

those facilities located outside the United States and its outlying areas.

Item VI—Selling Cost Principle (FAR Case 2001–024)

This final rule amends the FAR to revise the “selling costs” cost principle by restructuring the paragraphs and removing unnecessary and duplicative language to increase clarity. The rule does not change the allowability of selling costs. The case was initiated at the request of the Aerospace Industries Association (AIA). This rule is of particular interest to contractors and contracting officers who use cost analysis to price contracts and modifications, and who determine or negotiate reasonable costs in accordance with a clause of a contract, *e.g.*, price revision of fixed-price incentive contracts, terminated contracts, or indirect cost rates.

Item VII—Section 508 Micropurchase Exception Sunset Provision (FAR Case 2002–012)

The interim rule published in the **Federal Register** at 67 FR 80321, December 31, 2002, is converted to a final rule, without change, to extend the Electronic and Information Technology (Section 508) micropurchase exception to October 1, 2004.

Item VIII—Technical Amendments

These amendments update references and make editorial changes at FAR 19.1005 and 52.212–1.

Dated: July 16, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001–15 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 FAC2001–15 are effective August 25, 2003, except for Items III, VII, and VIII which are effective July 24, 2003.

Dated: July 14, 2003.

Deidre A. Lee,

Director, Defense Procurement and Acquisition Policy.

Dated: July 14, 2003.

David A. Drabkin,

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

Dated: July 7, 2003.

Tom Luedtke,

Assistant 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, 5, 14, 19, 22, 36, 52, and 53

[FAC 2001–15; FAR Case 2001–032; Item I]

RIN 9000–AJ50

Federal Acquisition Regulation; Elimination of the Standard Form 129, Solicitation Mailing List Application

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to remove the requirement for contracting offices to establish and maintain manual solicitation mailing lists and the need to use the Standard Form (SF) 129, Solicitation Mailing List Application.

DATES: Effective Date: August 25, 2003.

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 2001–15, FAR case 2001–032.

SUPPLEMENTARY INFORMATION:

A. Background

In order to broaden use and reliance on e-business applications, the Councils have been working with the Office of Federal Procurement Policy to eliminate the need to maintain paper-based sources of contractor information. As part of this effort, the Councils have agreed to eliminate the SF 129, Solicitation Mailing List Application.

The SF 129 was created to enable contracting activities to obtain information from sources to develop a solicitation mailing list. At the time the

form was developed, manual processes were the only means available to assure access to adequate sources of supplies and services. Today, by sharp contrast, there are multiple tools available to agencies that can provide the functionality of the SF 129, but in a more efficient and effective manner. With the Administration’s encouragement, agencies are taking advantage of these tools. For example, an increasing number of agencies are requiring potential contractors to register in the Central Contractor Registration (CCR) System, a centrally located, searchable database, accessible via the Internet, as their tool of choice for developing, maintaining, and providing sources for future procurements. The CCR database enables prospective contractors to update their information in one place via a Web site. Contracting officers are now able to access, via the Internet, contractor data and industry information less expensively, and more efficiently identify sources for contracting opportunities. FAR changes are pending that will require use of CCR as the single validated source of data on contractors doing business with the Government (<http://www.ccr.gov>). Furthermore, agencies are continually working to develop new electronic means of matching interested businesses with Government contracting offices on “FedBizOpps,” <http://www.FedBizOpps.gov>, the designated single Governmentwide point of entry for public access to notices of procurement actions over \$25,000. FedBizOpp, through its interested vendors list, has the capability to generate a list of vendors who are interested in a specific solicitation for purposes of teaming opportunities, subcontracting opportunities, and other business relationships. In light of these electronic initiatives, we have eliminated the manual collection of contractor data using the SF 129.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 67 FR 67762, November 6, 2002. Three sources submitted comments in response to the proposed rule. All respondents agreed with the rule as published. One respondent pointed out a typographical error at 52.214–10. That error has been corrected. Additionally, the proposed rule inadvertently omitted the phrase “except for construction,” at 14.201–6(e), the prescription for the use of the provision at 52.214–10, Contract Award–Sealed Bidding. That language has been corrected in this final rule.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive

Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule substitutes efficient electronic databases for solicitation mailing lists and the SF 129, Solicitation Mailing List Application. Continued reliance on the SF 129 would unnecessarily promote inefficiency associated with paper-based processes. The successful phase-out of the paper-based Commerce Business Daily in favor of reliance on FedBizOpps demonstrates that the Federal contracting community, including small businesses, is successfully transitioning to greater use of electronic tools and their associated efficiencies to conduct business.

C. Paperwork Reduction Act

The Paperwork Reduction Act no longer applies because the final rule eliminates reporting and recordkeeping requirements currently approved under OMB Control Number 9000-0002. This rule will reduce the current OMB inventory by 464,000 hours.

List of Subjects in 48 CFR Parts 1, 5, 14, 19, 22, 36, 52, and 53

Government procurement.

Dated: July 16, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 5, 14, 19, 22, 36, 52, and 53 as set forth below:

1. The authority citation for 48 CFR parts 1, 5, 14, 19, 22, 36, 52, and 53 is revised to read as follows:

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

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

2. Amend section 1.106 in the table following the introductory paragraph by removing from FAR segment 14.205 its corresponding OMB Control Number "9000-0002" and adding "9000-0037" in its place; and by removing the FAR segments "14.205-4(c)" and "SF 129" and their corresponding OMB Control

Numbers "9000-0037" and "9000-0002", respectively.

PART 5—PUBLICIZING CONTRACT ACTIONS

3. Amend section 5.205 by revising the fourth sentence of paragraph (a) to read as follows:

5.205 Special situations.

(a) * * * Contracting officers must consider potential sources which respond to advance notices for a subsequent solicitation. * * *

5.403 [Amended]

4. Amend section 5.403 in paragraph (a) by removing "(a) Individual requests."; and by removing paragraph (b).

PART 14—SEALED BIDDING

14.103-1 [Amended]

5. Amend section 14.103-1 by removing paragraph (b) and redesignating paragraphs "(c)" and "(d)" as "(b)" and "(c)", respectively.

6. Amend section 14.201-6 by revising paragraph (e) to read as follows:

14.201-6 Solicitation provisions.

(e) Insert in all invitations for bids, except those for construction, the provision at 52.214-10, Contract Award-Sealed Bidding.

7. Amend section 14.203-1 by revising the first sentence to read as follows:

14.203-1 Transmittal to prospective bidders.

Invitations for bids or presolicitation notices must be provided in accordance with 5.102. * * *

8. Revise section 14.205 and its section heading to read as follows:

14.205 Presolicitation notices.

In lieu of initially forwarding complete bid sets, the contracting officer may send presolicitation notices to concerns. The notice shall—

(a) Specify the final date for receipt of requests for a complete bid set;

(b) Briefly describe the requirement and furnish other essential information to enable concerns to determine whether they have an interest in the invitation; and

(c) Normally not include drawings, plans, and specifications. The return date of the notice must be sufficiently in advance of the mailing date of the invitation for bids to permit an accurate estimate of the number of bid sets

required. Bid sets shall be sent to concerns that request them in response to the notice.

14.205-1 through 14.205-5 [Removed]

9. Remove sections 14.205-1 through 14.205-5.

14.211 [Amended]

10. Amend section 14.211 in the first sentence of paragraph (a) by removing "14.205-4(c)" and adding "14.205" in its place.

11. Amend section 14.503-1 by revising the introductory text of paragraph (a) to read as follows:

14.503-1 Step one.

(a) Requests for technical proposals shall be synopsisized in accordance with Part 5. The request must include, as a minimum, the following:

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

19.202-2 [Amended]

12. Amend section 19.202-2 by removing paragraph (a) and redesignating paragraphs "(b)" and "(c)" as "(a)" and "(b)", respectively.

19.202-4 [Amended]

13. Amend section 19.202-4 by removing paragraph (c) and redesignating paragraph (d) as (c).

19.402 [Amended]

14. Amend section 19.402 in paragraph (c)(3) by removing the words "on solicitation mailing lists or".

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

15. Amend section 22.1009-2 by revising paragraph (b) to read as follows:

22.1009-2 Attempt to identify possible places of performance.

* * * * *

(b) Databases available via the Internet for lists of prospective offerors and contractors.

* * * * *

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.213-3 [Amended]

16. Amend section 36.213-3 in the parenthetical in paragraph (d) by removing "14.205 and".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**52.214–9 [Removed and Reserved]**

- 17. Remove and reserve section 52.214–9.

52.214–10 [Amended]

- 18. Amend section 52.214–10 in the prescription by removing “14.201–6(e)(2)” and adding “14.201–6(e)” in its place.

PART 53—FORMS**53.214 [Amended]**

- 19. Amend section 53.214 by removing and reserving paragraph (e).

53.301–129 [Removed]

- 20. Remove section 53.301–129.

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DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 2, 11, and 23**

[FAC 2001–15; FAR Case 2001–028; Item II]

RIN 9000–AJ47

Federal Acquisition Regulation; Energy-Efficient Standby Power Devices

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 13221 of July 31, 2001, Energy-Efficient Standby Power Devices, and to clarify requirements for the purchase of recovered material.

DATES: *Effective Date:* August 25, 2003.

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. Laura Smith, at (202) 501–1224. Please cite FAC 2001–15, FAR case 2001–028.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils have agreed to amend the FAR to—

1. Implement E.O. 13221, by providing guidance on energy-efficient standby power devices; and

2. Clarify requirements for the purchase of recovered material.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 67 FR 64010, October 16, 2002. Four respondents submitted public comments. A discussion of the comments is provided below. The Councils concluded that the proposed rule should be converted to a final rule, with only minor editorial changes made to the proposed rule (*see* Response” to comment number 3).

1. *Comment:* The respondent supported the proposed revisions to the FAR, as “they provide the needed clarity in both these areas and will enhance contracting officers’ ability to effectively purchase green products.”

Councils’ Response: No change.

2. *Comment:* The proposed FAR 23.203(a)(1)(ii) authorizes the purchase of products that meet a Department of Energy Federal Energy Management Program (FEMP) standby power wattage recommendation. However, the FEMP recommended standby power wattage for about half of the product categories is higher than the one watt limit mandated by the E.O., even though the listing of products for the categories identify numerous products that consume one watt or less in their standby mode.

Councils’ Response: Nonconcur. In accordance with Section 1. of E.O. 13221, adherence to the one watt requirement is mandated only “when life-cycle cost-effective and practicable and where the relevant product’s utility and performance are not compromised as a result.” Pursuant to this direction, FEMP does not recommend restricting procurement within a product category to items that use only one watt or less of electricity when such a restriction would not permit adequate competition among producers.

3. *Comment:* The definition of energy-efficient standby power devices that was added in FAR 2.101 could apply to all products that use power (*e.g.*, a flashlight), rather than “commercially available, off-the-shelf products that use external standby power devices, or that contain an internal standby power function” per Section 1. of the E.O. The respondent recommended revising paragraph 1 of the definition to read: “(1) Use external standby power devices, or that contain an internal standby power function.”

Councils’ Response: Concur. The Councils have revised the definition of energy-efficient standby power devices at FAR 2.101 accordingly.

4. *Comment:* The proposed rule would amend FAR 11.002, Policy, by adding to paragraphs (d)(1) and (2) a reference to E.O. 13221 and text regarding products containing energy-efficient standby power devices. The amendment, as proposed, could be interpreted as giving preference to products that consume one watt or less while in standby mode over products that consume zero watts when switched off. This, of course, would run contrary to the intent of the E.O. Moreover, many office products rarely enter into a standby power mode and, hence, greater energy can be conserved via a power management function, a feature typical on Energy Star-qualified products.

Councils’ Response: Nonconcur. The policy statement does not express a preference for products with energy-efficient standby power devices over products which do not contain a standby power function. Rather, the policy statement indicates that if the Government requires a product that consumes power in a standby mode, the standby power device should be energy-efficient. Whether a product contains a standby power device will, in most instances, be determined by agency needs and related functions required of the product. For product categories covered by Energy Star, FEMP only considers a product for its standby power device list if it also meets the Energy Star criteria which includes power management functions.

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

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule simply provides additional guidance to Government contracting and technical personnel with respect to the Government’s preference, set forth in FAR Subpart 23.2, for buying energy-efficient products and services. This rule requires a contracting officer, when acquiring a product that uses an external standby power device or that