “(OCT 2004)” and removing “will be will be” from paragraph (d)(3) of the clause and adding “will be” in its place.

[FR Doc. 04-22248 Filed 10-4-04; 8:45 am]

BILLING CODE 6820-EP-S

and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This Small Entity Compliance Guide has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2001-25 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2001-25 which precedes this document. These documents are also available via the Internet at <http://www.acqnet.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.

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),

LIST OF RULES IN FAC 2001-25

Item	Subject	FAR case	Analyst
I	Elimination of the Standard Form 1417	2002-017	Davis.
II	Free Trade Agreements—Chile and Singapore, and Trade Agreements Thresholds	2003-016	Davis.
III	Telecommuting for Federal Contractors (Interim)	2003-025	Zaffos.
IV	Section 508 Micropurchase Exemption (Interim)	2004-020	Nelson.
V	Technical Amendments.		

Item I—Elimination of the Standard Form 1417 (FAR Case 2002-017)

This final rule eliminates the use of the Standard Form 1417, Pre-Solicitation Notice (Construction Contract), in contracts for construction, alteration or repair, dismantling, demolition, or removal of improvements. The use of this form has become unnecessary because contracting officers provide access to presolicitation notices through the Governmentwide point of entry (GPE)

via the Internet at <http://www.fedbizopps.gov> pursuant to FAR 5.204. Elimination of the form increases reliance on electronic business practices and reduces the estimated information collection requirement burden hours imposed on offerors.

Item II—Free Trade Agreements—Chile and Singapore, and Trade Agreements Thresholds (FAR Case 2003-016)

The interim rule to implement new Free Trade Agreements with Chile and Singapore, published in the **Federal**

Register at 69 FR 1050, January 7, 2004, is converted to a final rule with changes. The interim rule included in each Trade Agreements clause the statement that United States law will apply to resolve any claim of breach of contract. At the request of the Department of Justice, the final rule relocates this statement into a separate clause to be included in all contracts. All contracting officers must be aware of this new requirement.

Item III—Telecommuting for Federal Contractors (FAR Case 2003–025) (Interim)

This interim rule addresses telecommuting by employees of Federal contractors. This rule implements Section 1428 of the Services Acquisition Reform Act of 2003 (Title XIV of Public Law 108–136), which prohibits agencies from including a requirement in a solicitation that precludes an offeror from permitting its employees to telecommute or, when telecommuting is not precluded, from unfavorably evaluating an offeror's proposal that includes telecommuting unless it would adversely affect agency requirements,

such as security. Contracting officers awarding service contracts should familiarize themselves with this rule.

Item IV—Section 508 Micropurchase Exemption (FAR Case 2004–020) (Interim)

This interim rule extends from October 1, 2004, to April 1, 2005, the micropurchase exception from the requirement to purchase electronic and information technology that provides individuals with disabilities better access to and use of information and data, as required by Section 508 of the Rehabilitation Act of 1973. The extension will provide agencies time to update their purchase card training

modules on the 508 requirements and train their personnel. This rule is of special interest to contracting officers who purchase electronic and information technology.

Item V—Technical Amendments

Editorial changes are made at FAR 14.403(c), 52.212–5(b)(34)(ii), 52.215–15(b)(2), 52.217–5, and 52.219–4(d)(3) to update various references.

Dated: September 28, 2004.

Ralph J. De Stefano,

Acting Director, Contract Policy Division.

[FR Doc. 04–22249 Filed 10–4–04; 8:45 am]

BILLING CODE 6820–EP–S