



Federal Register

**Tuesday,
March 18, 2003**

Part IV

**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 2001–13; Introduction

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

ACTION: Summary presentation of final rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2001–13. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at <http://www.arnet.gov/far>.

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

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

For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2001–13 and specific FAR case number(s). Interested parties may also visit our Web site at <http://www.arnet.gov/far>.

Item	Subject	FAR case	Analyst
I	Contract Types for Commercial Item Acquisitions	2000–013	Moss
II	Preference for U.S.-Flag Vessels—Subcontracts for Commercial Items	1999–024	Klein
III	Federal, State, and Local Taxes	2000–016	De Stefano
IV	Progress Payment Requests	2001–006	De Stefano

SUPPLEMENTARY INFORMATION:

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

FAC 2001–13 amends the FAR as specified below:

Item I—Contract Types for Commercial Item Acquisitions (FAR Case 2000–013)

This final rule amends FAR 12.207, 16.202–1, and 16.203–1 to indicate that award fee and performance or delivery incentives based solely on factors other than cost may be used in conjunction with firm-fixed-price (FFP) contracts and fixed-price contracts with economic price adjustment (FP/EPA) without changing the FFP or FP/EPA nature of the contract. A cross reference to these sections is added to FAR 12.207 to ensure clarity of the revisions relative to commercial item acquisitions.

Item II—Preference for U.S.-Flag Vessels—Subcontracts for Commercial Items (FAR Case 1999–024)

This final rule amends FAR Parts 12, 32, 47, and associated clauses to limit the types of subcontracts for which the waiver of cargo preference statutes is applicable. The rule is intended to ensure compliance with cargo preference statutes if ocean cargoes are clearly destined for Government use, while avoiding disruption of commercial delivery systems. This final rule also amends FAR Part 12 by adding 10 U.S.C. 2631, Transportation of Supplies by Sea, to the list of laws

inapplicable to subcontracts for the acquisition of commercial items (except for certain subcontracts). FAR Subpart 47.5 and the clause at FAR 52.247–64 do not generally apply to acquisitions by the Department of Defense.

Item III—Federal, State, and Local Taxes (FAR Case 2000–016)

This final rule amends the FAR to clarify the prescriptions at FAR 29.401 for use of FAR clauses pertaining to Federal, State, and local taxes. These clauses, 52.229–3, Federal, State, and Local Taxes; and 52.229–4, Federal, State, and Local Taxes (State and Local Adjustments), are also updated to reflect information previously contained in the clause at FAR 52.229–5, Taxes—Contracts Performed in U.S. Possessions or Puerto Rico. FAR clause 52.229–5 is removed.

Item IV—Progress Payment Requests Under Indefinite-Delivery Contracts (FAR Case 2001–006)

This final rule amends the Federal Acquisition Regulation (FAR) to require, under indefinite-delivery contracts, the contractor to account for and submit progress payment requests under individual orders as if each order constitutes a separate contract, unless otherwise specified in the contract. The rule is of special interest to contracting officers that administer indefinite-delivery contracts.

Dated: March 12, 2003.

Laura G. Smith,
Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001–13 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2001–13 are effective April 17, 2003.

Dated: March 10, 2003.

Deidre A. Lee,
Director, Defense Procurement and Acquisition Policy.

Dated: March 3, 2003.

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

Dated: February 28, 2003.

Tom Luedtke,
Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 03–6371 Filed 3–17–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 12 and 16**[FAC 2001-13; FAR Case 2000-013;
Item I]

RIN 9000-AJ03

**Federal Acquisition Regulation;
Contract Types for Commercial Item
Acquisitions****AGENCIES:** Department of Defense (DoD),
General Services Administration (GSA),
and National Aeronautics and Space
Administration (NASA).**ACTION:** Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify the use of award fees and performance or delivery incentives in firm-fixed-price contracts and fixed-price with economic price adjustment contracts. These changes are intended to clarify how award fees and performance or delivery incentives may be used in commercial item acquisitions where statute prohibits use of cost-type contracts and requires use of firm-fixed-price contracts and fixed-price contracts with economic price adjustment to the maximum extent practicable.

DATES: *Effective Date:* April 17, 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. Victoria Moss, Procurement Analyst, at (202) 501-4764. Please cite FAC 2001-13, FAR case 2000-013.

SUPPLEMENTARY INFORMATION:**A. Background**

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 83292, December 29, 2000, that proposed to amend FAR 12.207 and Subpart 16.2 to clarify the contract-type requirements for commercial item acquisitions derived from Section 8002(d) of the Federal Acquisition Streamlining Act (FASA) (Pub. L. 103-355). FASA states that agencies must use firm-fixed-price (FFP) contracts and fixed-price contracts with economic price adjustments (FP/EPA) to the maximum extent practicable for

commercial item acquisitions. FASA also prohibits the use of cost-type contracts.

The proposed rule would have amended Part 12 to address pricing mechanisms for acquiring commercial services available on a time-and-materials or labor-hour basis within FAR Part 12 contract-type restrictions. Additionally, the proposed rule contained revisions to FAR 16.202-1 and 16.203-1 to indicate that award fee and performance or delivery incentives based solely on factors other than cost may be used in conjunction with FFP and FP/EPA contracts without changing the FFP or FP/EPA nature of the contract.

The 60-day comment period for the proposed rule ended February 27, 2001. Ten sources submitted comments on the proposed rule. All comments received were considered in the formulation of this final rule. The comments indicated significant confusion concerning the proposed revisions to Part 12 regarding the intended application of the proposed time-and-materials and labor-hour pricing mechanism coverage. Consequently, the FAR Council decided that only the changes associated with using non-cost based award fee and delivery or schedule incentives in conjunction with FFP and FP/EPA contracts should be finalized.

Although this rule does not address the use of time-and-materials and labor-hour contracts for commercial item acquisitions, the Administrator, Office of Federal Procurement Policy, intends to work with the other FAR Council members to develop appropriate revisions to current FAR coverage to address their use, including safeguards that are needed to effectively protect taxpayer interests when these contractual arrangements are used under Part 12.

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

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Parts 12 and 16 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5

U.S.C. 601, *et seq.* (FAC 2001-13, FAR case 2000-013), 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.*

List of Subjects in 48 CFR Parts 12 and 16

Government procurement.

Dated: March 12, 2003.

Laura G. Smith,*Director, Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA amend 48 CFR parts 12 and 16 as set forth below:

1. The authority citation for 48 CFR parts 12 and 16 continues to read as follows:

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

**PART 12—ACQUISITION OF
COMMERCIAL ITEMS**

2. In section 12.207, add the following sentence to the end of the paragraph to read as follows:

12.207 Contract type.

* * * These contract types may be used in conjunction with an award fee and performance or delivery incentives when the award fee or incentive is based solely on factors other than cost (*see* 16.202-1 and 16.203-1).

PART 16—TYPES OF CONTRACTS

3. In section 16.202-1, add the following sentences to the end of the paragraph to read as follows:

16.202-1 Description.

* * * The contracting officer may use a firm-fixed-price contract in conjunction with an award-fee incentive (*see* 16.404) and performance or delivery incentives (*see* 16.402-2 and 16.402-3) when the award fee or incentive is based solely on factors other than cost. The contract type remains firm-fixed-price when used with these incentives.

4. In section 16.203-1, redesignate the introductory text as paragraph (a), and paragraphs (a) through (c) as (1) through (3), respectively; and add paragraph (b) to read as follows:

16.203-1 Description.

* * * * *

(b) The contracting officer may use a fixed-price contract with economic

price adjustment in conjunction with an award-fee incentive (see 16.404) and performance or delivery incentives (see 16.402-2 and 16.402-3) when the award fee or incentive is based solely on factors other than cost. The contract type remains fixed-price with economic price adjustment when used with these incentives.

[FR Doc. 03-6372 Filed 3-17-03; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12, 32, 47, and 52

[FAC 2001-13; FAR Case 1999-024; Item II]

RIN 9000-A197

Federal Acquisition Regulation; Preference for U.S.-Flag Vessels— Subcontracts for Commercial Items

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) regarding the applicability of statutory requirements for use of U.S.-flag vessels in the transportation of supplies by sea. The FAR presently waives these requirements for subcontracts for the acquisition of commercial items. This rule would require the use of U.S.-flag vessels under certain subcontracts for commercial items.

DATES: *Effective Date:* April 17, 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. Linda Klein, Procurement Analyst, at (202) 501-3775. Please cite FAC 2001-13, FAR case 1999-024.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Parts 12, 32, 47, and associated clauses to limit the types of subcontracts for which the waiver of cargo preference statutes is

applicable. The rule is intended to ensure compliance with cargo preference statutes if ocean cargoes are clearly destined for Government use, while avoiding disruption of commercial delivery systems. This final rule also amends FAR Part 12 by adding 10 U.S.C. 2631 to the list of laws inapplicable to subcontracts for the acquisition of commercial items, except for certain subcontracts, since civilian agencies may buy supplies for use of military departments.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 66920, November 7, 2000. Four respondents submitted public comments during the comment period. These comments were considered in the formulation of the final rule. A summary of the comments and their respective disposition is as follows:

1. One respondent voiced opposition to the rule indicating that (1) neither the statute nor the legislative history grants authority to create an administrative deviation from the explicit requirement to use U.S.-flag vessels in the transportation of supplies bought for the Department of Defense (DoD) either by DoD or a civilian agency; (2) the rule should be considered a major rule under 5 U.S.C. 804; and (3) this rule will have a significant impact on a substantial number of small entities. The Councils did not concur. 41 U.S.C. 430(b), as added by the Federal Acquisition Streamlining Act (FASA) of 1994 (Pub. L. 103-355, Section 8003), requires that the FAR list those laws inapplicable to subcontracts for commercial items, and requires that covered laws as defined in 41 U.S.C. 430(c) be included on that list unless the FAR Council makes a written determination that it would not be in the best interest of the Federal Government to exempt commercial subcontracts from the applicability of the provision (see comment 2). In accordance with this statute, FAR 12.504(a)(10) currently lists 46 U.S.C. 1241(b), with the inapplicability effective May 1, 1996. This rule adds 10 U.S.C. 2631 to the FAR list, because civilian agencies may buy supplies for use of military departments. 10 U.S.C. 2631 is currently listed as inapplicable to commercial items at DFARS 212.504(a)(xxii), with the same exceptions now being incorporated in the FAR. This rule clarifies existing policy and limits the number of allowable waivers. The rule strengthens the Government support for the Cargo Preference statutes. The Office of Information and Regulatory Affairs reviewed the proposed rule before publication and did not declare it to be a major rule under 5 U.S.C. 804.

2. One respondent expressed opposition to the rule considering it to be inconsistent with FASA with respect to commercial item procurements. The respondent states that 10 U.S.C. Sec. 2631 is not specifically enumerated to remain unaffected by Title VIII of FASA, it does not provide for criminal or civil penalties, or contain any provisions that would override the provisions in Title VIII of FASA and, therefore, a written determination of the FAR Council is required to not exempt all commercial item subcontracts from the provisions of 10 U.S.C. Sec 2631. The FAR Council has made a determination in writing as required by the OFPP Act, 41 U.S.C. 430(b).

3. One respondent expressed concern regarding deletion of contracts awarded using the simplified acquisition procedures in Part 13 from the current list of exceptions to the preference for U.S.-flag vessels. This change was accomplished under FAR case 98-604, and is outside the scope of this case.

4. One respondent expressed concern that the rule does not waive Cargo Preference for commercial subcontracts if the prime contractor is redistributing or reselling without adding value. The Council did not concur. FASA specifically prohibits waiver of laws for subcontracts where the prime does not add value; the subcontractor then is held to all laws applicable to a prime contractor. The rule merely clarifies this portion of the law.

5. One respondent expressed concern regarding the difference between the requirements outlined in the statutes covering DoD and non-DoD cargo. The concern is that extension of the rule to civilian agency acquisitions places an insurmountable burden on Government contractors and subcontractors. The Councils did not concur as FAR 47.503(b)(2) already states that 10 U.S.C. 2631 is applicable if supplies being shipped are for use of military departments. This rule does not expand that applicability of 10 U.S.C. 2631 to other non-DoD cargo, but actually limits application of Cargo Preference, by providing waiver of 10 U.S.C. 2631, if it would otherwise be applicable.

6. One respondent contends that if the proposed rule is not withdrawn, it should be modified to require prime contractors to advise their subcontractors when the statutes apply. The Councils did not concur because the FAR currently requires the prime contractor to notify the subcontractors of any flow-down statutes.

7. Two respondents were concerned that the rule could be read to omit one major exception to cargo preference waivers for subcontracts for commercial

items—"non-commercial component parts" and requests clarification. The Councils did not concur because the rule only relates to commercial component parts.

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

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most ocean transportation companies are large business concerns. FAR Subpart 47.5 and the clause at FAR 52.247-64 do not generally apply to acquisitions by the Department of Defense.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104-13) applies because the final rule will increase the flow down of FAR clause 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels, to certain commercial subcontracts. This information collection requirement is currently approved by the Office of Management and Budget under OMB Control Number 9000-0061, Transportation Requirements, which also covers other transportation related information collection requirements. We estimate an increase of 9000 responses per year as a result of this final rule, and a corresponding increase of 900 burden hours per year. We received no comments on the information collection requirements published in the proposed rule.

List of Subjects in 48 CFR Parts 12, 32, 47, and 52

Government procurement.

Dated: March 12, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 12, 32, 47, and 52 as set forth below:

1. The authority citation for 48 CFR parts 12, 32, 47, and 52 continues to read as follows:

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

PART 12—ACQUISITION OF COMMERCIAL ITEMS

2. In section 12.504, amend paragraph (a) by redesignating paragraphs (a)(1) through (a)(11) as (a)(2) through (a)(12), respectively; by adding a new paragraph (a)(1); and by revising the newly designated paragraph (a)(11) to read as follows:

12.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

(a) * * *

(1) 10 U.S.C. 2631, Transportation of Supplies by Sea (except for the types of subcontracts listed at 47.504(d)).

* * * * *

(11) 46 U.S.C. Appx 1241(b), Transportation in American Vessels of Government Personnel and Certain Cargo (see Subpart 47.5) (except for the types of subcontracts listed at 47.504(d)).

* * * * *

PART 32—CONTRACT FINANCING

32.1103 [Amended]

3. Amend section 32.1103 in the introductory text of paragraph (e) by removing "10 U.S.C. 101(a)(13)" and adding "2.101" in its place.

PART 47—TRANSPORTATION

4. Amend section 47.504 by revising paragraph (d) to read as follows:

47.504 Exceptions.

* * * * *

(d) Subcontracts for the acquisition of commercial items or commercial components (see 12.504(a)(1) and (a)(11)). This exception does not apply to—

(1) Grants-in-aid shipments, such as agricultural and food-aid shipments;

(2) Shipments covered under 46 U.S.C. Appx 1241-1, such as those generated by Export-Import Bank loans or guarantees;

(3) Subcontracts under—

(i) Government contracts or agreements for ocean transportation services; or

(ii) Construction contracts; or

(4) Shipments of commercial items that are—

(i) Items the contractor is reselling or distributing to the Government without adding value (see FAR 12.501(b)). Generally, the contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment; or

(ii) Shipped in direct support of U.S. military—

(A) Contingency operations;

(B) Exercises; or

(C) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

5. Revise section 47.507 to read as follows:

47.507 Contract clauses.

(a)(1) Insert the clause at 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels, in solicitations and contracts that may involve ocean transportation of supplies subject to the Cargo Preference Act of 1954. (For application of the Cargo Preference Act of 1954, see 47.502(a)(3), 47.503(a), and 47.504.)

(2) If an applicable statute requires, or if it has been determined under agency procedures, that the supplies to be furnished under the contracts must be transported exclusively in privately owned U.S.-flag commercial vessels (see 47.502(a)(1) and 47.503(b)), use the clause with its Alternate I.

(3) Except for contracts or agreements for ocean transportation services or construction contracts, use the clause with its Alternate II if any of the supplies to be transported are commercial items that are shipped in direct support of U.S. military—

(i) Contingency operations;

(ii) Exercises; or

(iii) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

(b) The contracting officer may insert in solicitations and contracts, under agency procedures, additional appropriate clauses concerning the vessels to be used.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Amend section 52.212-5 by revising the date of the clause and paragraph (e)(4) 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 (Apr. 2003)

* * * * *

(e) * * *

(4) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (46 U.S.C. Appx 1241 and 10 U.S.C. 2631) (flow down required in accordance with paragraph (d) of FAR clause 52.247-64); and

* * * * *

7. Amend section 52.213-4 by revising the date of the clause and paragraph (b)(1)(xi) 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) (Apr. 2003)

* * * * *

(b)(1) * * *

(xi) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003) (46 U.S.C. Appx 1241). (Applies to supplies transported by ocean vessels (except for the types of subcontracts listed at 47.504(d).)

* * * * *

8. Amend section 52.244-6 by revising the section and clause heading, the date of the clause, and paragraph (c)(1)(v) to read as follows:

§ 52.244-6 Subcontracts for Commercial Items and Commercial Components.

* * * * *

Subcontracts for Commercial Items and Commercial Components (Apr. 2003)

* * * * *

(c)(1) * * *

(v) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631) (flow down required in accordance with paragraph (d) of FAR clause 52.247-64).

* * * * *

9. Amend section 52.247-64 by—
- Revising the date of the clause;
 - Removing “The” from the beginning of the introductory text of paragraph (a) and adding “Except as provided in paragraph (e) of this clause, the” in its place;
 - Removing the period at the end of paragraph (d) and adding “, except those described in paragraph (e)(4).” in its place;
 - Removing “and” at the end of paragraph (e)(2);
 - Removing the period at the end of paragraph (e)(3) and adding “; and” in its place;
 - Adding paragraph (e)(4);
 - Revising the date, introductory text, and paragraph (a) of Alternate I; and
 - Revising Alternate II to read as follows:

52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels.

* * * * *

Preference for Privately Owned U.S.-Flag Commercial Vessels (Apr 2003)

* * * * *

(e) * * *

- (4) Subcontracts or purchase orders for the acquisition of commercial items unless—
- This contract is—
 - A contract or agreement for ocean transportation services; or
 - A construction contract; or

(ii) The supplies being transported are—

- Items the Contractor is reselling or distributing to the Government without adding value. (Generally, the Contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment); or

(B) Shipped in direct support of U.S. military—

- Contingency operations;
- Exercises; or
- Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

* * * * *

Alternate I (Apr 2003). As prescribed in 47.507(a)(2), substitute the following paragraphs (a) and (b) for paragraphs (a) and (b) of the basic clause:

(a) Except as provided in paragraphs (b) and (e) of this clause, the Contractor shall use privately owned U.S.-flag commercial vessels, and no others, in the ocean transportation of any supplies to be furnished under this contract.

* * * * *

Alternate II (Apr 2003). As prescribed in 47.507(a)(3), substitute the following paragraph (e) for paragraph (e) of the basic clause:

(e) The requirement in paragraph (a) does not apply to—

- Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;
 - Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353); and
 - Shipments of classified supplies when the classification prohibits the use of non-Government vessels.
- (4) Subcontracts or purchase orders under this contract for the acquisition of commercial items unless the supplies being transported are—

(i) Items the Contractor is reselling or distributing to the Government without adding value. (Generally, the Contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment); or

(ii) Shipments in direct support of U.S. military—

- Contingency operations;
- Exercises; or
- Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations. (*Note:* This contract requires shipment of commercial items in direct support of U.S. military contingency operations, exercises, or forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.)

[FR Doc. 03-6373 Filed 3-17-03; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 29 and 52

[FAC 2001-13; FAR Case 2000-016; Item III]

RIN 9000-AJ39

Federal Acquisition Regulation; Federal, State, and Local Taxes

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify the prescriptions for use of clauses relating to Federal, State, and local taxes. In addition, the rule deletes the clause at FAR 52.229-5, Taxes—Contracts Performed in U.S. Possessions or Puerto Rico, and updates and moves the definition of “local taxes.”

DATES: Effective Date: April 17, 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 2001-13, FAR case 2000-016.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the FAR to clarify the prescriptions at FAR 29.401 for use of FAR clauses 52.229-3, Federal, State, and Local Taxes; 52.229-4, Federal, State, and Local Taxes (State and Local Adjustments). In addition, the rule deletes the clause at 52.229-5, Taxes—Contracts Performed in U.S. Possessions or Puerto Rico, and moves the definition of “local taxes” from the clause at 52.229-3 and 52.229-4, and updates the definition by adding U.S. territories and the Commonwealth of the Northern Mariana Islands, which are no longer considered possessions of the United States.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 67 FR 38552, June 4, 2002. Two sources

submitted comments in response to the proposed rule. The first respondent recommended adding the word "contingency" in 29.401-3(b) for clarity. The Councils adopted the intent of the respondent's recommendation for paragraph (b) for clarity and consistency with the clause language at 52.229-4(c). Another commenter recommended that the FAR be further amended to address payment of property tax on equipment rented or leased by the Government. That comment was outside the scope of the case and no action was taken.

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

B. Regulatory Flexibility Act

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

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 29 and 52

Government procurement.

Dated: March 12, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 29 and 52 as set forth below:

1. The authority citation for 48 CFR parts 29 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 29—TAXES

2. In section 29.305, revise paragraph (b)(1) to read as follows:

29.305 State and local tax exemptions.

* * * * *

(b) * * *

(1) Under a contract containing the clause at 52.229-3, Federal, State, and Local Taxes, or at 52.229-4, Federal,

State, and Local Taxes (State and Local Adjustments), in accordance with the terms of those clauses.

* * * * *

3. Revise the heading and text of section 29.401-3 to read as follows:

29.401-3 Federal, State, and local taxes.

(a) Except as provided in paragraph (b) of this section, insert the clause at 52.229-3, Federal, State, and Local Taxes, in solicitations and contracts if—

(1) The contract is to be performed wholly or partly within the United States, its possessions or territories, Puerto Rico, or the Northern Mariana Islands;

(2) A fixed-price contract is contemplated; and

(3) The contract is expected to exceed the simplified acquisition threshold.

(b) In a noncompetitive contract that meets all the conditions in paragraph (a) of this section, the contracting officer may insert the clause at 52.229-4, Federal, State, and Local Taxes (State and Local Adjustments), instead of the clause at 52.229-3, if the price would otherwise include an inappropriate contingency for potential postaward change(s) in State or local taxes.

29.401-4 and 29.401-5 [Removed]

29.401-6 [Redesignated as 29.401-4]

4. Remove sections 29.401-4 and 29.401-5, and redesignate section 29.401-6 as 29.401-4.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Amend section 52.229-3 as follows:

a. Revise the date of the clause;

b. Revise paragraph (a) introductory text; and

c. In paragraph (a), amend the definitions "Contract date", "All applicable Federal, State, and local taxes and duties", "After-imposed Federal tax", and "After-relieved Federal tax" by removing " , as used in this clause," and placing these definitions in alphabetical order; and add, in alphabetical order, the definition "Local taxes".

The revised and added text read as follows:

52.229-3 Federal, State, and Local Taxes.

* * * * *

Federal, State, and Local Taxes (April 2003)

(a) As used in this clause—

* * * * *

Local taxes includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands,

if the contract is performed wholly or partly in any of those areas.

* * * * *

(End of clause)

6. Amend section 52.229-4 as follows:

(a) Revise the section and clause headings; and the introductory paragraph;

(b) Revise paragraph (a) introductory text;

(c) In paragraph (a), place the definitions "Contract date", "All applicable Federal, State, and local taxes and duties", "After-imposed tax", "After-relieved tax", and "Excepted tax" in alphabetical order and amend by removing " , as used in this clause;" and add, in alphabetical order, the definition "Local taxes".

The revised and added text read as follows:

52.229-4 Federal, State, and Local Taxes (State and Local Adjustments).

As prescribed in 29.401-3, insert the following clause:

Federal, State, and Local Taxes (State and Local Adjustments) (April 2003)

(a) As used in this clause—

* * * * *

Local taxes includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands, if the contract is performed wholly or partly in any of those areas.

* * * * *

52.229-5 [Removed and reserved]

7. Remove and reserve section 52.229-5.

8. Amend section 52.229-10 as follows: a. Amend the introductory text by removing "29.401-6(b)" and adding "29.401-4(b)" in its place; b. Revise the date of the clause; and c. Amend paragraph (h) by removing "29.401-6(b)(1)" and adding "29.401-4(b)(1)" in its place.

The revised text reads as follows:

52.229-10 State of New Mexico Gross Receipts and Compensating Tax.

* * * * *

State of New Mexico Gross Receipts and Compensating Tax (April 2003)

* * * * *

[FR Doc. 03-6374 Filed 3-17-03; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 32 and 52**

[FAC 2001-13; FAR Case 2001-006; Item IV]

RIN 9000-AJ23

**Federal Acquisition Regulation;
Progress Payment Requests Under
Indefinite-Delivery 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 (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to require, under indefinite-delivery contracts, the contractor to account for and submit progress payment requests under individual orders as if each order constitutes a separate contract, unless otherwise specified in the contract.

DATES: Effective Date: April 17, 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, at (202) 501-1758. Please cite FAC 2001-13, FAR case 2001-006.

SUPPLEMENTARY INFORMATION:**A. Background**

The Councils have agreed to amend the Federal Acquisition Regulation (FAR) to require, under indefinite-delivery contracts, the contractor to account for and submit progress payment requests under individual orders as if each order constitutes a separate contract, unless otherwise specified in the contract.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 66 FR 57294, November 14, 2001. Eight respondents submitted public comments. These comments are discussed 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.

1. *Time requirement.* One respondent asked if the proposed rule change would have a time requirement other than 60 days, and if so, how that change would effect outside agencies. This question referenced an existing policy addressing progress schedules and reports.

Councils' response: No change. The proposed change focuses on how progress payments will be billed and processed on delivery orders under indefinite-delivery type contracts. It does not impact any existing timeframes.

2. *Statement of work.* One respondent asserted that the proposed change would increase the difficulty in preparing a statement of work to quantify a technical assistance contract.

Councils' response: No change. The proposed change would not impact the preparation of statements of work.

3. *Effect on costs.* Two respondents disagreed with the proposed change on the basis that existing FAR language contains the necessary flexibility, and that the proposed language would reduce latitude of the contracting officer, increase the costs of doing business with the government, and generate more paper. Other points made were that the inconsistency between FAR 32.503-5(c) and FAR 52.232-16 does not obtain the desired effect because many offices follow single billing for each task order, and that single billing for the entire contract is preferable to keep costs lower.

Councils' response: No change. The proposed change would have minimal impact on efficiency. The FAR currently requires that contracting officers administer indefinite-delivery type contracts on a delivery order basis. The vast majority of contractors comply with this guidance; so adding this requirement to the clause will simply eliminate an inconsistency between FAR guidance to contracting officers and the contract clause. Furthermore, the existing requirement for administering progress payments on a delivery-order basis is necessary to maintain proper control over payment processing and liquidations. Permitting progress payments on a whole contract basis would create inefficiencies in payment approval and processing, making it more difficult to ensure that progress payments are paid from the proper appropriations, and add complexity to surveillance.

4. *No inconsistency.* One respondent stated that there is not an inconsistency in the FAR between the coverage in FAR 32.503-5(c) and FAR 52.232-16; that if there is a perceived inconsistency it does not merit a revision to the Progress Payment clause; and that if any revision

to the FAR is necessary to resolve this perceived inconsistency, then the FAR should be revised to delete all references that imply that individual orders (under a contract) are to be treated as separate contracts.

Councils' response: No change. The inconsistency between the coverage in FAR 32.503-5(c) and the Progress Payment clause is clear. FAR 32.503-5(c) provides that under indefinite delivery contracts the contracting officer should administer progress payments made under each individual order as if the order constituted a separate contract, unless agency procedures provide otherwise. However, there is no related language in the clause at FAR 52.232-16, so the contractor is not currently required by contract to request progress payments on a delivery order basis. Although contractors almost always comply with the contracting officer's instructions regarding separation of progress payments by order, a contractor may erroneously contend that it incurred additional costs in complying with direction to prepare progress payments on an indefinite-delivery contract as if each delivery order were a separate contract. The Councils recommend adding the proposed language to the clause to preclude future misunderstandings.

With regard to the comment that FAR references implying that individual orders should be treated as separate contracts should be deleted, the Councils regard the existing requirements as necessary. The necessity is borne of the need to recognize that funds are typically obligated on the individual orders, and that individual orders must be treated as if they were separate contracts in order to effectively administer progress payments; and monitor production, payment requests, delivery payments and liquidations.

5. *Invoices.* One respondent expressed concern that the proposed changes would require submission of individual requests for payment of invoices on indefinite-delivery service contracts. Currently, some contractors submit single requests for payment under several task orders.

Councils' response: No change. The proposed rule addresses progress payment requests, not invoices. The rule does not address the submission of invoices and does not prohibit agencies from permitting their contractors to submit single invoices for multiple tasks. To the extent that progress payments are involved, existing contract coverage at 52.232-16, Progress Payments, acts to protect the Government's interests.

6. *Agency procedures.* One respondent submitted the following comments:

a. The need for the rule is not evident, since the prescription in FAR 32.502-4(e) directs contracting officers to provide special contract instructions for severable work, where accounting segregation is needed, and furthermore, FAR 32.503-5(c) provides guidance to treat task orders under existing indefinite-delivery contracts as if they were separate contracts.

Councils' response: No change. Although the prescription at FAR 32.502-4(c) directs that special contract instructions be provided for severable work, the existing language at FAR 32.503-5(c) establishes a default requirement for separate administration of progress payments on delivery orders. There is a need for accompanying standard language in the clause at FAR 52.232-16, rather than requiring that special provisions be constructed for each occurrence of a fairly common situation. If special instructions were determined to be the solution to this inconsistency and those provisions were not written into a contract through an oversight, then the inconsistency would be incorporated into the contract. This would result in complications in the administration and payment of progress payments under the affected contract.

b. To fully implement the policy changes of the proposed rule, the first sentence of existing coverage in FAR 32.503(c) should be revised to add the phrase "or the contract" after the phrase "unless agency procedures."

Councils' response: No change. The recommended language is redundant because a provision should not be in the contract if it does not comply with the procedures of the awarding agency.

c. In the second sentence of FAR 32.503(c), recommend changing "if the awarding agency wants the administration* * *" to "when the awarding agency's procedures, the contract administration office's procedures, or the contract* * *" require the contract administration to be on a basis other than order-by-order.

Councils' response: No change. The recommended language contains potential conflicts, e.g., if the awarding agency procedures and the contract administration office procedures are not in step. Furthermore, the Councils regard referencing the contract in this sentence as redundant, since an alternate procedure should not be in the contract unless it complies with the awarding agency procedures. The central point of the sentence under discussion is that progress payments will be administered on an order-by-

order basis if the contract is administered by an agency other than the awarding agency, unless the awarding agency has previously coordinated that alternate arrangement with the administering agency. This point is diluted if an alternate procedure can be established simply by putting it in the contract.

d. In FAR 52.232-16(l), the FAR Council recognizes the appropriateness of special attention to the terms of the contract, but fails to take into account special agency procedures that may exist, and that are covered under existing FAR 32.503-5(c). To fully implement the policy and maintain consistency within the FAR, we recommend revising the phrase "unless otherwise specified in the contract" to "unless agency procedures or the contract provide otherwise."

Councils' response: No change. The Councils believe that the language in the proposed rule for FAR 52.232-16 obtains the desired effect, is consistent with the language in the proposed rule for FAR 32.503-5, and does effectively implement the policy. Specifically, by limiting the exceptions in FAR 52.232-16(l) to other contractual provisions, this language eliminates the potential for a requirement to be expressed in agency procedures, but not executed in the contract itself. This existing proposed rule enforces consistency between regulation and contract.

7. *Concurrence of the CAO.* The respondent recommended that the case be revised to require that the contracting officer obtain the concurrence of the contract administration office if the awarding agency wants the administration of progress payments to be on a basis other than order-by-order. This change would remove any ambiguity with regard to whether coordination with the contract administration office constitutes concurrence.

Councils' response: No change. The Councils recognize that the term "coordination" may not always be construed to mean that the awarding office will obtain the agreement of the administering office prior to deciding that progress payments will be administered on a basis other than order-by-order. However, the term "coordinate" provides more flexibility, which may be appropriate at certain times.

8. *Performance-based payments.* One respondent stated that the FAR should be revised to include a similar concept for performance-based payments. Specifically, language should be inserted into FAR part 32.10 and FAR 52.232-32, Performance-Based

Payments, to provide that, under indefinite-delivery contracts, the performance-based payments would be administered under each individual order as if the order constituted a separate contract, unless agency procedures provide otherwise. In addition to the language proposed for FAR 32.1007, this recommendation includes accompanying proposed language to be inserted in the Performance Based Payments clause at FAR 32.232-32. In addition, the FAR should be revised to provide that, for indefinite-delivery contracts, that performance-based payments be used only on individual delivery orders or task orders, and not on the basic contract.

Councils' response: The Councils believe that these recommendations are beyond the scope of the subject case.

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

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities have a dollar value less than the simplified acquisition threshold and, therefore, do not have the progress payment type of financing.

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 32 and 52

Government procurement.

Dated: March 12, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 32 and 52 as set forth below:

1. The authority citation for 48 CFR parts 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 32—CONTRACT FINANCING

2. Amend section 32.503–5 by adding a sentence to the end of paragraph (c) to read as follows:

32.503–5 Administration of progress payments.

* * * * *
 (c) * * * When the contract will be administered by an agency other than the awarding agency, the contracting officer shall coordinate with the contract administration office if the awarding agency wants the administration of progress payments to be on a basis other than order—by—order.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 3. Amend section 52.232–16 by—
 - a. Revising the date of the clause;
 - b. Adding paragraph (m);
 - c. Revising the date and introductory text of Alternate II;
 - d. Redesignating paragraphs (m) and (n) of Alternate II as (n) and (o), respectively;
 - e. Revising the introductory text of the newly designated paragraph (n), and paragraph (n)(3);
 - f. Revising the date and the introductory text of Alternate III; and
 - g. Redesignating paragraph (m) of Alternate III as paragraph (n).

52.232–16 Progress Payments.

* * * * *

Progress Payments (April 2003)

* * * * *

(m) *Progress payments under indefinite—delivery contracts.* The Contractor shall account for and submit progress payment

requests under individual orders as if the order constituted a separate contract, unless otherwise specified in this contract. (End of clause)

* * * * *

Alternate II (Apr 2003). If the contract is a letter contract, add paragraphs (n) and (o). The amount specified in paragraph (o) shall not exceed 80 percent of the maximum liability of the Government under the letter contract. The contracting officer may specify separate limits for separate parts of the work.

(n) The Contracting Officer will liquidate progress payments made under this letter contract, unless previously liquidated under paragraph (b) of this clause, using the following procedures:

- (1) * * *
- (2) * * *

(3) If this letter contract is partly terminated and partly superseded by a contract, the Government will allocate the unliquidated progress payments to the terminated and unterminated portions as the Government deems equitable, and will liquidate each portion under the relevant procedure in paragraphs (n)(1) and (n)(2) of this clause.

* * * * *

Alternate III (Apr 2003). As prescribed in 32.502–4(d), add the following paragraph (n) to the basic clause. If Alternate II is also being used, redesignate the following paragraph as paragraph (p):

* * * * *

[FR Doc. 03–6375 Filed 3–17–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

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

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121). It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 2001–13 which amends the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 2001–13 which precedes this document. These documents are also available via the Internet at <http://www.arnet.gov/far>.

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

LIST OF RULES IN FAC 2001–13

Item	Subject	FAR case	Analyst
I	Contract Types for Commercial Item Acquisitions	2000–013	Moss
II	Preference for U.S.-Flag Vessels—Subcontracts for Commercial Items	1999–024	Klein
III	Federal, State, and Local Taxes	2000–016	De Stefano
IV	Progress Payment Requests	2001–006	De Stefano

Item I—Contract Types for Commercial Item Acquisitions (FAR Case 2000–013)

This final rule amends FAR 12.207, 16.202–1, and 16.203–1 to indicate that award fee and performance or delivery incentives based solely on factors other than cost may be used in conjunction with firm-fixed-price (FFP) contracts and fixed-price contracts with economic price adjustment (FP/EPA) without changing the FFP or FP/EPA nature of

the contract. A cross reference to these sections is added to FAR 12.207 to ensure clarity of the revisions relative to commercial item acquisitions.

Item II—Preference for U.S.-Flag Vessels—Subcontracts for Commercial Items (FAR Case 1999–024)

This final rule amends FAR parts 12, 32, 47, and associated clauses to limit the types of subcontracts for which the

waiver of cargo preference statutes is applicable. The rule is intended to ensure compliance with cargo preference statutes if ocean cargoes are clearly destined for Government use, while avoiding disruption of commercial delivery systems. This final rule also amends FAR part 12 by adding 10 U.S.C. 2631, Transportation of Supplies by Sea, to the list of laws inapplicable to subcontracts for the

acquisition of commercial items (except for certain subcontracts). FAR subpart 47.5 and the clause at FAR 52.247-64 do not generally apply to acquisitions by the Department of Defense.

Item III—Federal, State, and Local Taxes (FAR Case 2000-016)

This final rule amends the FAR to clarify the prescriptions at FAR 29.401 for use of FAR clauses pertaining to Federal, State, and local taxes. These clauses, 52.229-3, Federal, State, and Local Taxes; and 52.229-4, Federal,

State, and Local Taxes (State and Local Adjustments), are also updated to reflect information previously contained in the clause at FAR 52.229-5, Taxes—Contracts Performed in U.S. Possessions or Puerto Rico. FAR clause 52.229-5 is removed.

Item IV—Progress Payment Requests Under Indefinite-Delivery Contracts (FAR Case 2001-006)

This final rule amends the Federal Acquisition Regulation (FAR) to require, under indefinite-delivery contracts, the

contractor to account for and submit progress payment requests under individual orders as if each order constitutes a separate contract, unless otherwise specified in the contract. The rule is of special interest to contracting officers that administer indefinite-delivery contracts.

Dated: March 12, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

[FR Doc. 03-6376 Filed 3-17-03; 8:45 am]

BILLING CODE 6820-EP-P