



Thursday
March 4, 1999

Part II

**Department of Defense
General Services
Administration**

**National Aeronautics and
Space Administration**

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

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Chapter 1

**Federal Acquisition Circular 97-11;
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 issued by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 97-11. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, may be located on the Internet at <http://www.arnet.gov/far>.

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

FOR FURTHER INFORMATION CONTACT: The 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 97-11 and specific FAR case number(s). Interested parties may also visit our website at <http://www.arnet.gov/far>.

Item	Subject	FAR case	Analyst
I	Review of FAR Representations	96-013	Linfield.
II	Very Small Business Concerns (Interim)	98-013	Moss.
III	Variation in Quantity	98-612	Moss.
IV	Electronic Funds Transfer	91-118	Olson.
V	Waiver of Cost or Pricing Data for Subcontracts	98-302	De Stefano.
VI	Executive Order 12933, Nondisplacement of Qualified Workers Under Certain Contracts.	94-610	O'Neill.
VII	Recruitment Costs Principle	98-001	Nelson.
VIII	Compensation for Senior Executives (Interim)	98-301	Nelson.
IX	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 97-11 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Review of FAR Representations (FAR Case 96-013)

This final rule amends FAR parts 1, 4, 12, 14, 26, 27, 32, 41, and 52 to reduce certain contractual requirements for representations or other affirmations that place an unnecessary burden on offerors or contractors.

Item II—Very Small Business Concerns (FAR Case 98-013)

This interim rule amends Federal Acquisition Regulation (FAR) Parts 5, 8, 12, 19, and 52 to implement the Small Business Administration's Very Small Business Pilot Program (13 CFR parts 121 and 125). The rule provides for the set-aside of certain acquisitions between \$2,500 and \$50,000 for very small business (VSB) concerns. The pilot VSB program is limited to buying activities and VSBs located in 10 geographic regions specified by the Small Business Administration and will run through September 30, 2000.

Item III—Variation in Quantity (FAR Case 98-612)

This final rule revises the prescription in 11.703(a) for the clause at 52.211-16, Variation in Quantity, to require use of the clause only in solicitations and contracts where a variation in quantity is authorized. This change makes the clause prescription consistent with language in FAR 11.701(a).

Item IV—Electronic Funds Transfer (FAR Case 91-118)

This final rule amends FAR Parts 13, 16, 32, and 52 to address the use of electronic funds transfer (EFT) for Federal contract payments, and to facilitate implementation of Public Law 104-134 which mandates payment by EFT in most situations. The final rule mainly differs from the interim rule by removing references to the "phase one" time period, which ended on January 1, 1999; by implementing applicable provisions of the Department of the Treasury's final rule at 31 CFR part 208 which addresses the "phase two" time period beginning January 2, 1999; by addressing the situation where contractors furnish EFT information by registering in the Central Contractor Registration database; and by permitting agencies to collect EFT banking information at various time periods ranging from prior to award (as a condition of award) to after award (concurrent with the initial invoice).

Item V—Waiver of Cost or Pricing Data for Subcontracts (FAR Case 98-302)

Section 805 of Public Law 105-261 clarifies that waivers of requirements for submittal of prime contractor cost or pricing data do not automatically waive requirements for subcontractors to submit cost or pricing data. Although this is consistent with the current requirements of FAR 15.403-1(c)(4), the final rule clarifies the requirement to provide rationale supporting any waiver of subcontracts.

Item VI—Executive Order 12933, Nondisplacement of Qualified Workers Under Certain Contracts (FAR Case 94-610)

The interim rule published as Item III in FAC 97-01 is converted to a final rule with minor changes. The final rule makes changes to the definition of "building service contract" at FAR 22.1202, and paragraphs (c) and (j) of the clause at 52.222-50, Nondisplacement of Qualified Workers.

Item VII—Recruitment Costs Principle (FAR Case 98-001)

This final rule amends FAR 31.205-1, Public relations and advertising costs, and FAR 31.205-34, Recruitment costs, to remove excessive wording and details for streamlining purposes.

Item VIII—Compensation for Senior Executives (FAR Case 98-301)

This interim rule revises FAR section 31.205-6(p) to implement Section 804 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261). Section 804 revises the definition of "senior executive" at 10 U.S.C. 2324(1)(5) and at 41 U.S.C. 256(m)(2) to be "the five most highly compensated employees in management positions at each home office and each segment of the contractor." This change applies to costs of compensation incurred after January 1, 1999, regardless of the date of contract award.

Item IX—Technical Amendments

Amendments are being made at FAR 1.106, 25.402, 52.219-8, 53.228, and 53.301-1418 in order to update references and make editorial changes.

Dated: February 25, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 97-11 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 97-11 are effective May 3, 1999, except for Items II, VIII, and IX, which are effective March 4, 1999.

Eleanor R. Spector,

Director, Defense Procurement.

Edward C. Loeb,

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

Tom Luedtke,

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

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

48 CFR Parts 1, 4, 12, 14, 26, 27, 32, 41, and 52

[FAC 97-11; FAR Case 96-013; Item I]

RIN 9000-AH97

Federal Acquisition Regulation; Review of FAR Representations

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to remove or reduce certain requirements for representations and other statements from offerors and contractors.

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Paul Linfield, Procurement Analyst, at (202) 501-1757. Please cite FAC 97-11, FAR case 96-013.

SUPPLEMENTARY INFORMATION:**A. Background**

This case was initiated in response to requests from industry to eliminate representations required by the FAR that place an unnecessary burden on offerors or contractors. A proposed rule was published in the **Federal Register** on May 7, 1998 (63 FR 25382), with comments requested by July 6, 1998. Comments were received from 4 respondents and were considered in formulation of the final rule. The final rule is not substantively different from the proposed rule. This rule—

1. Deletes the clause at 52.214-17, Affiliated Bidders;
2. Reduces the information collection requirements associated with the clauses at 52.204-5, Women-Owned Business; 52.212-3, Offeror Representations and Certifications—Commercial Items; 52.214-21, Descriptive Literature; 52.228-9, Cargo Insurance; and 52.241-1, Electric Service Territory Compliance Representation; and

3. Makes editorial changes to the clauses at 52.226-1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises; 52.227-15, Representation of Limited Rights Data and Restricted Computer Software; 52.228-8, Liability and Insurance—Leased Motor Vehicles; and 52.232-12, Advance Payments.

The FAR uses many different terms to express affirmation by the contractor, such as "state," "represent," "affirm," "declare," "warrant," and "certify."

41 U.S.C. 425, as amended by Section 4301(b)(1) of Public Law 104-106, restricts the inclusion of nonstatutory certification requirements in the FAR. This law was apparently enacted in response to industry perception that a certification requires a high level of attention within the company, may entail personal accountability of the signing official, and is more likely to be subject to criminal prosecution. Changes were made to the FAR under FAR case 96-312 to comply with this statute.

As has already been established in FAR case 96-312, all other forms of contractual affirmation (e.g., statements, representations, affirmations, declarations, or warranties) are not certifications subject to the statutory restrictions of 41 U.S.C. 425 (see GAO Decision B-278404.2). The other terms of affirmation, despite subjective shades of meaning, are essentially synonymous and are not intended to imply gradations in the level of contractual requirement.

Moreover, the implied difference in level of review for certifications as opposed to other forms of affirmation does not indicate a difference in the Government expectation of truthfulness or accuracy. The Government relies on information provided by the contractor, whether the contractor says "I certify," "I represent," "I state," or simply checks a block. If the information turns out to be false, then the Government may take action under the False Statements Act and may assert its right to other remedies.

Because the use of multiple terms of affirmation other than "certification" may convey unintended differences of meaning, it is our goal in the future to use more simple and consistent terminology. However, some of the terminology changes in the proposed rule were interpreted as a substantive change to the requirements of the clause, implying a reduction in the effectiveness of the commitment by the contractor. Therefore, in the final rule, we do not make any changes to the FAR clauses at 52.216-2, 52.216-3, 52.222-43, 52.222-44, and 52.229-3 because the only proposed change was

Item VIII—Compensation for Senior Executives (FAR Case 98-301)

This interim rule revises FAR section 31.205-6(p) to implement Section 804 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261). Section 804 revises the definition of "senior executive" at 10 U.S.C. 2324(1)(5) and at 41 U.S.C. 256(m)(2) to be "the five most highly compensated employees in management positions at each home office and each segment of the contractor." This change applies to costs of compensation incurred after January 1, 1999, regardless of the date of contract award.

Item IX—Technical Amendments

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Dated: February 25, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

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Eleanor R. Spector,

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

48 CFR Parts 1, 4, 12, 14, 26, 27, 32, 41, and 52

[FAC 97-11; FAR Case 96-013; Item I]

RIN 9000-AH97

Federal Acquisition Regulation; Review of FAR Representations

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to remove or reduce certain requirements for representations and other statements from offerors and contractors.

EFFECTIVE DATE: May 3, 1999.

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SUPPLEMENTARY INFORMATION:**A. Background**

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1. Deletes the clause at 52.214-17, Affiliated Bidders;
2. Reduces the information collection requirements associated with the clauses at 52.204-5, Women-Owned Business; 52.212-3, Offeror Representations and Certifications—Commercial Items; 52.214-21, Descriptive Literature; 52.228-9, Cargo Insurance; and 52.241-1, Electric Service Territory Compliance Representation; and

3. Makes editorial changes to the clauses at 52.226-1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises; 52.227-15, Representation of Limited Rights Data and Restricted Computer Software; 52.228-8, Liability and Insurance—Leased Motor Vehicles; and 52.232-12, Advance Payments.

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Moreover, the implied difference in level of review for certifications as opposed to other forms of affirmation does not indicate a difference in the Government expectation of truthfulness or accuracy. The Government relies on information provided by the contractor, whether the contractor says "I certify," "I represent," "I state," or simply checks a block. If the information turns out to be false, then the Government may take action under the False Statements Act and may assert its right to other remedies.

Because the use of multiple terms of affirmation other than "certification" may convey unintended differences of meaning, it is our goal in the future to use more simple and consistent terminology. However, some of the terminology changes in the proposed rule were interpreted as a substantive change to the requirements of the clause, implying a reduction in the effectiveness of the commitment by the contractor. Therefore, in the final rule, we do not make any changes to the FAR clauses at 52.216-2, 52.216-3, 52.222-43, 52.222-44, and 52.229-3 because the only proposed change was

substitution of an essentially similar term, just to standardize terminology.

Changes to the clause at 52.225-10, Duty-Free Entry, are deferred to FAR case 97-024, Part 25 Rewrite.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it does not significantly alter the type of information to be provided to the Government under the amended provisions and clauses.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) is deemed to apply. This rule will result in a reduction of 119,150 hours in the information collection requirements approved under the following Office of Management and Budget (OMB) Control Numbers:

9000-0018, *Certification of Independent Price Determination and Parent Company and Identifying Data* (Deletion of 52.214-17, Affiliated Bidders, reduction from 25,700 hours to approximately 12,850 hours);

9000-0039, *Descriptive Literature* (Revision of 52.214-21, Descriptive Literature, reduction from 1,334 hours to approximately 1,254 hours);

9000-0136, *Solicitation/Contract/Order for Commercial Items* (Revision of 52.212-3, Offeror Representations and Certifications—Commercial Items, reduction from 7,500,000 to approximately 7,394,050 hours); and

9000-0126, *Electric Service Territory Compliance Representation* (Revision of 52.241-1, Electric Service Territory Representations, reduction from 500 hours to approximately 230 hours).

Although OMB Clearance Number 9000-0145, Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification—FAR case 95-307, ostensibly covers FAR clause 52.204-5, Women-Owned Business, the estimated burdens for that clearance appear to be based on the information collection requirements associated with use of the DUNS number. Therefore, although revisions to 52.204-5 will significantly reduce the number of responses required, we do not estimate

any impact on the hours approved under 9000-0145.

List of Subjects in 48 CFR Parts 1, 4, 12, 14, 26, 27, 32, 41, and 52

Government procurement.

Dated: February 25, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 1, 4, 12, 14, 26, 27, 32, 41, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 4, 12, 14, 26, 27, 32, 41, 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 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1.106 is amended in the table following the introductory paragraph by removing the FAR segment “52.214-17” and its corresponding OMB Control Number “9000-0018”; and by adding, in numerical order, the following entry:

1.106 OMB approval under the Paperwork Reduction Act.

FAR segment	OMB control number
* * * * *	
52.212-3	9000-0136
* * * * *	

PART 4—ADMINISTRATIVE MATTERS

3. Section 4.603 is amended by revising paragraph (b) to read as follows:

4.603 Solicitation provisions.

* * * * *

(b) The contracting officer shall insert the provision at 52.204-5, Women-Owned Business (Other Than Small Business), in all solicitations that are not set aside for small business concerns and that exceed the simplified acquisition threshold, if the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

4. Section 12.503 is amended by revising paragraph (b)(5) to read as follows:

12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial items.

* * * * *

(b) * * *

(5) 49 U.S.C. 40118, Requirement for a clause under the Fly American provisions (see 47.405).

* * * * *

PART 14—SEALED BIDDING

14.201-6 [Amended]

5. Section 14.201-6 is amended by removing and reserving paragraph (k).

14.405 [Amended]

6. Section 14.405 is amended in paragraph (d)(2) by adding “and” at the end of the sentence; by removing paragraph (e) and redesignating paragraph (f) as (e).

PART 26—OTHER SOCIOECONOMIC PROGRAMS

26.103 [Amended]

7. Section 26.103 is amended in paragraphs (a), (b), and (e) by removing “self-certification” and adding “representation” in its place.

PART 27—PATENTS, DATA, AND COPYRIGHTS

27.404 [Amended]

8. Section 27.404 is amended in the second sentence of paragraphs (d)(2) and (e)(3) by removing the word “representation” and adding “provision” in its place.

9. Section 27.409 is amended by revising the first sentence of paragraph (g) to read as follows:

27.409 Solicitation provisions and contract clauses.

* * * * *

(g) In accordance with 27.404(d)(2), if the contracting officer desires to have an offeror state in response to a solicitation, to the extent feasible, whether limited rights data or restricted computer software are likely to be used in meeting the data delivery requirements set forth in the solicitation, the contracting officer shall insert the provision at 52.227-15, Representation of Limited Rights Data and Restricted Computer Software, in any solicitation containing the clause at 52.227-14, Rights in Data—General. * * *

* * * * *

PART 32—CONTRACT FINANCING

10. Section 32.805 is amended by revising paragraph (a) to read as follows:

32.805 Procedure.

(a) *Assignments.* (1) Assignments by corporations shall be—

(i) Executed by an authorized representative;

(ii) Attested by the secretary or the assistant secretary of the corporation; and

(iii) Impressed with the corporate seal or accompanied by a true copy of the resolution of the corporation's board of directors authorizing the signing representative to execute the assignment.

(2) Assignments by a partnership may be signed by one partner, if the assignment is accompanied by adequate evidence that the signer is a general partner of the partnership and is authorized to execute assignments on behalf of the partnership.

(3) Assignments by an individual shall be signed by that individual and the signature acknowledged before a notary public or other person authorized to administer oaths.

* * * * *

PART 41—ACQUISITION OF UTILITY SERVICES

11. Section 41.201 is amended by removing the last two sentences of paragraph (e) and adding a sentence at the end to read as follows:

41.201 Policy.

* * * * *

(e) * * * Proposals from alternative electric suppliers shall provide a representation that service can be provided in a manner consistent with section 8093 of Public Law 100-202 (see 41.201(d)).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

12. Section 52.204-5 is revised to read as follows:

52.204-5 Women-Owned Business (Other Than Small Business).

As prescribed in 4.603(b), insert the following provision:

Women-Owned Business (Other Than Small Business) (May 1999)

(a) *Definition.* *Women-owned business concern*, as used in this provision, means a concern that is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

(b) *Representation.* [Complete only if the offeror is a women-owned business concern and has not represented itself as a small business concern in paragraph (b)(1) of FAR 52.219-1, *Small Business Program*

Representations, of this solicitation.] The offeror represents that it is, is not a women-owned business concern.

(End of provision)

13. Section 52.212-3 is amended by revising the date of the provision; in paragraph (a) of the provision in the definition "Women-owned business concern," by removing the words "the stock of which" and adding "its stock"; by revising paragraphs (c)(2), (c)(3), and (c)(4); and in the introductory text of paragraph (d) by removing "Certifications and representations" and adding "Representations" to read as follows:

52.212-3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (May 1999)

* * * * *

(c) * * *

(2) *Small disadvantaged business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, for general statistical purposes, that it is, is not a small disadvantaged business concern as defined in 13 CFR 124.1002.

(3) *Women-owned small business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it is, is not a women-owned small business concern.

Note: Complete paragraphs (c)(4) and (c)(5) only if this solicitation is expected to exceed the simplified acquisition threshold.

(4) *Women-owned business concern (other than small business concern).* [Complete only if the offeror is a women-owned business concern and did not represent itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it is, is not a women-owned business concern.

* * * * *

52.214-17 [Reserved]

14. Section 52.214-17 is removed and reserved.

15. Section 52.214-21 is amended by revising the introductory text of the provision; and by revising the date, introductory text, and paragraph (d) of Alternate I to read as follows:

52.214-21 Descriptive literature.

As prescribed in 14.201-6(p)(1), insert the following provision:

* * * * *

Alternate I (May 1999). As prescribed in 14.201-6(p)(2), add the following paragraphs (d) and (e) to the basic provision.

(d) The Contracting Officer may waive the requirement for furnishing descriptive literature if the bidder has supplied a product the same as that required by this solicitation

under a prior contract. A bidder that requests a waiver of this requirement shall provide the following information:

Prior contract number _____

Date of prior contract _____

Contract line item number of product supplied _____

Name and address of Government activity to which delivery was made _____

Date of final delivery of product supplied _____

* * * * *

16. Section 52.219-1 is amended by revising the provision date; in the parenthetical of paragraphs (b)(2) and (b)(3) of the provision by adding "the" after the word "if"; in paragraph (c) by revising "Woman-owned" to read "Women-owned"; and by revising the introductory text of paragraph (d)(2) to read as follows:

52.219-1 Small Business Program Representations.

* * * * *

Small Business Program Representations (May 1999)

* * * * *

(d) * * *

(2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small, small disadvantaged, or women-owned small business concern in order to obtain a contract to be awarded under the preference programs established pursuant to section 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall—

* * * * *

52.219-21 [Amended]

17. Section 52.219-21 is amended by revising the provision date to read "(May 1999)"; and by removing the statement "Offeror represents as follows:" which follows the first parenthetical.

52.226-1 [Amended]

18. Section 52.226-1 is amended by revising the clause date to read "(May 1999)"; and in the first sentence of paragraph (c)(1) of the clause by removing "self-certification" each time it is used (twice) and adding "representation" in its place.

19. Section 52.227-15 is revised to read as follows:

52.227-15 Representation of Limited Rights Data and Restricted Computer Software.

As prescribed in 27.409(g), insert the following provision:

Statement of Limited Rights Data and Restricted Computer Software (May 1999)

(a) This solicitation sets forth the work to be performed if a contract award results, and the Government's known delivery

requirements for data (as defined in FAR 27.401). Any resulting contract may also provide the Government the option to order additional data under the Additional Data Requirements clause at 52.227-16 of the FAR, if included in the contract. Any data delivered under the resulting contract will be subject to the Rights in Data—General clause at 52.227-14 that is to be included in this contract. Under the latter clause, a Contractor may withhold from delivery data that qualify as limited rights data or restricted computer software, and deliver form, fit, and function data in lieu thereof. The latter clause also may be used with its Alternates II and/or III to obtain delivery of limited rights data or restricted computer software, marked with limited rights or restricted rights notices, as appropriate. In addition, use of Alternate V with this latter clause provides the Government the right to inspect such data at the Contractor's facility.

(b) As an aid in determining the Government's need to include Alternate II or Alternate III in the clause at 52.227-14, Rights in Data—General, the offeror shall complete paragraph (c) of this provision to either state that none of the data qualify as limited rights data or restricted computer software, or identify, to the extent feasible, which of the data qualifies as limited rights data or restricted computer software. Any identification of limited rights data or restricted computer software in the offeror's response is not determinative of the status of such data should a contract be awarded to the offeror.

(c) The offeror has reviewed the requirements for the delivery of data or software and states [offeror check appropriate block]—

None of the data proposed for fulfilling such requirements qualifies as limited rights data or restricted computer software.

Data proposed for fulfilling such requirements qualify as limited rights data or restricted computer software and are identified as follows:

Note: "Limited rights data" and "Restricted computer software" are defined in the contract clause entitled "Rights in Data—General."

(End of provision)

20. Section 52.228-8 is amended by revising the introductory paragraph, the clause date, and paragraph (e) of the clause to read as follows:

52.228-8 Liability and Insurance—Leased Motor Vehicles.

As prescribed in 28.312, insert the following clause:

Liability and Insurance—Leased Motor Vehicles (May 1999)

* * * * *

(e) The contract price shall not include any costs for insurance or contingency to cover losses, damage, injury, or death for which the Government is responsible under paragraph (a) of this clause.

(End of clause)

21. Section 52.228-9 is revised to read as follows:

52.228-9 Cargo Insurance.

As prescribed in 28.313(a), insert the following clause:

Cargo Insurance (May 1999)

(a) The Contractor, at the Contractor's expense, shall provide and maintain, during the continuance of this contract, cargo insurance of \$ _____ per vehicle to cover the value of property on each vehicle and of \$ _____ to cover the total value of the property in the shipment.

(b) All insurance shall be written on companies acceptable to _____ [insert name of contracting agency], and policies shall include such terms and conditions as required by _____ [insert name of contracting agency]. The Contractor shall provide evidence of acceptable cargo insurance to _____ [insert name of contracting agency] before commencing operations under this contract.

(c) Each cargo insurance policy shall include the following statement:

"It is a condition of this policy that the Company shall furnish—

(1) Written notice to _____ [insert name and address of contracting agency], 30 days in advance of the effective date of any reduction in, or cancellation of, this policy; and

(2) Evidence of any renewal policy to the address specified in paragraph (1) of this statement, not less than 15 days prior to the expiration of any current policy on file with _____ [insert name of contracting agency]."

(End of clause)

22. Section 52.232-12 is amended—
a. By revising the introductory text, the date, paragraph (j), and the introductory text of paragraph (o) of the clause;

b. In paragraph (o)(8) by removing "and warranties";

c. By revising the date of Alternate V; and

d. By revising the date, paragraph (g), the introductory text of paragraph (l), and paragraph (l)(8) of the clause following Alternate V.

The revised text reads as follows:

52.232-12 Advance Payments.

As prescribed in 32.412(a), insert the following clause:

Advance Payments (May 1999)

* * * * *

(j) *Insurance.* (1) The Contractor shall maintain with responsible insurance carriers—

(i) Insurance on plant and equipment against fire and other hazards, to the extent that similar properties are usually insured by others operating plants and properties of similar character in the same general locality;

(ii) Adequate insurance against liability on account of damage to persons or property; and

(iii) Adequate insurance under all applicable workers' compensation laws.

(2) Until work under this contract has been completed and all advance payments made under the contract have been liquidated, the Contractor shall—

(i) Maintain this insurance;

(ii) Maintain adequate insurance on any materials, parts, assemblies, subassemblies, supplies, equipment, and other property acquired for or allocable to this contract and subject to the Government lien under paragraph (i) of this clause; and

(iii) Furnish any evidence with respect to its insurance that the administering office may require.

* * * * *

(o) *Representations.* The Contractor represents the following:

* * * * *

Alternate V (May 1999). * * *

* * * * *

Advance Payments Without Special Bank Account (May 1999)

* * * * *

(g) *Insurance.* (1) The Contractor shall maintain with responsible insurance carriers—

(i) Insurance on plant and equipment against fire and other hazards, to the extent that similar properties are usually insured by others operating plants and properties of similar character in the same general locality;

(ii) Adequate insurance against liability on account of damage to persons or property; and

(iii) Adequate insurance under all applicable workers' compensation laws.

(2) Until work under this contract has been completed and all advance payments made under the contract have been liquidated, the Contractor shall—

(i) Maintain this insurance;

(ii) Maintain adequate insurance on any materials, parts, assemblies, subassemblies, supplies, equipment, and other property acquired for or allocable to this contract and subject to the Government lien under paragraph (f) of this clause; and

(iii) Furnish any evidence with respect to its insurance that the administering office may require.

* * * * *

(l) *Representations.* The Contractor represents the following:

* * * * *

(8) These representations shall be continuing and shall be considered to have been repeated by the submission of each invoice for advance payments.

* * * * *

23. Section 52.241-1 is revised to read as follows:

52.241-1 Electric Service Territory Compliance Representation.

As prescribed in 41.501(b), insert a provision substantially the same as the following:

Electric Service Territory Compliance Representation (May 1999)

(a) Section 8093 of Public Law 100-202 generally requires purchases of electricity by any department, agency, or instrumentality of

the United States to be consistent with State law governing the provision of electric utility service, including State utility commission rulings and electric utility franchises or service territories established pursuant to State statute, State regulation, or State-approved territorial agreements.

(b) By signing this offer, the offeror represents that this offer to sell electricity is consistent with Section 8093 of Public Law 100-202.

(c) Upon request of the Contracting Officer, the offeror shall submit supporting legal and factual rationale for this representation.

(End of provision)

[FR Doc. 99-5203 Filed 3-3-99; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 8, 12, 19, and 52

[FAC 97-11; FAR Case 98-013; Item II]

RIN 9000-AI29

Federal Acquisition Regulation; Very Small Business Concerns

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

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement the Small Business Administration's Very Small Business Pilot Program (13 CFR parts 121 and 125).

DATES: *Effective Date:* March 4, 1999.

Applicability Date: This rule applies to solicitations issued on or after March 4, 1999.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before May 3, 1999, to be considered in the formulation of a final rule.

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

E-Mail comments submitted over the Internet should be addressed to: farcase.98-013@gsa.gov

Please cite FAC 97-11, FAR case 98-013 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 97-11, FAR case 98-013.

SUPPLEMENTARY INFORMATION:

A. Background

Section 304 of the Small Business Administration Reauthorization and Amendments Act of 1994 (Pub. L. 103-403) authorized the SBA Administrator to establish and carry out a pilot program for very small business (VSB) concerns. The Small Business Administration (SBA) published a final rule in the **Federal Register** on September 2, 1998 (63 FR 46640), amending 13 CFR parts 121 and 125 to establish a pilot program for VSB business concerns. The purpose of the program is to improve access to Government contract opportunities for concerns that are substantially below SBA's size standards by reserving certain acquisitions for competition among such VSB concerns.

Implementation of the program is limited to geographic areas served by 10 SBA district offices. A VSB concern is defined as a small business that has 15 or fewer employees together with average annual receipts that do not exceed \$1 million. Any procurement that has an anticipated dollar value exceeding \$2,500 but not greater than \$50,000 may be set aside for VSB concerns. A contracting officer must set aside for VSB concerns any such service or construction requirement that will be performed within the geographical boundaries served by a designated SBA district office if there is a reasonable expectation of obtaining fair and reasonable offers from two or more responsible VSB concerns headquartered within the geographical area served by that designated SBA district. In the case of a procurement for supplies, a contracting officer must set aside any such requirement for VSBs if the contracting office is located within the geographical area served by a designated SBA district, and there is a reasonable expectation of obtaining fair and reasonable offers from two or more responsible VSB concerns headquartered within the geographical area served by that designated SBA district office. A decision chart to assist contracting personnel in making the

decision to set aside an acquisition for VSB concerns is located at <http://www.arnet.gov/References/VerySmall.html>. The program will expire on September 30, 2000, unless further extended through legislation.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may 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 Section 304 of the Small Business Administration Reauthorization and Amendments Act of 1994 (Pub. L. 103-403) called for the Small Business Administration (SBA) to conduct a pilot program to improve access to Federal Government contract opportunities for concerns that are substantially below SBA's size standards by reserving certain procurements for competition among such very small business (VSB) concerns. SBA's final rule implementing the pilot program was published in the **Federal Register** on September 2, 1998 (63 FR 46640).

The SBA provides, in its final rule, that the rule should have no effect on the amount of dollar value of any contract requirement or the number of requirements reserved for the small business set-aside program, since it is administered within and is a component of the small business set-aside program. Estimates of the number of entities to which the rule will apply were submitted by SBA in its regulatory flexibility analysis prepared for the final SBA rule. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97-11, FAR Case 98-013), in correspondence.

C. Paperwork Reduction Act

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

the United States to be consistent with State law governing the provision of electric utility service, including State utility commission rulings and electric utility franchises or service territories established pursuant to State statute, State regulation, or State-approved territorial agreements.

(b) By signing this offer, the offeror represents that this offer to sell electricity is consistent with Section 8093 of Public Law 100-202.

(c) Upon request of the Contracting Officer, the offeror shall submit supporting legal and factual rationale for this representation.

(End of provision)

[FR Doc. 99-5203 Filed 3-3-99; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 8, 12, 19, and 52

[FAC 97-11; FAR Case 98-013; Item II]

RIN 9000-AI29

Federal Acquisition Regulation; Very Small Business Concerns

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

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement the Small Business Administration's Very Small Business Pilot Program (13 CFR parts 121 and 125).

DATES: *Effective Date:* March 4, 1999.

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Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before May 3, 1999, to be considered in the formulation of a final rule.

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SUPPLEMENTARY INFORMATION:

A. Background

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Implementation of the program is limited to geographic areas served by 10 SBA district offices. A VSB concern is defined as a small business that has 15 or fewer employees together with average annual receipts that do not exceed \$1 million. Any procurement that has an anticipated dollar value exceeding \$2,500 but not greater than \$50,000 may be set aside for VSB concerns. A contracting officer must set aside for VSB concerns any such service or construction requirement that will be performed within the geographical boundaries served by a designated SBA district office if there is a reasonable expectation of obtaining fair and reasonable offers from two or more responsible VSB concerns headquartered within the geographical area served by that designated SBA district. In the case of a procurement for supplies, a contracting officer must set aside any such requirement for VSBs if the contracting office is located within the geographical area served by a designated SBA district, and there is a reasonable expectation of obtaining fair and reasonable offers from two or more responsible VSB concerns headquartered within the geographical area served by that designated SBA district office. A decision chart to assist contracting personnel in making the

decision to set aside an acquisition for VSB concerns is located at <http://www.arnet.gov/References/VerySmall.html>. The program will expire on September 30, 2000, unless further extended through legislation.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may 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 Section 304 of the Small Business Administration Reauthorization and Amendments Act of 1994 (Pub. L. 103-403) called for the Small Business Administration (SBA) to conduct a pilot program to improve access to Federal Government contract opportunities for concerns that are substantially below SBA's size standards by reserving certain procurements for competition among such very small business (VSB) concerns. SBA's final rule implementing the pilot program was published in the **Federal Register** on September 2, 1998 (63 FR 46640).

The SBA provides, in its final rule, that the rule should have no effect on the amount of dollar value of any contract requirement or the number of requirements reserved for the small business set-aside program, since it is administered within and is a component of the small business set-aside program. Estimates of the number of entities to which the rule will apply were submitted by SBA in its regulatory flexibility analysis prepared for the final SBA rule. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97-11, FAR Case 98-013), in correspondence.

C. Paperwork Reduction Act

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

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to conform the Federal Acquisition Regulation to revisions made to the Small Business Administration's small business size and Government contracting assistance regulations to incorporate the Very Small Business Set-Aside Pilot Program. The Small Business Administration's rule is effective on January 4, 1999. However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 5, 8, 12, 19, and 52

Government procurement.

Dated: February 25, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 5, 8, 12, 19, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 5, 8, 12, 19, 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 5—PUBLICIZING CONTRACT ACTIONS

2. Section 5.207 is amended by adding paragraph (c)(2)(xviii); and by revising paragraph (d) to read as follows:

5.207 Preparation and transmittal of synopses.

* * * * *

(c)(2) * * *

(xviii) In the case of a very small business set-aside, identify the Designated Region (see subpart 19.9).

(d) *Set-asides.* When the proposed acquisition provides for a total, partial, or very small business set-aside, or a HUBZone small business set-aside, the appropriate CBD Numbered Note will be cited.

* * * * *

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

3. Section 8.404 is amended by revising paragraph (a) to read as follows:

8.404 Using schedules.

(a) *General.* When agency requirements are to be satisfied through the use of Federal Supply Schedules as set forth in this subpart, the simplified acquisition procedures of Part 13 and the small business provisions of Part 19 do not apply, except for the provision at 13.303-2(c)(3). Orders placed pursuant to a Multiple Award Schedule (MAS), using the procedures in this subpart, are considered to be issued pursuant to full and open competition (see 6.102(d)(3)). Therefore, when placing orders under Federal Supply Schedules, ordering offices need not seek further competition, synopsesize the requirement, make a separate determination of fair and reasonable pricing, or consider small business programs. GSA has already determined the prices of items under schedule contracts to be fair and reasonable. By placing an order against a schedule using the procedures in this section, the ordering office has concluded that the order represents the best value and results in the lowest overall cost alternative (considering price, special features, administrative costs, etc.) to meet the Government's needs.

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.303 [Amended]

4. Section 12.303 is amended at the end of paragraph (b)(1) by removing the semicolon and adding “, or set-aside for very small business concerns;”.

PART 19—SMALL BUSINESS PROGRAMS

5. Section 19.000 is amended at the end of paragraph (a)(8) by removing “and”; in paragraph (a)(9) by removing the period and adding “; and”; and by adding paragraph (a)(10) to read as follows:

19.000 Scope of part.

(a) * * *

(10) The Very Small Business Pilot Program.

* * * * *

6. Section 19.001 is amended by adding, in alphabetical order, the definition “Very small business concern” to read as follows:

19.001 Definitions.

* * * * *

Very small business concern means a small business concern—

(1) Whose headquarters is located within the geographic area served by a designated SBA district; and

(2) Which, together with its affiliates, has no more than 15 employees and has average annual receipts that do not exceed \$1 million.

* * * * *

7. Section 19.102 is amended by redesignating paragraph “(g)” as “(h)”; and by adding a new paragraph (g) to read as follows:

19.102 Size standards.

* * * * *

(g) In the case of acquisitions set aside for very small business in accordance with 19.904, offerors may not have more than 15 employees and may not have average annual receipts that exceed \$1 million.

* * * * *

19.502-2 [Amended]

8. Section 19.502-2 is amended in the first sentence of paragraph (a) by removing “Each” and adding “Except for those acquisitions set aside for very small business concerns (see subpart 19.9), each”.

9. Subpart 19.9, consisting of sections 19.901 through 19.905, is added to read as follows:

Subpart 19.9—Very Small Business Pilot Program

Sec.

- 19.901 General.
- 19.902 Definition.
- 19.903 Applicability.
- 19.904 Procedures.
- 19.905 Solicitation provision and contract clause.

Authority: 41 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

Subpart 19.9—Very Small Business Pilot Program

19.901 General.

(a) The Very Small Business Pilot Program was established under Section 304 of the Small Business Administration Reauthorization and Amendments Act of 1994 (Public Law 103-403).

(b) The purpose of the program is to improve access to Government contract opportunities for concerns that are substantially below SBA's size standards by reserving certain acquisitions for competition among such concerns.

(c) This pilot program terminates on September 30, 2000. Therefore, any award under this program must be made on or before this date.

19.902 Definition.

Designated SBA district means the geographic area served by any of the following SBA district offices:

(1) Albuquerque, NM, serving New Mexico.

(2) Los Angeles, CA, serving the following counties in California: Los Angeles, Santa Barbara, and Ventura.

(3) Boston, MA, serving Massachusetts.

(4) Louisville, KY, serving Kentucky.

(5) Columbus, OH, serving the following counties in Ohio: Adams, Allen, Ashland, Athens, Auglaize, Belmont, Brown, Butler, Champaign, Clark, Clermont, Clinton, Coshocton, Crawford, Darke, Delaware, Fairfield, Fayette, Franklin, Gallia, Greene, Guernsey, Hamilton, Hancock, Hardin, Highland, Hocking, Holmes, Jackson, Knox, Lawrence, Licking, Logan, Madison, Marion, Meigs, Mercer, Miami, Monroe, Montgomery, Morgan, Morrow, Muskingum, Noble, Paulding, Perry, Pickaway, Pike, Preble, Putnam, Richland, Ross, Scioto, Shelby, Union, Van Wert, Vinton, Warren, Washington, and Wyandot.

(6) New Orleans, LA, serving Louisiana.

(7) Detroit, MI, serving Michigan.

(8) Philadelphia, PA, serving the State of Delaware and the following counties in Pennsylvania: Adams, Berks, Bradford, Bucks, Carbon, Chester, Clinton, Columbia, Cumberland, Dauphin, Delaware, Franklin, Fulton, Huntingdon, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mifflin, Monroe, Montgomery, Montour, Northampton, Northumberland, Philadelphia, Perry, Pike, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming, and York.

(9) El Paso, TX, serving the following counties in Texas: Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Pecos, Presidio, Reeves, and Terrell.

(10) Santa Ana, CA, serving the following counties in California: Orange, Riverside, and San Bernadino.

19.903 Applicability.

(a) The Very Small Business Pilot Program applies to acquisitions, including construction acquisitions, with an estimated value exceeding \$2,500 but not greater than \$50,000, when—

(1) In the case of an acquisition for supplies, the contracting office is located within the geographical area served by a designated SBA district; or

(2) In the case of an acquisition for other than supplies, the contract will be performed within the geographical area served by a designated SBA district.

(b) The Very Small Business Pilot Program does not apply to—

(1) Acquisitions that will be awarded pursuant to the 8(a) Program; or

(2) Any requirement that is subject to the Small Business Competitiveness Demonstration Program (see Subpart 19.10).

19.904 Procedures.

(a) A contracting officer shall set-aside for very small business concerns each acquisition that has an anticipated dollar value exceeding \$2,500 but not greater than \$50,000 if—

(1) In the case of an acquisition for supplies—

(i) The contracting office is located within the geographical area served by a designated SBA district; and

(ii) There is a reasonable expectation of obtaining offers from two or more responsible very small business concerns headquartered within the geographical area served by the designated SBA district that are competitive in terms of market prices, quality, and delivery; or

(2) In the case of an acquisition for services—

(i) The contract will be performed within the geographical area served by a designated SBA district; and

(ii) There is a reasonable expectation of obtaining offers from two or more responsible very small business concerns headquartered within the geographical area served by the designated SBA district that are competitive in terms of market prices, quality, and delivery.

(b) Contracting officers shall determine the applicable designated SBA district office as defined at 19.902. The geographic areas served by the SBA Los Angeles and Santa Ana District offices will be treated as one designated SBA district for the purposes of this subpart.

(c) If no reasonable expectation exists under paragraphs (a)(1)(ii) and (a)(2)(ii) of this section, the contracting officer shall document the file and proceed with the acquisition in accordance with Subpart 19.5.

(d) If the contracting officer receives only one acceptable offer from a responsible very small business concern in response to a very small business set-aside, the contracting officer should make an award to that firm. If there is no offer received from a very small business concern, the contracting officer shall cancel the very small business set-aside and proceed with the acquisition in accordance with Subpart 19.5.

19.905 Solicitation provision and contract clause.

The contracting officer shall use the clause at 52.219-5, Very Small Business Set-Aside, in solicitations and contracts if the acquisition is set aside for very small business concerns.

(a) The contracting officer shall use the clause at 52.219-5 with its Alternate I—

(1) In construction or service contracts; or

(2) When the acquisition is for a product in a class for which the Small Business Administration has waived the nonmanufacturer rule (see 19.102(f)(4) and (5)).

(b) The contracting officer shall use the clause at 52.219-5 with its Alternate II when Alternate I does not apply, the acquisition is processed under simplified acquisition procedures, and the total amount of the contract does not exceed \$25,000.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

10. Section 52.212-5 is amended by revising the clause date; and by redesignating paragraphs (b)(2) through (b)(8) as (b)(4) through (b)(10), and (b)(9) and (b)(10) as (b)(2) and (b)(3), respectively; and by revising newly designated paragraph (b)(4) of the clause to read 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 (Mar 1999)

* * * * *

(b) * * *

____(4)(i) 52.219-5, Very Small Business Set-Aside (Pub. L. 103-403, section 304, Small Business Reauthorization and Amendments Act of 1994).

____(ii) Alternate I to 52.219-5.

____(iii) Alternate II to 52.219-5.

* * * * *

11. Section 52.219-5 is added to read as follows:

52.219-5 Very Small Business Set-Aside.

As prescribed in 19.905, insert the following clause:

Very Small Business Set-Aside (Mar 1999)

(a) *Definition.* *Very Small Business Concern*, as used in this clause, means a concern whose headquarters is located within the geographical area served by a designated SBA district (see 13 CFR 125.7(b)); which, together with its affiliates, has no more than 15 employees and has average annual receipts that do not exceed \$1 million.

(b) *Eligibility.* (1) Only those firms headquartered in the

_____ Small Business Administration (SBA) district [Contracting Officer shall insert the applicable SBA designated district. If the geographic area is served by the SBA Los Angeles or Santa Ana District offices, list both] are eligible for this acquisition.

(2) Offers or quotations under this acquisition are solicited from very small business concerns only. Offers that are from other than an eligible very small business concern shall not be considered and shall be rejected. The offeror represents that it is an eligible very small business concern by submission of an offer or quotation.

(c) *Agreement.* A very small business concern submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States. As used in this clause, the term *United States* includes its territories and possessions, the Commonwealth of Puerto Rico, the trust territory of the Pacific Islands, and the District of Columbia.

(End of clause)

Alternate I (Mar 1999). As prescribed in 19.905(a), delete paragraph (c) of the basic clause.

Alternate II (Mar 1999). As prescribed in 19.905(b), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) *Agreement.* A very small business concern submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by domestic firms in the United States. As used in this clause, the term *United States* includes its territories and possessions, the Commonwealth of Puerto Rico, the trust territory of the Pacific Islands, and the District of Columbia.

[FR Doc. 99-5204 Filed 3-3-99; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 11 and 52

[FAC 97-11; FAR Case 98-612; Item III]

RIN 9000-AI30

Federal Acquisition Regulation; Variation in Quantity

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to remove the requirement to include the clause at FAR 52.211-16, Variation in Quantity, in fixed-price solicitations and contracts that do not permit a variation in the quantity of supplies furnished under the contract.

EFFECTIVE DATE: May 3, 1999.

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 97-11, FAR case 98-612.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR 11.703(a) to change the prescription for the clause at 52.211-16, Variation in Quantity. The revised prescription requires that the clause only be used if the contracting officer is authorizing a variation in the quantity of supplies to be furnished under fixed-price supply contracts or fixed-price service contracts that involve the furnishing of supplies. Currently the clause is required in all fixed-price supply contracts for supplies or for services that involve the furnishing of supplies. Where variations are not permitted, the clause is used with a "0%" permissible variation.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97-11, FAR case 98-612), 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 11 and 52

Government procurement.

Dated: February 25, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 11 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 11 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. Section 11.703 is amended by revising paragraph (a) to read as follows:

11.703 Contract clauses.

(a) The contracting officer shall insert the clause at 52.211-16, Variation in Quantity, in solicitations and contracts, if authorizing a variation in quantity in fixed-price contracts for supplies or for services that involve the furnishing of supplies.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.211-16 is amended by revising the introductory paragraph to read as follows:

52.211-16 Variation in quantity.

As prescribed in 11.703(a), insert the following clause:

* * * * *

[FR Doc. 99-5205 Filed 3-3-99; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 13, 16, 32, and 52

[FAC 97-11; FAR Case 91-118; Item IV]

RIN 9000-AG49

Federal Acquisition Regulation; Electronic Funds Transfer

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to adopt as final, with changes, the interim rule published in Federal Acquisition Circular 90-42 on August 29, 1996. The rule amends the Federal Acquisition Regulation (FAR) to address the use of electronic funds transfers (EFT) for Federal contract payments made after January 1, 1999, and to

(2) Offers or quotations under this acquisition are solicited from very small business concerns only. Offers that are from other than an eligible very small business concern shall not be considered and shall be rejected. The offeror represents that it is an eligible very small business concern by submission of an offer or quotation.

(c) *Agreement.* A very small business concern submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States. As used in this clause, the term *United States* includes its territories and possessions, the Commonwealth of Puerto Rico, the trust territory of the Pacific Islands, and the District of Columbia.

(End of clause)

Alternate I (Mar 1999). As prescribed in 19.905(a), delete paragraph (c) of the basic clause.

Alternate II (Mar 1999). As prescribed in 19.905(b), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) *Agreement.* A very small business concern submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by domestic firms in the United States. As used in this clause, the term *United States* includes its territories and possessions, the Commonwealth of Puerto Rico, the trust territory of the Pacific Islands, and the District of Columbia.

[FR Doc. 99-5204 Filed 3-3-99; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 11 and 52

[FAC 97-11; FAR Case 98-612; Item III]

RIN 9000-AI30

Federal Acquisition Regulation; Variation in Quantity

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to remove the requirement to include the clause at FAR 52.211-16, Variation in Quantity, in fixed-price solicitations and contracts that do not permit a variation in the quantity of supplies furnished under the contract.

EFFECTIVE DATE: May 3, 1999.

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 97-11, FAR case 98-612.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR 11.703(a) to change the prescription for the clause at 52.211-16, Variation in Quantity. The revised prescription requires that the clause only be used if the contracting officer is authorizing a variation in the quantity of supplies to be furnished under fixed-price supply contracts or fixed-price service contracts that involve the furnishing of supplies. Currently the clause is required in all fixed-price supply contracts for supplies or for services that involve the furnishing of supplies. Where variations are not permitted, the clause is used with a "0%" permissible variation.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97-11, FAR case 98-612), 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 11 and 52

Government procurement.

Dated: February 25, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 11 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 11 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. Section 11.703 is amended by revising paragraph (a) to read as follows:

11.703 Contract clauses.

(a) The contracting officer shall insert the clause at 52.211-16, Variation in Quantity, in solicitations and contracts, if authorizing a variation in quantity in fixed-price contracts for supplies or for services that involve the furnishing of supplies.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.211-16 is amended by revising the introductory paragraph to read as follows:

52.211-16 Variation in quantity.

As prescribed in 11.703(a), insert the following clause:

* * * * *

[FR Doc. 99-5205 Filed 3-3-99; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 13, 16, 32, and 52

[FAC 97-11; FAR Case 91-118; Item IV]

RIN 9000-AG49

Federal Acquisition Regulation; Electronic Funds Transfer

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to adopt as final, with changes, the interim rule published in Federal Acquisition Circular 90-42 on August 29, 1996. The rule amends the Federal Acquisition Regulation (FAR) to address the use of electronic funds transfers (EFT) for Federal contract payments made after January 1, 1999, and to

facilitate implementation of Public Law 104-134 which mandates payment by EFT in most situations.

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson, at (202) 501-0692. Please cite FAC 97-11, FAR case 91-118.

SUPPLEMENTARY INFORMATION:

A. Background

Subsection 31001(x)(1) of the Debt Collection Improvement Act of 1996 (Pub. L. 104-134) amends 31 U.S.C. 3332 to require, subject to the authority of the Secretary of the Treasury to grant waivers, that—

1. Beginning July 26, 1996, payments to newly eligible recipients must be made by EFT unless the recipient of those payments certifies that the recipient does not have an account with a financial institution or an authorized payment agent; and

2. Beginning January 2, 1999, all Federal payments (other than payments under the Internal Revenue Code of 1986) shall be made by electronic funds transfer (EFT).

Under this statute, the Department of the Treasury is responsible for issuing implementing regulations. Treasury issued an interim rule which was published at 61 FR 39254, July 26, 1996. The interim rule added Part 208 to Title 31, Code of Federal Regulations, and addressed the time period from July 26, 1996, through January 1, 1999 ("phase one"). Treasury published a final rule at 63 FR 51490, September 25, 1998 that provides guidance at 31 CFR 208 regarding compliance with Pub. L. 104-134's EFT requirement and establishes the circumstances under which waivers are available for the time period beginning January 2, 1999 ("phase two").

An interim FAR rule was published at 61 FR 45770, August 29, 1996. A proposed FAR rule, which differed significantly from the interim rule, was published at 63 FR 36522, July 6, 1998. Public comments on the proposed rule were received from 17 sources. All comments were considered in developing the final rule.

This final rule differs from the proposed rule to—

- (1) Reflect the analysis and disposition of public comments;
- (2) Implement applicable provisions of Treasury's final rule;
- (3) Remove references to the "phase one" time period, which ended January 1, 1999;

(4) Add a new contract clause at 52.232-38, Submission of Electronic Funds Transfer Information with Offer;

(5) Address the situation when an offeror is required to submit EFT information prior to award; and

(6) Make editorial changes.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may 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 majority of small entities will have payment made by EFT under their contracts. An Initial Regulatory Flexibility Analysis (IRFA) was performed in conjunction with the interim rule published at 61 FR 45770, August 29, 1996, and a revised IRFA was performed in conjunction with the proposed rule published at 63 FR 36522, July 6, 1998.

A Final Regulatory Flexibility Analysis (FRFA) has been performed and submitted to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat. The FRFA is summarized as follows:

The objective of the rule is to revise current procedures for the use of electronic funds transfers for Federal contract payments to comply with Subsection 31001(x)(1) of the Debt Collection Improvement Act of 1996 (Pub. L. 104-134). Subsection 31001(x)(1) of the Act amends 31 U.S.C. 3332 to require, subject to the authority of the Secretary of the Treasury to grant waivers, that all Federal payment shall be made by EFT beginning January 2, 1999.

Several respondents commented on the impact of this rule on small businesses. One respondent remarked on the "financial burden now being inflicted by the changing payment policies." This method of payment, rather than a financial burden, should be economically beneficial to small and large entities. Administratively, EFT information is noncomplex and easy to provide to the Government with an offer, after award, or through the Central Contractor Registration process. Once the information has been furnished, the payment process will be faster and less burdensome than the payment process by check since small businesses will not have to worry about mail delays, depositing checks, lost mail, etc. A second respondent raised the concern about protecting small businesses from financial harm by safeguarding banking information from unauthorized use. The final rule addresses this concern at FAR 32.1104 by requiring agencies to safeguard EFT information provided to the Government.

The final rule will apply, beginning January 2, 1999, to all small and large businesses who enter into contracts with the Federal Government unless one of the conditions enumerated at FAR 32.1103 applies. The rule requires contractors to submit identification and account number information which will enable the Government to make contract payments by EFT. Administrative or financial personnel who have general knowledge of the contractor's bank account or a financial agent, are able to prepare the information required by the clauses.

The goal of the alternative selected and reflected in the final rule is to provide flexibility with regard to the needs of small entities within the constraints and objectives of Pub. L. 104-134 and implementing Treasury Regulations.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) is deemed to apply because the final rule contains information collection requirements. The collection of this information has been approved by the Office of Management and Budget (OMB) under OMB Control Number 9000-0144. Public comments concerning this request were invited through a **Federal Register** notice.

List of Subjects in 48 CFR Parts 13, 16, 32, and 52

Government procurement.

Dated: February 25, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 13, 16, 32, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 13, 16, 32, 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 13—SIMPLIFIED ACQUISITION PROCEDURES

2. Section 13.201 is amended in paragraph (d) by removing "32.1103" and inserting "32.1110".

3. Section 13.301 is amended at the end of paragraph (b) by adding a new sentence to read as follows:

13.301 Governmentwide commercial purchase card.

* * * * *

(b) * * * See 32.1110(d) for instructions for use of the appropriate clause when payment under a written contract will be made through use of the card.

* * * * *

4. Section 13.302-1 is amended by revising paragraph (e) to read as follows:

13.302-1 General.

* * * * *

(e) In accordance with 31 U.S.C. 3332, electronic funds transfer (EFT) is required for payments except as provided in 32.1110. See Subpart 32.11 for instructions for use of the appropriate clause in purchase orders. When obtaining oral quotes, the contracting officer shall inform the quoter of the EFT clause that will be in any resulting purchase order.

PART 16—TYPES OF CONTRACTS

5. Section 16.505 is amended by redesignating paragraph (a)(6)(viii) as (a)(6)(ix); and adding a new paragraph (a)(6)(viii) to read as follows:

16.505 Ordering.

(a) * * *

(6) * * *

(viii) Method of payment and payment office, if not specified in the contract (see 32.1110(e)).

* * * * *

PART 32—CONTRACT FINANCING

6–7. Subpart 32.11 is revised to read as follows:

Subpart 32.11—Electronic Funds Transfer

- 32.1100 Scope of subpart.
- 32.1101 Statutory requirements.
- 32.1102 Definitions.
- 32.1103 Applicability.
- 32.1104 Protection of EFT information.
- 32.1105 Assignment of claims.
- 32.1106 EFT mechanisms.
- 32.1107 Payment information.
- 32.1108 Payment by Governmentwide commercial purchase card.
- 32.1109 EFT information submitted by offerors.
- 32.1110 Solicitation provision and contract clauses.

Subpart 32.11—Electronic Funds Transfer

32.1100 Scope of subpart.

This subpart provides policy and procedures for contract financing and delivery payments to contractors by electronic funds transfer (EFT).

32.1101 Statutory requirements.

31 U.S.C. 3332 requires, subject to implementing regulations of the Secretary of the Treasury at 31 CFR part 208, that EFT be used to make all contract payments.

32.1102 Definitions.

Electronic Funds Transfer (EFT) means any transfer of funds, other than a transaction originated by cash, check, or similar paper instrument, that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to

debit or credit an account. The term includes Automated Clearing House transfers, Fedwire transfers, and transfers made at automatic teller machines and point-of-sale terminals. For purposes of compliance with 31 U.S.C. 3332 and implementing regulations at 31 CFR part 208, the term “electronic funds transfer” includes a Governmentwide commercial purchase card transaction.

EFT information means information necessary for making a payment by EFT through specified EFT mechanisms.

Governmentwide commercial purchase card, as used in this part, means a card that is similar in nature to a commercial credit card that is used to make financing and delivery payments for supplies and services. The purchase card is an EFT method and it may be used as a means to meet the requirement to pay by EFT, to the extent that purchase card limits do not preclude such payments.

Payment information means the payment advice provided by the Government to the contractor that identifies what the payment is for, any computations or adjustments made by the Government, and any information required by the Prompt Payment Act.

32.1103 Applicability.

The Government shall provide all contract payments through EFT except if—

(a) The office making payment under a contract that requires payment by EFT, loses the ability to release payment by EFT. To the extent authorized by 31 CFR part 208, the payment office shall make necessary payments pursuant to paragraph (a)(2) of the clause at either 52.232–33 or 52.232–34 until such time as it can make EFT payments;

(b) The payment is to be received by or on behalf of the contractor outside the United States and Puerto Rico (but see 32.1106(b));

(c) A contract is paid in other than United States currency (but see 32.1106(b));

(d) Payment by EFT under a classified contract (see 4.401) could compromise the safeguarding of classified information or national security, or where arrangements for appropriate EFT payments would be impractical due to security considerations;

(e) A contract is awarded by a deployed contracting officer in the course of military operations, including, but not limited to, contingency operations as defined in 10 U.S.C. 101(a)(13), or a contract is awarded by any contracting officer in the conduct of emergency operations, such as

responses to natural disasters or national or civil emergencies, if—

(1) EFT is not known to be possible; or

(2) EFT payment would not support the objectives of the operation;

(f) The agency does not expect to make more than one payment to the same recipient within a one-year period;

(g) An agency’s need for supplies and services is of such unusual and compelling urgency that the Government would be seriously injured unless payment is made by a method other than EFT;

(h) There is only one source for supplies and services and the Government would be seriously injured unless payment is made by a method other than EFT; or

(i) Otherwise authorized by Department of the Treasury Regulations at 31 CFR part 208.

32.1104 Protection of EFT information.

The Government shall protect against improper disclosure of contractors’ EFT information.

32.1105 Assignment of claims.

The use of EFT payment methods is not a substitute for a properly executed assignment of claims in accordance with Subpart 32.8. EFT information that shows the ultimate recipient of the transfer to be other than the contractor, in the absence of a proper assignment of claims, is considered to be incorrect EFT information within the meaning of the “Suspension of Payment” paragraphs of the EFT clauses at 52.232–33 and 52.232–34.

32.1106 EFT mechanisms.

(a) *Domestic EFT mechanisms.* The EFT clauses at 52.232–33 and 52.232–34 are designed for use with the domestic United States banking system, using United States currency, and only the specified mechanisms (U.S. Automated Clearing House, and Fedwire Transfer System) of EFT. However, the head of an agency may authorize the use of any other EFT mechanism for domestic EFT with the concurrence of the office or agency responsible for making payments.

(b) *Nondomestic EFT mechanisms and other than United States currency.* The Government shall provide payment by other than EFT for payments received by or on behalf of the contractor outside the United States and Puerto Rico or for contracts paid in other than United States currency. However, the head of an agency may authorize appropriate use of EFT with the concurrence of the office or agency responsible for making payments if—

(1) The political, financial, and communications infrastructure in a foreign country supports payment by EFT; or

(2) Payments of other than United States currency may be made safely.

32.1107 Payment information.

The payment or disbursing office shall forward to the contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System.

32.1108 Payment by Governmentwide commercial purchase card.

A Governmentwide commercial purchase card charge authorizes the third party (e.g., financial institution) that issued the purchase card to make immediate payment to the contractor. The Government reimburses the third party at a later date for the third party's payment to the contractor.

(a) The clause at 52.232-36, Payment by Third Party, governs when a contractor submits a charge against the purchase card for contract payment. The clause provides that the contractor shall make such payment requests by a charge to a Government account with the third party at the time the payment clause(s) of the contract authorizes the contractor to submit a request for payment, and for the amount due in accordance with the terms of the contract. To the extent that such a payment would otherwise be approved, the charge against the purchase card should not be disputed when the charge is reported to the Government by the third party. To the extent that such payment would otherwise not have been approved, an authorized individual (see 1.603-3) shall take action to remove the charge, such as by disputing the charge with the third party or by requesting that the contractor credit the charge back to the Government under the contract.

(b) Written contracts to be paid by purchase card should include the clause at 52.232-36, Payment by Third Party, as prescribed by 32.1110(d). However, payment by a purchase card also may be made under a contract that does not contain the clause to the extent the contractor agrees to accept that method of payment.

(c) The clause at 52.232-36, Payment by Third Party, requires that the contract—

(1) Identify the third party and the particular purchase card to be used; and

(2) Not include the purchase card account number. The purchase card account number should be provided separately to the contractor.

32.1109 EFT information submitted by offerors.

If offerors are required to submit EFT information prior to award, the successful offeror is not responsible for resubmitting this information after award of the contract except to make changes, or to place the information on invoices if required by agency procedures. Therefore, contracting officers shall forward EFT information provided by the successful offeror to the appropriate office.

32.1110 Solicitation provision and contract clauses.

(a) Unless payment will be made exclusively through use of the Governmentwide commercial purchase card or other third party payment arrangement (see 13.301 and paragraph (d) of this section) or an exception listed in 32.1103(a) through (i) applies—

(1) The contracting officer shall insert the clause at 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration, in all solicitations and contracts if the payment office uses the Central Contractor Registration (CCR) database as its source of EFT information. The contracting officer also shall insert this clause if the payment office does not currently have the ability to make payment by EFT, but will use the CCR database as its source of EFT information when it begins making payments by EFT;

(2)(i) The contracting officer shall insert the clause at 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration, in all other solicitations and contracts. The contracting officer also shall insert this clause if the payment office currently does not have the ability to make payment by EFT, but will use a source other than the CCR database for EFT information when it begins making payments by EFT.

(ii)(A) If permitted by agency procedures, the contracting officer may insert in paragraph (b)(1) of the clause, a particular time after award, such as a fixed number of days, or event such as the submission of the first request for payment.

(B) If no agency procedures are prescribed, the time period inserted in paragraph (b)(1) of the clause shall be "no later than 15 days prior to submission of the first request for payment."

(b) If the head of the agency has authorized, in accordance with 32.1106, to use a nondomestic EFT mechanism, the contracting officer shall insert in solicitations and contracts a clause substantially the same as 52.232-33 or

52.232-34 that clearly addresses the nondomestic EFT mechanism.

(c) If EFT information is to be submitted to other than the payment office in accordance with agency procedures, the contracting officer shall insert in solicitations and contracts the clause at 52.232-35, Designation of Office for Government Receipt of Electronic Funds Transfer Information, or a clause substantially the same as 52.232-35 that clearly informs the contractor where to send the EFT information.

(d) If payment under a written contract will be made by a charge to a Government account with a third party such as a Governmentwide commercial purchase card, then the contracting officer shall insert the clause at 52.232-36, Payment by Third Party, in solicitations and contracts. Payment by a purchase card may also be made under a contract that does not contain the clause at 52.232-36, to the extent the contractor agrees to accept that method of payment.

(e) If the contract or agreement provides for the use of delivery orders, and provides that the ordering office designate the method of payment for individual orders, the contracting officer shall insert, in the solicitation and contract or agreement, the clause at 52.232-37, Multiple Payment Arrangements, and, to the extent they are applicable, the clauses at—

(1) 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration;

(2) 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration; and

(3) 52.232-36, Payment by Third Party.

(f) If more than one disbursing office will make payment under a contract or agreement, the contracting officer, or ordering office (if the contract provides for choices between EFT clauses on individual orders or classes of orders), shall include or identify the EFT clause appropriate for each office and shall identify the applicability by disbursing office and contract line item.

(g) If the solicitation contains the clause at 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration, and an offeror is required to submit EFT information prior to award—

(1) The contracting officer shall insert in the solicitation the provision at 52.232-38, Submission of Electronic Funds Transfer Information with Offer, or a provision substantially the same; and

(2) For sealed bid solicitations, the contracting officer shall amend 52.232-

38 to ensure that a bidder's EFT information—

- (i) Is not a part of the bid to be opened at the public opening; and
- (ii) May not be released to members of the general public who request a copy of the bid.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Section 52.212-4 is amended by revising the date and the third sentence in paragraph (i) of the clause to read as follows:

52.212-4 Contract Terms and Conditions—Commercial Items.

* * * * *

Contract Terms and Conditions—Commercial Items (May 1999)

* * * * *

(i) * * * If the Government makes payment by Electronic Funds Transfer (EFT), see 52.212-5(b) for the appropriate EFT clause. * * *

* * * * *

9. Section 52.212-5 is amended by revising the date of the clause; in the parenthetical in paragraph (b)(21) by inserting a period after the "C" in "U.S.C"; by redesignating (b)(22) and (b)(23) as (b)(25) and (b)(26); and by adding new paragraphs (b)(22) through (b)(24) to read 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 (May 1999)

* * * * *

- (b) * * *
 - _____(22) 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration (31 U.S.C. 3332).
 - _____(23) 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration (31 U.S.C. 3332).
 - _____(24) 52.232-36, Payment by Third Party (31 U.S.C. 3332).

* * * * *

10. Section 52.213-4 is amended by revising the date of the clause; by removing paragraph (a)(2)(vi); and redesignating paragraphs (a)(2)(vii) through (a)(2)(ix) as (a)(2)(vi) through (a)(2)(viii), respectively; and by adding new paragraphs (b)(1)(ix) and (b)(1)(x) 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) (May 1999)

* * * * *

- (b) * * *
- (1) * * *
- (ix) 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration (May 1999). (Applies when the payment will be made by electronic funds transfer (EFT) and the payment office uses the Central Contractor Registration (CCR) database as its source of EFT information.)

(x) 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration (May 1999). (Applies when the payment will be made by EFT and the payment office does not use the CCR database as its source of EFT information.)

* * * * *

11. Sections 52.232-33 and 52.232-34, headings and text, are revised to read as follows:

52.232-33 Payment by Electronic Funds Transfer—Central Contractor Registration.

As prescribed in 32.1110(a)(1), insert the following clause:

Payment by Electronic Funds Transfer—Central Contractor Registration (May 1999)

(a) *Method of payment.* (1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either—

- (i) Accept payment by check or some other mutually agreeable method of payment; or
- (ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).

(b) *Contractor's EFT information.* The Government shall make payment to the Contractor using the EFT information contained in the Central Contractor Registration (CCR) database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the CCR database.

(c) *Mechanisms for EFT payment.* The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

(d) *Suspension of payment.* If the Contractor's EFT information in the CCR database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the CCR database;

and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(e) *Contractor EFT arrangements.* If the Contractor has identified multiple payment receiving points (i.e., more than one remittance address and/or EFT information set) in the CCR database, and the Contractor has not notified the Government of the payment receiving point applicable to this contract, the Government shall make payment to the first payment receiving point (EFT information set or remittance address as applicable) listed in the CCR database.

(f) *Liability for uncompleted or erroneous transfers.* (1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for—

- (i) Making a correct payment;
- (ii) Paying any prompt payment penalty due; and
- (iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and—

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

(ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.

(g) *EFT and prompt payment.* A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(h) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register in the CCR database and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(i) *Liability for change of EFT information by financial agent.* The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.

(j) *Payment information.* The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the CCR database. (End of Clause)

52.232-34 Payment by Electronic Funds Transfer—Other than Central Contractor Registration.

As prescribed in 32.1110(a)(2), insert the following clause:

Payment by Electronic Funds Transfer—Other Than Central Contractor Registration (May 1999)

(a) *Method of payment.* (1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT) except as provided in paragraph (a)(2) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either—

- (i) Accept payment by check or some other mutually agreeable method of payment; or
- (ii) Request the Government to extend payment due dates until such time as the Government makes payment by EFT (but see paragraph (d) of this clause).

(b) *Mandatory submission of Contractor's EFT information.* (1) The Contractor is required to provide the Government with the information required to make payment by EFT (see paragraph (j) of this clause). The Contractor shall provide this information directly to the office designated in this contract to receive that information (hereafter: "designated office") by

[the Contracting Officer shall insert date, days after award, days before first request, the date specified for receipt of offers if the provision at 52.232-38 is utilized, or "concurrent with first request" as prescribed by the head of the agency; if not prescribed, insert "no later than 15 days prior to submission of the first request for payment"]. If not otherwise specified in this contract, the payment office is the designated office for receipt of the Contractor's EFT information. If more than one designated office is named for the contract, the Contractor shall provide a separate notice to each office. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the designated office(s).

(2) If the Contractor provides EFT information applicable to multiple contracts, the Contractor shall specifically state the applicability of this EFT information in terms acceptable to the designated office. However, EFT information supplied to a designated office shall be applicable only to contracts that identify that designated office as the office to receive EFT information for that contract.

(c) *Mechanisms for EFT payment.* The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

(d) *Suspension of payment.* (1) The Government is not required to make any payment under this contract until after receipt, by the designated office, of the correct EFT payment information from the Contractor. Until receipt of the correct EFT information, any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(2) If the EFT information changes after submission of correct EFT information, the Government shall begin using the changed EFT information no later than 30 days after its receipt by the designated office to the extent payment is made by EFT. However, the Contractor may request that no further payments be made until the updated EFT information is implemented by the payment office. If such suspension would result in a late payment under the prompt payment terms of this contract, the Contractor's request for suspension shall extend the due date for payment by the number of days of the suspension.

(e) *Liability for uncompleted or erroneous transfers.* (1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for—

- (i) Making a correct payment;
- (ii) Paying any prompt payment penalty due; and
- (iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and—

- (i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

(ii) If the funds remain under the control of the payment office, the Government shall not make payment and the provisions of paragraph (d) shall apply.

(f) *EFT and prompt payment.* A payment shall be deemed to have been made in a timely manner in accordance with the

prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(g) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall provide the EFT information required by paragraph (j) of this clause to the designated office, and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(h) *Liability for change of EFT information by financial agent.* The Government is not liable for errors resulting from changes to EFT information provided by the Contractor's financial agent.

(i) *Payment information.* The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address in the contract.

(j) *EFT information.* The Contractor shall provide the following information to the designated office. The Contractor may supply this data for this or multiple contracts (see paragraph (b) of this clause). The Contractor shall designate a single financial agent per contract capable of receiving and processing the EFT information using the EFT methods described in paragraph (c) of this clause.

- (1) The contract number (or other procurement identification number).
- (2) The Contractor's name and remittance address, as stated in the contract(s).
- (3) The signature (manual or electronic, as appropriate), title, and telephone number of the Contractor official authorized to provide this information.

(4) The name, address, and 9-digit Routing Transit Number of the Contractor's financial agent.

(5) The Contractor's account number and the type of account (checking, saving, or lockbox).

(6) If applicable, the Fedwire Transfer System telegraphic abbreviation of the Contractor's financial agent.

(7) If applicable, the Contractor shall also provide the name, address, telegraphic abbreviation, and 9-digit Routing Transit Number of the correspondent financial institution receiving the wire transfer payment if the Contractor's financial agent is not directly on-line to the Fedwire Transfer System; and, therefore, not the receiver of the wire transfer payment.

(End of clause)

12. Sections 52.232-35, 52.232-36, 52.232-37, and 52.232-38 are added to read as follows:

52.232-35 Designation of Office for Government Receipt of Electronic Funds Transfer Information.

As prescribed in 32.1110(c), insert the following clause:

Designation of Office for Government Receipt of Electronic Funds Transfer Information (May 1999)

(a) As provided in paragraph (b) of the clause at 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration, the Government has designated the office cited in paragraph (c) of this clause as the office to receive the Contractor's electronic funds transfer (EFT) information, in lieu of the payment office of this contract.

(b) The Contractor shall send all EFT information, and any changes to EFT information to the office designated in paragraph (c) of this clause. The Contractor shall not send EFT information to the payment office, or any other office than that designated in paragraph (c). The Government need not use any EFT information sent to any office other than that designated in paragraph (c).

(c) Designated Office:
Name:

Mailing Address:

Telephone Number:

Person to Contact:

Electronic Address:

(End of clause)

52.232-36 Payment by Third Party.

As prescribed in 32.1110(d), insert the following clause:

Payment by Third Party (May 1999)

(a) *General.* The Contractor agrees to accept payments due under this contract, through payment by a third party in lieu of payment directly from the Government, in accordance with the terms of this clause. The third party and, if applicable, the particular Governmentwide commercial purchase card to be used are identified elsewhere in this contract.

(b) *Contractor payment request.* In accordance with those clauses of this contract that authorize the Contractor to submit invoices, contract financing requests, other payment requests, or as provided in other clauses providing for payment to the Contractor, the Contractor shall make such payment requests through a charge to the Government account with the third party, at the time and for the amount due in accordance with the terms of this contract.

(c) *Payment.* The Contractor and the third party shall agree that payments due under this contract shall be made upon submittal of payment requests to the third party in accordance with the terms and conditions of an agreement between the Contractor, the Contractor's financial agent (if any), and the third party and its agents (if any). No payment shall be due the Contractor until such agreement is made. Payments made or due by the third party under this clause are not payments made by the Government and are not subject to the Prompt Payment Act or any implementation thereof in this contract.

(d) *Documentation.* Documentation of each charge against the Government's account shall be provided to the Contracting Officer upon request.

(e) *Assignment of claims.* Notwithstanding any other provision of this contract, if any payment is made under this clause, then no payment under this contract shall be assigned under the provisions of the assignment of claims terms of this contract or the Assignment of Claims Act of 1940, as amended, 31 U.S.C. 3727, 41 U.S.C. 15.

(f) *Other payment terms.* The other payment terms of this contract shall govern the content and submission of payment requests. If any clause requires information or documents in or with the payment request, that is not provided in the third party agreement referenced in paragraph (c) of this clause, the Contractor shall obtain instructions from the Contracting Officer before submitting such a payment request.

(End of clause)

52.232-37 Multiple Payment Arrangements.

As prescribed in 32.1110(e), insert the following clause:

Multiple Payment Arrangements (May 1999)

This contract or agreement provides for payments to the Contractor through several alternative methods. The applicability of specific methods of payment and the designation of the payment office(s) are either stated—

(a) Elsewhere in this contract or agreement; or

(b) In individual orders placed under this contract or agreement.

(End of clause)

52.232-38 Submission of Electronic Funds Transfer Information with Offer.

As prescribed in 32.1110(g), insert the following provision:

Submission of Electronic Funds Transfer Information With Offer (May 1999)

The offeror shall provide, with its offer, the following information that is required to make payment by electronic funds transfer

(EFT) under any contract that results from this solicitation. This submission satisfies the requirement to provide EFT information under paragraphs (b)(1) and (j) of the clause at 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration.

(1) The solicitation number (or other procurement identification number).

(2) The offeror's name and remittance address, as stated in the offer.

(3) The signature (manual or electronic, as appropriate), title, and telephone number of the offeror's official authorized to provide this information.

(4) The name, address, and 9-digit Routing Transit Number of the offeror's financial agent.

(5) The offeror's account number and the type of account (checking, savings, or lockbox).

(6) If applicable, the Fedwire Transfer System telegraphic abbreviation of the offeror's financial agent.

(7) If applicable, the offeror shall also provide the name, address, telegraphic abbreviation, and 9-digit Routing Transit Number of the correspondent financial institution receiving the wire transfer payment if the offeror's financial agent is not directly on-line to the Fedwire and, therefore, not the receiver of the wire transfer payment.

[FR Doc. 99-5206 Filed 3-3-99; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

[FAC 97-11; FAR Case 98-302; Item V]

RIN 9000-AI31

Federal Acquisition Regulation; Waiver of Cost or Pricing Data for Subcontracts

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Section 805 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261).

EFFECTIVE DATE: May 3, 1999.

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 97-11, FAR case 98-302.

SUPPLEMENTARY INFORMATION:

A. Background

Section 805 of Public Law 105-261 clarifies that waivers of requirements for submittal of prime contractor cost or pricing data do not automatically waive requirements for subcontractors to submit cost or pricing data. Although this is consistent with the current requirements of FAR 15.403-1(c)(4), the final rule clarifies the requirement to provide rationale supporting any waiver of subcontracts.

Pursuant to the House of Representatives Conference Report (H.R. Conf. Rep. No. 736, 105th Cong., 2nd Sess. 1998) which addresses Section 805, the executive branch is working to clarify situations in which an exceptional circumstance waiver of requirements for submission of certified cost or pricing data may be granted. This will be the subject of an independent FAR case.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97-11, FAR case 98-302), in correspondence.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 15

Government procurement.

Dated: February 25, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 15 is amended as set forth below:

PART 15—CONTRACTING BY NEGOTIATION

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

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

2. Section 15.403-1 is amended by revising paragraph (c)(4) to read as follows:

15.403-1 Prohibition on obtaining cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).

* * * * *

(c) * * *

(4) *Waivers.* The head of the contracting activity (HCA) may, without power of delegation, waive the requirement for submission of cost or pricing data in exceptional cases. The authorization for the waiver and the supporting rationale shall be in writing. The HCA may consider waiving the requirement if the price can be determined to be fair and reasonable without submission of cost or pricing data. For example, if cost or pricing data were furnished on previous production buys and the contracting officer determines such data are sufficient, when combined with updated information, a waiver may be granted. If the HCA has waived the requirement for submission of cost or pricing data, the contractor or higher-tier subcontractor to whom the waiver relates shall be considered as having been required to provide cost or pricing data. Consequently, award of any lower-tier subcontract expected to exceed the cost or pricing data threshold requires the submission of cost or pricing data unless—

(i) An exception otherwise applies to the subcontract; or

(ii) The waiver specifically includes the subcontract and the rationale supporting the waiver for that subcontract.

[FR Doc. 99-5207 Filed 3-3-99; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22 and 52

[FAC 97-11; FAR Case 94-610; Item VI]

RIN 9000-AH62

Federal Acquisition Regulation; Executive Order 12933, Nondisplacement of Qualified Workers Under Certain Contracts

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Executive Order 12933, Nondisplacement of Qualified Workers under Certain Contracts, signed by the President on October 20, 1994 (59 FR 53559, October 24, 1994). The Executive Order requires that workers on certain building service contracts be given the right of first refusal for employment with the successor contractor, if the workers would otherwise lose their jobs as a result of the termination of the contract.

An interim rule for this FAR case was published in the **Federal Register** at 62 FR 44823, August 22, 1997, as Item XII of Federal Acquisition Circular 97-01. This final rule amends the definition of "building service contract" in FAR 22.1202, and provides guidance regarding the quality of work performed on predecessor contracts and disputes resolution in the clause at 52.222-50.

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jack O'Neill, Procurement Analyst, at (202) 501-3856. Please cite FAC 97-11, FAR case 94-610.

SUPPLEMENTARY INFORMATION:

A. Background

Executive Order 12933 was signed October 20, 1994, by President Clinton and published in the **Federal Register** on October 24, 1994 (59 FR 53559). To obtain public input and assist in the

development of implementing regulations, the Department of Labor (DoL) invited comment through a notice of proposed rulemaking in the **Federal Register** on July 18, 1995 (60 FR 36756). The final DoL rule was published in the **Federal Register** on May 22, 1997 (62 FR 28175). An interim rule for this FAR case was published in the **Federal Register** at 62 FR 44823, August 22, 1997, as Item XII of Federal Acquisition Circular 97-01. This final rule makes further changes to FAR part 22, and the clause at 52.222-50, that are the result of resolution of public comments received in response to publication of the interim rule in the **Federal Register**.

The definition of "building service contract" at FAR 22.1202 is amended by deleting concessions other than food services or laundry services from the definition. The clause at FAR 52.222-50, Nondisplacement of Qualified Workers, is amended by inserting a cross-reference to performance standards in 29 CFR 9.8, and inserting the concept of presumption of satisfactory performance by employees on predecessor contracts.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

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 and the Executive order mandate a practice that is already followed in most cases. This rule implements the requirements of the Executive order, as implemented by the DoL in its final rule of May 22, 1997 (62 FR 28175). The DoL certified that its final rule will not have a significant economic impact on a substantial number of small entities. In those cases where the practice was not followed before the Executive order, the impact would be a result of the Executive order and the DoL regulation; it would not be a result of the FAR implementation.

C. Paperwork Reduction Act

This final rule will not impose any additional paperwork burdens beyond the information collection and recordkeeping requirements required under sections 9.6(c), 9.9(b), and 9.11 of the Department of Labor Regulations, 29 CFR part 9, and approved under DoL

Office of Management and Budget Control 1215-0190.

List of Subjects in 48 CFR Parts 22 and 52

Government procurement.

Dated: February 25, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 22 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 22 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 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1200 [Amended]

2. Section 22.1200 is amended by adding "(E.O.)" after "Order".

22.1201 [Amended]

3. Section 22.1201 is amended in the first sentence by removing "Federal"; and in the last sentence by removing "Executive Order" and adding "E.O.".

22.1202 [Amended]

4. Section 22.1202 is amended—

A. In the third sentence of the definition "Building service contract" by removing "Executive Order" and adding "E.O.";

B. At the end of paragraph (1) of the definition by adding "and" after the semicolon;

C. In paragraph (2) by removing "; or" and adding a period; and by removing paragraph (3);

D. In paragraph (2) introductory text of the definition "Public building" by removing the colon and adding "—".

22.1203-1 [Amended]

5. Section 22.1203-1 is amended in the first sentence of paragraph (b)(1) by revising "non-covered" to read "noncovered", and by revising "non-service" to read "nonservice".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 52.222-50 is amended by revising the date of the clause; by revising paragraph (c); and by revising the second sentence of paragraph (j). The new text reads as follows:

52.222-50 Nondisplacement of Qualified Workers.

* * * * *

Nondisplacement of Qualified Workers (May 1999)

* * * * *

(c) Notwithstanding the Contractor's obligation under paragraph (b) of this clause, the Contractor—

(1) May employ on the contract any employee who has worked for the Contractor for at least 3 months immediately preceding the commencement of this contract and who would otherwise face layoff or discharge;

(2) Is not required to offer a right of first refusal to any employee(s) of the predecessor contractor who are not service employees; and

(3) Is not required to offer a right of first refusal to any employee(s) of the predecessor contractor who the Contractor reasonably believes, based on the particular employee's past performance, has failed to perform suitably on the job (see 29 CFR 9.8).

(4) Must presume, unless demonstrated otherwise, that all employees working on the predecessor contract in the last month of performance performed suitable work on the contract. Offers of employment are governed by the following:

(i) The offer shall state the time within which the employee must accept such offer, but in no case shall the period for acceptance be less than 10 days.

(ii) The offer may be made by separate written notice to each employee, or orally at a meeting attended by a group of the predecessor contractor's employees.

(iii) An offer need not be to a position similar to that which the employee previously held, but the employee must be qualified for the position.

(iv) An offer to a position providing lower pay or benefits than the employee held with the predecessor contractor will be considered *bona fide* if the Contractor shows valid business reasons.

(v) To ensure that an offer is effectively communicated, the Contractor should take reasonable efforts to make the offer in a language that each worker understands; for example, by having a coworker or other person fluent in the worker's language at the meeting to translate or otherwise assist an employee who is not fluent in English.

* * * * *

(j) * * * Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR part 9. * * *

[FR Doc. 99-5208 Filed 3-3-99; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Part 31**

[FAC 97-11; FAR Case 98-001; Item VII]

RIN 9000-A106

**Federal Acquisition Regulation;
Recruitment Costs Principle**

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to revise the "recruitment costs" and the "public relations and advertising cost" cost principles for streamlining purposes.

EFFECTIVE DATE: May 3, 1999.

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 97-11, FAR case 98-001.

SUPPLEMENTARY INFORMATION:**A. Background**

A proposed FAR rule was published in the *Federal Register* on August 12, 1998 (63 FR 43238). The final rule differs from the proposed rule by deleting the following phrase from FAR 31.205-34(a): "and provided that the size of the staff recruited and maintained is in keeping with the workload requirements." This phrase is unnecessary as the criteria, including reasonableness, discussed in FAR part 31 are sufficient to govern the acceptability of this type of cost.

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

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

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 principles 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: February 25, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

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

**PART 31—CONTRACT COST
PRINCIPLES AND PROCEDURES**

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

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

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

31.205-1 Public relations and advertising costs.

* * * * *

(d) The only allowable advertising costs are those that are—

(1) Specifically required by contract, or that arise from requirements of Government contracts, and that are exclusively for—

(i) Acquiring scarce items for contract performance; or

(ii) Disposing of scrap or surplus materials acquired for contract performance;

(2) Costs of activities to promote sales of products normally sold to the U.S. Government, including trade shows, which contain a significant effort to promote exports from the United States. Such costs are allowable, notwithstanding paragraphs (f)(1), (f)(3), (f)(4)(ii), and (f)(5) of this subsection. However, such costs do not include the costs of memorabilia (*e.g.*, models, gifts, and souvenirs), alcoholic beverages, entertainment, and physical facilities

that are used primarily for entertainment rather than product promotion; or

(3) Allowable in accordance with 31.205-34.

* * * * *

3. Section 31.205-34 is amended by revising paragraph (a) introductory text; by revising paragraph (b); and by removing paragraph (c) to read as follows:

31.205-34 Recruitment costs.

(a) Subject to paragraph (b) of this subsection, the following costs are allowable:

* * * * *

(b) Help-wanted advertising costs are unallowable if the advertising—

(1) Does not describe specific positions or classes of positions; or

(2) Includes material that is not relevant for recruitment purposes, such as extensive illustrations or descriptions of the company's products or capabilities.

[FR Doc. 99-5209 Filed 3-3-99; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Part 31**

[FAC 97-11; FAR Case 98-301; Item VIII]

RIN 9000-A132

**Federal Acquisition Regulation;
Compensation for Senior Executives**

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

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 804 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261). Section 804 revises the definition of "senior executive" at 10 U.S.C. 2324(1)(5) and at 41 U.S.C. 256(m)(2).

EFFECTIVE DATE: March 4, 1999.

Applicability Date: This policy applies to costs of compensation incurred under Government contracts

after January 1, 1999, regardless of the date of contract award.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before May 3, 1999 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405. E-Mail comments submitted over the Internet should be addressed to: farcase.98-301@gsa.gov

Please cite FAC 97-11, FAR case 98-301 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 97-11, FAR case 98-301.

SUPPLEMENTARY INFORMATION:

A. Background

Section 808 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85) revised 10 U.S.C. 2324 and 41 U.S.C. 256 to limit allowable compensation costs for senior executives of contractors for a fiscal year to the benchmark compensation amount determined applicable for each fiscal year by the Administrator for Federal Procurement Policy. Section 808 defined "senior executive" as—

(A) The chief executive officer of the contractor or any individual acting in a similar capacity for the contractor;

(B) The four most highly compensated employees in management positions of the contractor other than the chief executive officer; and

(C) In the case of a contractor that has components which report directly to the contractor's headquarters, the five most highly compensated employees in management positions at each such components."

Section 804 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261) revises the definition of "senior executive" at 10 U.S.C. 2324(1)(5) and 41 U.S.C. 256(m)(2). Section 804 defines "senior executives" as "the five most highly compensated employees in management positions at each home office and each segment of the contractor" whether or not the home office or segment reports directly to the contractor's headquarters.

This interim rule revises the definition of "senior executive" at FAR 31.205-6(p) to implement Section 804 of Pub. L. 105-261. This change applies to costs of compensation incurred after January 1, 1999, regardless of the date of contract award.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR Case 98-301), 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 OMB 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 rule implements Section 804 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-621) and applies to costs of compensation incurred after January 1, 1999, regardless of the date of contract award. However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 31:

Government procurement.

Dated: February 25, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

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

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

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

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

2. Section 31.205-6 is amended in paragraph (p) introductory text by adding a sentence after the heading; by redesignating paragraphs (p)(2)(ii)(A) through (p)(2)(ii)(C) as (p)(2)(ii)(A)(1) through (p)(2)(ii)(A)(3), respectively; and by adding new paragraphs (p)(2)(ii)(A) introductory text and (p)(2)(ii)(B) to read as follows:

31.205-6 Compensation for personal services.

* * * * *

(p) * * * (Note that pursuant to Section 804 of Pub. L. 105-261, the definition of "senior executive" in (p)(2)(ii) has been changed for compensation costs incurred after January 1, 1999.)

* * * * *

(2) * * *

(ii) * * *

(A) Prior to January 2, 1999—

* * * * *

(B) Effective January 2, 1999, the five most highly compensated employees in management positions at each home office and each segment of the contractor, whether or not the home office or segment reports directly to the contractor's headquarters.

* * * * *

[FR Doc. 99-5210 Filed 3-3-99; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 25, 52, and 53

[FAC 97-11; Item IX]

Federal Acquisition Regulation; Technical Amendments

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

ACTION: Technical amendments.

after January 1, 1999, regardless of the date of contract award.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before May 3, 1999 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405. E-Mail comments submitted over the Internet should be addressed to: farcase.98-301@gsa.gov

Please cite FAC 97-11, FAR case 98-301 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 97-11, FAR case 98-301.

SUPPLEMENTARY INFORMATION:

A. Background

Section 808 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85) revised 10 U.S.C. 2324 and 41 U.S.C. 256 to limit allowable compensation costs for senior executives of contractors for a fiscal year to the benchmark compensation amount determined applicable for each fiscal year by the Administrator for Federal Procurement Policy. Section 808 defined "senior executive" as—

(A) The chief executive officer of the contractor or any individual acting in a similar capacity for the contractor;

(B) The four most highly compensated employees in management positions of the contractor other than the chief executive officer; and

(C) In the case of a contractor that has components which report directly to the contractor's headquarters, the five most highly compensated employees in management positions at each such components."

Section 804 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261) revises the definition of "senior executive" at 10 U.S.C. 2324(1)(5) and 41 U.S.C. 256(m)(2). Section 804 defines "senior executives" as "the five most highly compensated employees in management positions at each home office and each segment of the contractor" whether or not the home office or segment reports directly to the contractor's headquarters.

This interim rule revises the definition of "senior executive" at FAR 31.205-6(p) to implement Section 804 of Pub. L. 105-261. This change applies to costs of compensation incurred after January 1, 1999, regardless of the date of contract award.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR Case 98-301), 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 OMB 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 rule implements Section 804 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-621) and applies to costs of compensation incurred after January 1, 1999, regardless of the date of contract award. However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 31:

Government procurement.

Dated: February 25, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

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

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

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

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

2. Section 31.205-6 is amended in paragraph (p) introductory text by adding a sentence after the heading; by redesignating paragraphs (p)(2)(ii)(A) through (p)(2)(ii)(C) as (p)(2)(ii)(A)(1) through (p)(2)(ii)(A)(3), respectively; and by adding new paragraphs (p)(2)(ii)(A) introductory text and (p)(2)(ii)(B) to read as follows:

31.205-6 Compensation for personal services.

* * * * *

(p) * * * (Note that pursuant to Section 804 of Pub. L. 105-261, the definition of "senior executive" in (p)(2)(ii) has been changed for compensation costs incurred after January 1, 1999.)

* * * * *

(2) * * *

(ii) * * *

(A) Prior to January 2, 1999—

* * * * *

(B) Effective January 2, 1999, the five most highly compensated employees in management positions at each home office and each segment of the contractor, whether or not the home office or segment reports directly to the contractor's headquarters.

* * * * *

[FR Doc. 99-5210 Filed 3-3-99; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 25, 52, and 53

[FAC 97-11; Item IX]

Federal Acquisition Regulation; Technical Amendments

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

ACTION: Technical amendments.

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) 97-11 which amend the FAR. The rules marked with an asterisk (*) are those for which a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Further information regarding these rules may be obtained by referring to FAC 97-11 which precedes this document. This document may be obtained from the Internet at <http://www.arnet.gov/far>.

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501-4225.

LIST OF RULES IN FAC 97-11

Item	Subject	FAR case	Analyst
I	Review of FAR Representations	96-013	Linfield.
II	Very Small Business Concerns (Interim)	98-013	Moss.
III	Variation in Quantity	98-612	Moss.
IV	*Electronic Funds Transfer	91-118	Olson.
V	Waiver of Cost or Pricing Data for Subcontracts	98-302	De Stefano.
VI	Executive Order 12933, Nondisplacement of Qualified Workers Under Certain Contracts	94-610	O'Neill.
VII	Recruitment Costs Principle	98-001	Nelson.
VIII	Compensation for Senior Executives (Interim)	98-301	Nelson.

Item I—Review of FAR Representations (FAR Case 96-013)

This final rule amends FAR parts 1, 4, 12, 14, 26, 27, 32, 41, and 52 to reduce certain contractual requirements for representations or other affirmations that place an unnecessary burden on offerors or contractors.

Item II—Very Small Business Concerns (FAR Case 98-013)

This interim rule amends the Federal Acquisition Regulation (FAR) Parts 5, 8, 12, 19, and 52 to implement the Small Business Administration's Very Small Business Pilot Program (13 CFR parts 121 and 125). The rule provides for the set-aside of certain acquisitions between \$2,500 and \$50,000 for very small business (VSB) concerns. The pilot VSB program is limited to buying activities and VSBs located in 10 geographic regions specified by the Small Business Administration and will run through September 30, 2000.

Item III—Variation in Quantity (FAR Case 98-612)

This final rule revises the prescription in 11.703(a) for the clause at 52.211-16, Variation in Quantity, to require use of the clause only in solicitations and contracts where a variation in quantity is authorized. This change makes the clause prescription consistent with language in FAR 11.701(a).

Item IV—Electronic Funds Transfer (FAR Case 91-118)

This final rule amends FAR Parts 13, 16, 32, and 52 to address the use of electronic funds transfer (EFT) for Federal contract payments, and to facilitate implementation of Public Law 104-134 which mandates payment by EFT in most situations. The final rule mainly differs from the interim rule by removing references to the "phase one" time period, which ended on January 1, 1999; by implementing applicable provisions of the Department of the Treasury's final rule at 31 CFR part 208 which addresses the "phase two" time period beginning January 2, 1999; by addressing the situation where contractors furnish EFT information by registering in the Central Contractor Registration database; and by permitting agencies to collect EFT banking information at various time periods ranging from prior to award (as a condition of award) to after award (concurrent with the initial invoice).

Item V—Waiver of Cost or Pricing Data for Subcontracts (FAR Case 98-302)

Section 805 of Public Law 105-261 clarifies that waivers of requirements for submittal of prime contractor cost or pricing data do not automatically waive requirements for subcontractors to submit cost or pricing data. Although this is consistent with the current

requirements of FAR 15.403-1(c)(4), the final rule clarifies the requirement to provide rationale supporting any waiver of subcontracts.

Item VI—Executive Order 12933, Nondisplacement of Qualified Workers Under Certain Contracts (FAR Case 94-610)

The interim rule published as Item III in FAC 97-01 is converted to a final rule with minor changes. The final rule makes changes to the definition of "building service contract" at FAR 22.1202, and paragraphs (c) and (j) of the clause at 52.222-50, Nondisplacement of Qualified Workers.

Item VII—Recruitment Costs Principle (FAR Case 98-001)

This final rule amends FAR 31.205-1, Public relations and advertising costs, and FAR 31.205-34, Recruitment costs, to remove excessive wording and details for streamlining purposes.

Item VIII—Compensation for Senior Executives (FAR Case 98-301)

This interim rule revises FAR section 31.205-6(p) to implement Section 804 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261). Section

804 revises the definition of "senior executive" at 10 U.S.C. 2324(1)(5) and at 41 U.S.C. 256(m)(2) to be "the five most highly compensated employees in management positions at each home office and each segment of the contractor." This change applies to costs of compensation incurred after January 1, 1999, regardless of the date of contract award.

Dated: February 25, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99-5212 Filed 3-3-99; 8:45 am]

BILLING CODE 6820-EP-P

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

EFFECTIVE DATE: March 4, 1999.

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

List of Subjects in 48 CFR Parts 1, 25, 52, and 53

Government procurement.

Dated: February 25, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 1, 25, 52, and 53 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 25, 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 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. In section 1.106 the table following the introductory paragraph is amended by revising the entry for "SF 1418" to read as follows:

1.106 OMB approval under the Paperwork Reduction Act.

FAR segment	OMB control No.
* * * * *	
SF 1418	9000-0045
* * * * *	

PART 25—FOREIGN ACQUISITION

3. Section 25.402 is amended in paragraph (b) by revising the last two sentences to read as follows:

25.402 Policy.

* * * * *

(b) * * * This determination is effective until September 30, 1999, except that, for products of Panama, this determination is effective until September 30, 2000. These dates may be extended by the U.S. Trade Representative by means of a notice in the **Federal Register**.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.219-8 [Amended]

4. Section 52.219-8 is amended by revising the title of the clause to read "Utilization of Small Business Concerns".

PART 53—FORMS

5. Section 53.228 is amended by revising paragraph (n) to read as follows:

53.228 Bonds and insurance.

* * * * *

(n) *SF 1418 (Rev. 2/99) Performance Bond For Other Than Construction Contracts.* (See 28.106-1(n).) SF 1418 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

* * * * *

6. Section 53.301-1418 is revised to read as follows:

53.301-1418 Performance bond for other than construction contracts.

BILLING CODE 6820-EP-P

PERFORMANCE BOND FOR OTHER THAN CONSTRUCTION CONTRACTS <i>(See instructions on reverse)</i>	DATE BOND EXECUTED <i>(Must be same or later than date of contract)</i>	OMB No.: 9000-0045
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Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405

PRINCIPAL <i>(Legal name and business address)</i>	TYPE OF ORGANIZATION <i>("X" one)</i> <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> JOINT VENTURE <input type="checkbox"/> CORPORATION STATE OF INCORPORATION
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SURETY(IES) <i>(Name(s) and business address(es))</i>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th colspan="4" style="text-align: center;">PENAL SUM OF BOND</th> </tr> <tr> <td style="width:25%;">MILLION(S)</td> <td style="width:25%;">THOUSAND(S)</td> <td style="width:25%;">HUNDRED(S)</td> <td style="width:25%;">CENTS</td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td colspan="2">CONTRACT DATE</td> <td colspan="2">CONTRACT NO.</td> </tr> <tr> <td colspan="2"> </td> <td colspan="2"> </td> </tr> <tr> <td colspan="2">OPTION DATE</td> <td colspan="2">OPTION NO.</td> </tr> <tr> <td colspan="2"> </td> <td colspan="2"> </td> </tr> </table>	PENAL SUM OF BOND				MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS					CONTRACT DATE		CONTRACT NO.						OPTION DATE		OPTION NO.					
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MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS																										
CONTRACT DATE		CONTRACT NO.																											
OPTION DATE		OPTION NO.																											

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The Principal has entered into the contract identified above.

THEREFORE:

The above obligation is void if the Principal: (1) Performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of the contract during either the base term or an optional term of the contract and any extensions thereof that are granted by the Government, with or without notice to the Surety(ies), and during the life of any guaranty required under the contract, and (2) performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of the contract that hereafter are made. Notice of those modifications to the Surety(ies) is waived.

The guaranty for a base term covers the initial period of performance of the contract and any extensions thereof excluding any options. The guaranty for an option term covers the period of performance for the option being exercised and any extensions thereof.

The failure of a surety to renew a bond for any option term shall not result in a default of any bond previously furnished covering any base or option term.

WITNESS:

The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date.

PRINCIPAL			
SIGNATURE(S)	1. _____	2. _____	Corporate Seal
	(Seal)	(Seal)	
NAME(S) & TITLE(S) <i>(Typed)</i>	1. _____	2. _____	

INDIVIDUAL SURETY(IES)			
SIGNATURE(S)	1. _____	2. _____	Corporate Seal
	(Seal)	(Seal)	
NAME(S) <i>(Typed)</i>	1. _____	2. _____	

CORPORATE SURETY(IES)				
SURETY A	NAME & ADDRESS	STATE OF INC.	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1. _____	2. _____	
	NAME(S) & TITLE(S) <i>(Typed)</i>	1. _____	2. _____	

SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		

BOND PREMIUM	▶	RATE PER THOUSAND (\$)	TOTAL (\$)
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INSTRUCTIONS

- This form is authorized for use in connection with Government contracts. Any deviation from this form will require the written approval of the Administrator of General Services.
- Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.
- (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.
- (b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning their financial capability.
- Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.
- Type the name and title of each person signing this bond in the space provided.
- Unless otherwise specified, the bond shall be submitted to the contracting office that awarded the contract.

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) 97-11 which amend the FAR. The rules marked with an asterisk (*) are those for which a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Further information regarding these rules may be obtained by referring to FAC 97-11 which precedes this document. This document may be obtained from the Internet at <http://www.arnet.gov/far>.

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501-4225.

LIST OF RULES IN FAC 97-11

Item	Subject	FAR case	Analyst
I	Review of FAR Representations	96-013	Linfield.
II	Very Small Business Concerns (Interim)	98-013	Moss.
III	Variation in Quantity	98-612	Moss.
IV	*Electronic Funds Transfer	91-118	Olson.
V	Waiver of Cost or Pricing Data for Subcontracts	98-302	De Stefano.
VI	Executive Order 12933, Nondisplacement of Qualified Workers Under Certain Contracts	94-610	O'Neill.
VII	Recruitment Costs Principle	98-001	Nelson.
VIII	Compensation for Senior Executives (Interim)	98-301	Nelson.

Item I—Review of FAR Representations (FAR Case 96-013)

This final rule amends FAR parts 1, 4, 12, 14, 26, 27, 32, 41, and 52 to reduce certain contractual requirements for representations or other affirmations that place an unnecessary burden on offerors or contractors.

Item II—Very Small Business Concerns (FAR Case 98-013)

This interim rule amends the Federal Acquisition Regulation (FAR) Parts 5, 8, 12, 19, and 52 to implement the Small Business Administration's Very Small Business Pilot Program (13 CFR parts 121 and 125). The rule provides for the set-aside of certain acquisitions between \$2,500 and \$50,000 for very small business (VSB) concerns. The pilot VSB program is limited to buying activities and VSBs located in 10 geographic regions specified by the Small Business Administration and will run through September 30, 2000.

Item III—Variation in Quantity (FAR Case 98-612)

This final rule revises the prescription in 11.703(a) for the clause at 52.211-16, Variation in Quantity, to require use of the clause only in solicitations and contracts where a variation in quantity is authorized. This change makes the clause prescription consistent with language in FAR 11.701(a).

Item IV—Electronic Funds Transfer (FAR Case 91-118)

This final rule amends FAR Parts 13, 16, 32, and 52 to address the use of electronic funds transfer (EFT) for Federal contract payments, and to facilitate implementation of Public Law 104-134 which mandates payment by EFT in most situations. The final rule mainly differs from the interim rule by removing references to the "phase one" time period, which ended on January 1, 1999; by implementing applicable provisions of the Department of the Treasury's final rule at 31 CFR part 208 which addresses the "phase two" time period beginning January 2, 1999; by addressing the situation where contractors furnish EFT information by registering in the Central Contractor Registration database; and by permitting agencies to collect EFT banking information at various time periods ranging from prior to award (as a condition of award) to after award (concurrent with the initial invoice).

Item V—Waiver of Cost or Pricing Data for Subcontracts (FAR Case 98-302)

Section 805 of Public Law 105-261 clarifies that waivers of requirements for submittal of prime contractor cost or pricing data do not automatically waive requirements for subcontractors to submit cost or pricing data. Although this is consistent with the current

requirements of FAR 15.403-1(c)(4), the final rule clarifies the requirement to provide rationale supporting any waiver of subcontracts.

Item VI—Executive Order 12933, Nondisplacement of Qualified Workers Under Certain Contracts (FAR Case 94-610)

The interim rule published as Item III in FAC 97-01 is converted to a final rule with minor changes. The final rule makes changes to the definition of "building service contract" at FAR 22.1202, and paragraphs (c) and (j) of the clause at 52.222-50, Nondisplacement of Qualified Workers.

Item VII—Recruitment Costs Principle (FAR Case 98-001)

This final rule amends FAR 31.205-1, Public relations and advertising costs, and FAR 31.205-34, Recruitment costs, to remove excessive wording and details for streamlining purposes.

Item VIII—Compensation for Senior Executives (FAR Case 98-301)

This interim rule revises FAR section 31.205-6(p) to implement Section 804 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261). Section

804 revises the definition of "senior executive" at 10 U.S.C. 2324(1)(5) and at 41 U.S.C. 256(m)(2) to be "the five most highly compensated employees in management positions at each home office and each segment of the contractor." This change applies to costs of compensation incurred after January 1, 1999, regardless of the date of contract award.

Dated: February 25, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

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