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Part V

**Department of
Defense**

**General Services
Administration**

**National Aeronautics
and Space
Administration**

48 CFR Ch. 1, et al.
Federal Acquisition Regulation (FAR);
Final Rules

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Chapter 1

[Federal Acquisition Circular 90-45]

**Federal Acquisition Regulation;
Introduction of Miscellaneous
Amendments**

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

and National Aeronautics and Space
Administration (NASA).

ACTION: Summary presentation of final
and interim rules.

SUMMARY: This document serves to
introduce and relate together the interim
and final rule documents which follow
and which comprise Federal
Acquisition Circular (FAC) 90-45. The
Civilian Agency Acquisition Council
and the Defense Acquisition Regulations
Council have agreed to issue FAC 90-
45 to amend the Federal Acquisition
Regulation (FAR) to implement changes
in the following subject areas:

Item	Subject	FAR case	Analyst
I	Procurement Integrity	96-314	Linfield
II	Certification Requirements	96-312	O'Neill
III	Humanitarian Operations	96-323	Linfield
IV	Freedom of Information Act	96-326	O'Neill
V	Exceptions to Requirements for Certified Cost or Pricing Data	96-306	Olson
VI	Implementation of the North American Free Trade Agreement Implementation Act	93-310	Linfield
VII	Application of Special Simplified Procedures to Certain Commercial Items	96-307	Moss
VIII	Compliance with Immigration and Nationality Act Provisions	96-320	Linfield
IX	Caribbean Basin and Designated Countries	96-017	Linfield
X	Caribbean Basin Country End Products—Renewal of Treatment as Eligible	96-020	Linfield
XI	Compensation of Certain Contractor Personnel (Interim)	96-325	DeStefano
XII	Agency Procurement Protests	95-309	O'Neill
XIII	Two-Phase Design Build Selection Procedures	96-305	O'Neill
XIV	Year 2000 Compliance (Interim)	96-607	O'Neill
XV	Limitation on Indirect Cost Audits	96-324	Olson

DATES: For effective dates and comment
dates, see individual documents which
appear elsewhere in this separate part.

FOR FURTHER INFORMATION CONTACT: The
analyst whose name appears in relation
to each FAR case or subject area. For
general information, contact the FAR
Secretariat, Room 4035, GS Building,
Washington, DC, 20405 (202) 501-4755.
Please cite FAC 90-45 and FAR case
number(s).

SUPPLEMENTARY INFORMATION: Federal
Acquisition Circular 90-45 amends the
Federal Acquisition Regulation (FAR) as
specified below:

Case Summaries

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.

*Item I—Procurement Integrity (FAR
Case 96-314)*

This final rule amends the FAR to
implement the procurement integrity
provisions of Section 27 of the Office of
Federal Procurement Policy (OFPP) Act,
as amended by Section 4304 of the 1996
National Defense Authorization Act.
Section 4304 is part of the Clinger-
Cohen Act of 1996. Section 3.104 is

rewritten. Unlike the previous statute,
some of the post-employment
restrictions in the rewritten 3.104 apply
to post-award activities. The final rule
eliminates all of the procurement
integrity certifications required by the
previous statute.

The final rule makes other significant
changes. The new post-employment
restrictions apply to services provided
or decisions made on or after January 1,
1997; the old restrictions apply for
former officials whose employment
ended before January 1, 1997. The
clause at 52.203-10 is revised. The
clauses at 52.203-9 and 52.203-13, and
the Optional Form 333 at 53.202-1, are
removed. The solicitation provision at
52.203-8 is replaced with a new clause
to provide the means to void or rescind
contracts where there has been a
violation of the procurement integrity
restrictions.

*Item II—Certification Requirements
(FAR Case 96-312)*

This final rule amends FAR Parts 1,
3, 4, 6, 8, 9, 12, 14, 16, 19, 23, 27, 29,
31, 32, 36, 37, 42, 45, 47, 49, 52, and 53
to remove certain certification
requirements for contractors and
offerors that are not specifically
required by statute. The rule

implements Section 4301(b) of the
Clinger-Cohen Act of 1996 (Public Law
104-106).

*Item III—Humanitarian Operations
(FAR Case 96-323)*

This final rule amends the definition
of “simplified acquisition threshold” at
FAR 2.101 to increase the threshold to
\$200,000 for contracts to be awarded
and performed, or purchases to be
made, outside the United States in
support of a humanitarian or
peacekeeping operation. The rule
implements 10 U.S.C. 2302(7) and 41
U.S.C. 259(d) as amended by Section
807 of the National Defense
Authorization Act for Fiscal Year 1997
(Public Law 104-201).

*Item IV—Freedom of Information Act
(FAR Case 96-326)*

This final rule amends FAR Subpart
24.2 to implement Section 821 of the
National Defense Authorization Act for
Fiscal Year 1997 (Public Law 104-201).
Section 821 prohibits, with certain
exceptions, Government release of
competitive proposals under the
Freedom of Information Act.

Item V—Exceptions to Requirements for Certified Cost or Pricing Data (FAR Case 96-306)

This final rule implements Section 4201 of the Clinger-Cohen Act of 1996 (Public Law 104-106). Section 4201: (1) Exempts suppliers of commercial items under Federal contracts from the requirement to submit costs or pricing data; (2) provides for the submission of information other than cost or pricing data to the extent necessary to determine price reasonableness; and (3) removes specific audit authorities pertaining to information provided by commercial suppliers. Accordingly, FAR 15.8, 52.215-26, 52.215-41, and 52.215-42 are amended to revise requirements pertaining to the submission of information relating to commercial items; FAR 52.215-43 is removed; and other associated changes are made in FAR Parts 4, 12, 15, 16, 25, 31, 46, and 52.

Item VI—Implementation of the North American Free Trade Agreement Implementation Act (FAR Case 93-310)

The interim rule published as FAC 90-19 and amended by FAC 90-39 is converted to a final rule with changes. The final rule amends FAR Part 25. The final rule revisions result from public comments received on FAR Case 96-312 published as Item II in this FAC. Upon consideration of those public comments, certifications eliminated under the interim rule published in FAC 90-39 were reinstated.

Item VII—Application of Special Simplified Procedures to Certain Commercial Items (FAR Case 96-307)

This final rule amends FAR Parts 5, 6, 11, 12, and 13 to implement section 4202 of the Clinger-Cohen Act of 1996 (Public Law 104-106). Section 4202 requires revisions to the FAR to incorporate special simplified procedures for the acquisition of certain commercial items with a value greater than the simplified acquisition threshold (\$100,000) but not greater than \$5 million. The purpose of this revision is to vest contracting officers with additional procedural discretion and flexibility, so that commercial item acquisitions in this dollar range may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both the Government and industry.

Item VIII—Compliance With Immigration and Nationality Act Provisions (FAR Case 96-320)

The interim rule published as Item II of FAC 90-41 is converted to a final rule without change. The final rule amends FAR 9.406 to specify that a contractor may be debarred upon a determination by the Attorney General that the contractor is not in compliance with the employment provisions of the Immigration and Nationality Act. The rule implements Executive Order 12989, Economy and Efficiency in Government Procurement Through Compliance With Certain Immigration and Naturalization Act Provisions.

Item IX—Caribbean Basin and Designated Countries (FAR Case 96-017)

This final rule amends FAR 25.401 to update the lists of countries included in the definitions of "Caribbean Basin country" and "Designated country".

Item X—Caribbean Basin Country End Products—Renewal of Treatment as Eligible (FAR Case 96-020)

This final rule amends FAR 25.402(b) to implement the extension by the U.S. Trade Representative of the date of eligibility under the Trade Agreements Act for products of Caribbean Basin countries.

Item XI—Compensation of Certain Contractor Personnel (FAR Case 96-325)

This interim rule adds a new requirement at FAR 31.205-6(p) to implement Section 809 of the Fiscal Year (FY) 1997 National Defense Authorization Act (Public Law 104-201). Section 809 places a Governmentwide ceiling of \$250,000 per year on allowable compensation costs for contractor personnel in senior management positions under contracts awarded during FY 1997.

Item XII—Agency Procurement Protests (FAR Case 95-309)

The interim rule published as Item XIII of FAC 90-40 is revised and finalized. The rule amends FAR 33.103 to implement Executive Order 12979, Agency Procurement Protests. Executive Order 12979 provides for inexpensive, informal, procedurally simple, and expeditious resolution of agency protests, including the use of alternative dispute resolution techniques, third party neutrals, and another agency's personnel.

Item XIII—Two-Phase Design-Build Selection Procedures (FAR Case 96-305)

This final rule amends FAR Part 36 to implement Section 4105 of the Clinger-

Cohen Act of 1996 (Public Law 104-106), which authorizes the use of two-phase design-build procedures for construction contracting. Two phase design-build construction contracting provides for the selection of a limited number of offerors (normally five or fewer), during Phase One of the solicitation process, to submit detailed proposals for Phase Two.

Item XIV—Year 2000 Compliance (FAR Case 96-607)

This interim rule amends FAR Part 39 to increase awareness of Year 2000 procurement issues and to ensure that solicitations and contracts address Year 2000 issues.

Item XV—Limitation on Indirect Cost Audits (FAR Case 96-324)

This final rule amends FAR Part 42 to implement Section 808 of the FY 97 National Defense Authorization Act (Public Law 104-201). Section 808 amends 10 U.S.C. 2313(d) and 41 U.S.C. 254d(d) to expand required audit reciprocity among Federal agencies to include post-award audits. 10 U.S.C. 2313(d) and 41 U.S.C. 254d(d) were added by the Federal Acquisition Streamlining Act of 1994, Sections 2201(a)(1) and 2251(a) of Public Law 103-355, to include reciprocity on pre-award audits.

Dated: December 24, 1996.
Edward C. Loeb,
Director, Federal Acquisition Policy Division.
Federal Acquisition Circular

Federal Acquisition Circular (FAC) 90-45 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 90-45 is effective January 1, 1997, except for Item XII, which is effective March 3, 1997.

Dated: December 24, 1996.
Charles A. Zuckerman,
Director, Defense Procurement (Acting).

Dated: December 23, 1996.
Ida M. Ustad,
Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: December 23, 1996.
L.W. Bailets,
Associate Administrator for Procurement (Acting), National Aeronautics and Space Administration.

[FR Doc. 96-33198 Filed 12-31-96; 8:45 am]
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48 CFR Parts 1, 3, 4, 9, 12, 14, 15, 19, 33, 37, 43, 52, and 53

[FAC 90-45; FAR Case 96-314; Item I]

RIN 9000-AH19

Federal Acquisition Regulation; Procurement Integrity

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 to amend the Federal Acquisition Regulation (FAR) to implement Section 27 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 423), as amended by Section 4304 of the Clinger-Cohen Act, part of the FY 96 National Defense Authorization Act. 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.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Linfield at (202) 501-1757 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-45, FAR case 96-314. E-mail correspondence submitted over the Internet should be addressed to: 96-314@V.GSA.GOV.

SUPPLEMENTARY INFORMATION:**A. Background**

This final rule amends the FAR to implement the procurement integrity requirements in 41 U.S.C. 423 as amended by Section 4304 of the Clinger-Cohen Act of 1996 (Public Law 104-106). A proposed rule with request for public comments was published on September 6, 1996 (61 FR 47390). Sixty-nine comments were received from 10 respondents. These comments include three respondents' comments that were received after November 5, 1996, but which also were considered in drafting this final rule.

Section 4304 imposes restrictions on both the obtaining and disclosing of certain information obtained during the conduct of a procurement, except as provided by law. It requires certain agency officials involved in a procurement to take definite actions when contacting or contacted by offerors regarding non-Federal

employment. Also, it prohibits a former official's acceptance of compensation from a contractor if the former official either served in an identified position or made certain contract decisions involving more than \$10 million to that contractor. Unlike the previous statutory requirements, some of the post-employment restrictions apply to post-award activities.

The final rule eliminates all procurement integrity certifications previously required by the statute and revises the proposed rule published on September 6, 1996, in several significant ways. Subsection 3.104-2 was clarified to state that the post-Federal employment restrictions of the amended statute are applicable only to Federal service provided or decisions made after January 1, 1997. The text was reorganized and two new subsections added. In the redesignated 3.104-3, the terms "compensation", "contract", "decision to award a subcontract or modification of subcontract", "in excess of \$10,000,000", and "source selection evaluation board" were defined.

The final rule amplifies on the proposed rule in several areas addressed in the public comments received. For example, bid or proposal information marked in accordance with FAR 52.215-12 is contractor bid or proposal information that requires protection (see definition in 3.104-3 and 3.104-5). In 3.104-6, the final rule adds that contacts through an agent or other intermediary of an agency official or of a bidder or offeror may be considered a "contact" and require the agency official to disqualify himself or herself from the procurement. In the new 3.104-10, we added that the agency may take appropriate administrative action when an agency official's contact with a bidder or offeror regarding post-Federal employment interferes with the official's ability to perform assigned duties, and made specific reference to the criminal and civil penalties which may result from violations of the prohibitions and requirements of the Act.

B. Regulatory Flexibility Act

A Final Regulatory Flexibility Analysis (FRFA) has been performed. A copy of the FRFA may be obtained from the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755. The analysis is summarized as follows:

The objective of this rule is to advise present and certain former agency officials, bidders, offerors, and others involved in Federal agency procurements and contracts, of the revised requirements of 41 U.S.C. 423.

Section 4304 of the Clinger-Cohen Act of 1996 (Public Law 104-106) (1) restricts the disclosing and obtaining of procurement information during the conduct of a Federal agency procurement, (2) identifies actions procurement officers must take when contacted by a bidder or offeror regarding non-Federal employment, and (3) prohibits a former official's acceptance of compensation from a contractor if the former official either served in an identified position or made certain contact decisions involving more than \$10 million to that contractor.

No comments were received in response to the Initial Regulatory Flexibility Analysis. The final rule's restrictions on disclosing or obtaining procurement information apply to all competitive Government procurements. The restrictions on employment discussions between Federal agency officials and bidders or offerors in Federal agency procurements apply to all competitive Government procurements above the simplified acquisition threshold. We estimate that there are approximately 40,000 small businesses per year that submit bids or proposals for contracts exceeding the simplified acquisition threshold.

The rule's prohibition on former Federal agency officials' acceptance of compensation from certain contractors applies to any contractor which is awarded a contract in excess of \$10 million, or which is affected by certain decisions made by a Federal agency official on matters in excess of \$10 million. We estimate that this provision of the rule will apply to approximately 60 small businesses per year.

The interim rule imposes no new information collection or recordkeeping requirements. The rule eliminates existing information collection and recordkeeping requirements that implemented 41 U.S.C. 423 prior to its amendment by Section 4304. The existing requirements that this rule eliminates applied to (1) large and small entities that are bidders or offerors in Federal agency procurements with a value of \$100,000 or more, (2) contractors negotiating contract modifications with a value of \$100,000 or more, and (3) contractors that wish to employ former Federal procurement officials.

There are no known alternatives which would further reduce the impact on small entities and accomplish the objectives of 41 U.S.C. 423, as amended by Section 4304 of Public Law 104-106.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Public Law 96-511) is deemed to apply

because the final rule eliminates existing recordkeeping and information collection requirements approved by the Office of Management and Budget under OMB Number 9000-0103. A paperwork burden of 43,333 hours is eliminated.

List of Subjects in 48 CFR Parts 1, 3, 4, 9, 12, 14, 15, 19, 33, 37, 43, 52, and 53

Government procurement.

Dated: December 24, 1996.

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

Therefore, 48 CFR Parts 1, 3, 4, 9, 12, 14, 15, 19, 33, 37, 43, 52, and 53 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 3, 4, 9, 12, 14, 15, 19, 33, 37, 43, 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

1.106 [Amended]

2. The table in section 1.106 is amended under the "FAR Segment" and "OMB Control Number" columns by removing the entries for "3.104-9", "3.104-12(a)(12)", "52.203-8", and "52.203-9".

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3. Sections 3.104 through 3.104-11 are revised and 3.104-12 is removed, to read as follows:

3.104 Procurement integrity.

3.104-1 General.

(a) This FAR section 3.104 implements section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423), as amended by section 814 of the Fiscal Year 1990/1991 National Defense Authorization Act, Public Law 101-189, section 815 of the Fiscal Year 1991 National Defense Authorization Act, Public Law 101-510, and section 4304 of the Fiscal Year 1996 National Defense Authorization Act, Public Law 104-106 (hereinafter, the Office of Federal Procurement Policy Act, as amended, is referred to as "the Act"). Agencies may supplement 3.104 and any clauses required by 3.104, and may use agency specific definitions to identify individuals who occupy positions specified in 3.104-4(d)(1)(ii). Such supplementation and definitions must be approved at a level not lower than the senior procurement executive of the agency, unless a higher level of approval is required by law for that agency.

(b) Agency employees are reminded that there are other statutes and regulations that deal with the same or related prohibited conduct, for example—

(1) The offer or acceptance of a bribe or gratuity is prohibited by 18 U.S.C. 201, 10 U.S.C. 2207, 5 U.S.C. 7353, and 5 CFR part 2635;

(2) Section 208 of Title 18, United States Code, and 5 CFR part 2635 preclude a Government employee from participating personally and substantially in any particular matter that would affect the financial interests of any person from whom the employee is seeking employment;

(3) Post-employment restrictions are covered by 18 U.S.C. 207 and 5 CFR parts 2637 and 2641, which prohibit certain activities by former Government employees, including representation of a contractor before the Government in relation to any contract or other particular matter involving specific parties on which the former employee participated personally and substantially while employed by the Government;

(4) Parts 14 and 15 place restrictions on the release of information related to procurements and other contractor information which must be protected under 18 U.S.C. 1905;

(5) Other laws such as the Privacy Act (5 U.S.C. 552a) and the Trade Secrets Act (18 U.S.C. 1905) may preclude release of information both before and after award (see 3.104-5); and

(6) Use of nonpublic information to further an employee's private interest or that of another and engaging in a financial transaction using nonpublic information are covered by 5 CFR 2635.703.

3.104-2 Applicability.

(a) The restrictions at 3.104-4 (a) and (b) apply beginning January 1, 1997, to the conduct of every Federal agency procurement using competitive procedures for the acquisition of supplies or services from non-Federal sources using appropriated funds.

(b) The requirements of 3.104-4(c) apply beginning January 1, 1997, in connection with every Federal agency procurement using competitive procedures, for a contract expected to exceed the simplified acquisition threshold. Such requirements do not apply after the contract has been awarded or the procurement has been canceled.

(c) The post-employment restrictions at 3.104-4(d) apply to any former official of a Federal agency, for services provided or decisions made on or after January 1, 1997.

(d) Former officials of a Federal agency whose employment by a Federal agency ended before January 1, 1997, are subject to the restrictions imposed by 41 U.S.C. 423 as it existed before Public Law 104-106. Solely for the purpose of continuing those restrictions on those officials to the extent they were imposed prior to January 1, 1997, the provisions of 41 U.S.C. 423 as it existed before Public Law 104-106 apply through December 31, 1998.

3.104-3 Definitions.

As used in this section—

Agency ethics official means the designated agency ethics official described in 5 CFR 2638.201 and any other designated person, including—

(1) Deputy ethics officials described in 5 CFR 2638.204, to whom authority under 3.104-7 has been delegated by the designated agency ethics official; and
(2) Alternate designated agency ethics officials described in 5 CFR 2638.202(b).

Compensation means wages, salaries, honoraria, commissions, professional fees, and any other form of compensation, provided directly or indirectly for services rendered.

Compensation is indirectly provided if it is paid to an entity other than the individual, specifically in exchange for services provided by the individual.

Contract, for purposes of the post-employment restrictions at 3.104-4(d), includes both competitively awarded and non-competitively awarded contracts.

Contractor bid or proposal information means any of the following information submitted to a Federal agency as part of or in connection with a bid or proposal to enter into a Federal agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(1) Cost or pricing data (as defined by 10 U.S.C. 2306a(h) with respect to procurements subject to that section, and section 304A(h) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254b(h)), with respect to procurements subject to that section).

(2) Indirect costs and direct labor rates.

(3) Proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation.

(4) Information marked by the contractor as "contractor bid or proposal information" in accordance with applicable law or regulation.

(5) Information marked in accordance with 52.215-12.

Decision to award a subcontract or modification of subcontract means a decision to designate award to a particular source.

Federal agency has the meaning provided such term in section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472).

Federal agency procurement means the acquisition (by using competitive procedures and awarding a contract) of goods or services (including construction) from non-Federal sources by a Federal agency using appropriated funds. For broad agency announcements and small business innovative research programs, each proposal received by an agency shall constitute a separate procurement for purposes of the Act.

In excess of \$10,000,000 means—

(1) The value, or estimated value, at the time of award, of the contract, including all options;

(2) The total estimated value at the time of award of all orders under an indefinite-delivery, indefinite-quantity, or requirements contract;

(3) Any multiple award schedule contract unless the contracting officer documents a lower estimate.

(4) The value of a delivery order, task order, or an order under a Basic Ordering Agreement;

(5) The amount paid or to be paid in settlement of a claim; or

(6) The estimated monetary value of negotiated overhead or other rates when applied to the Government portion of the applicable allocation base.

Official means:

(1) An officer, as defined in 5 U.S.C. 2104.

(2) An employee, as defined in 5 U.S.C. 2105.

(3) A member of the uniformed services, as defined in 5 U.S.C. 2101(3).

(4) A special Government employee, as defined in 18 U.S.C. 202.

Participating personally and substantially in a Federal agency procurement is defined as follows:

(1) *Participating personally and substantially in a Federal agency procurement* means active and significant involvement of the individual in any of the following activities directly related to that procurement:

(i) Drafting, reviewing, or approving the specification or statement of work for the procurement.

(ii) Preparing or developing the solicitation.

(iii) Evaluating bids or proposals, or selecting a source.

(iv) Negotiating price or terms and conditions of the contract.

(v) Reviewing and approving the award of the contract.

(2) *Participating “personally”* means participating directly, and includes the direct and active supervision of a subordinate’s participation in the matter.

(3) *Participating “substantially”* means that the employee’s involvement is of significance to the matter.

Substantial participation requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. Participation may be substantial even though it is not determinative of the outcome of a particular matter. A finding of substantiality should be based not only on the effort devoted to a matter, but on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. However, the review of procurement documents solely to determine compliance with regulatory, administrative, or budgetary procedures, does not constitute substantial participation in a procurement.

(4) Generally, an individual will not be considered to have participated personally and substantially in a procurement solely by participating in the following activities:

(i) Agency level boards, panels, or other advisory committees that review program milestones or evaluate and make recommendations regarding alternative technologies or approaches for satisfying broad agency level missions or objectives;

(ii) The performance of general, technical, engineering, or scientific effort having broad application not directly associated with a particular procurement, notwithstanding that such general, technical, engineering, or scientific effort subsequently may be incorporated into a particular procurement;

(iii) Clerical functions supporting the conduct of a particular procurement; and

(iv) For procurements to be conducted under the procedures of OMB Circular A-76, participation in management studies, preparation of in-house cost estimates, preparation of “most efficient organization” analyses, and furnishing of data or technical support to be used by others in the development of performance standards, statements of work, or specifications.

Source selection evaluation board means any board, team, council, or other group that evaluates bids or proposals.

Source selection information means any of the following information which

is prepared for use by a Federal agency for the purpose of evaluating a bid or proposal to enter into a Federal agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(1) Bid prices submitted in response to a Federal agency invitation for bids, or lists of those bid prices before bid opening.

(2) Proposed costs or prices submitted in response to a Federal agency solicitation, or lists of those proposed costs or prices.

(3) Source selection plans.

(4) Technical evaluation plans.

(5) Technical evaluations of proposals.

(6) Cost or price evaluations of proposals.

(7) Competitive range determinations that identify proposals that have a reasonable chance of being selected for award of a contract.

(8) Rankings of bids, proposals, or competitors.

(9) Reports and evaluations of source selection panels, boards, or advisory councils.

(10) Other information marked as “SOURCE SELECTION INFORMATION—SEE FAR 3.104” based on a case-by-case determination by the head of the agency or designee, or the contracting officer, that its disclosure would jeopardize the integrity or successful completion of the Federal agency procurement to which the information relates.

3.104-4 Statutory and related prohibitions, restrictions, and requirements.

(a) *Prohibition on disclosing procurement information (subsection 27(a) of the Act).* (1) A person described in paragraph (a)(2) of this subsection shall not, other than as provided by law, knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates. (See 3.104-5(a).)

(2) Paragraph (a)(1) of this subsection applies to any person who—

(i) Is a present or former official of the United States, or a person who is acting or has acted for or on behalf of, or who is advising or has advised the United States with respect to, a Federal agency procurement; and

(ii) By virtue of that office, employment, or relationship, has or had access to contractor bid or proposal information or source selection information.

(b) *Prohibition on obtaining procurement information (subsection*

27(b) of the Act). A person shall not, other than as provided by law, knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

(c) *Actions required of agency officials when contacted by offerors regarding non-Federal employment (subsection 27(c) of the Act).* If an agency official who is participating personally and substantially in a Federal agency procurement for a contract in excess of the simplified acquisition threshold contacts or is contacted by a person who is a bidder or offeror in that Federal agency procurement regarding possible non-Federal employment for that official, the official shall—

(1) Promptly report the contact in writing to the official's supervisor and to the designated agency ethics official (or designee) of the agency in which the official is employed; and

(2)(i) Reject the possibility of non-Federal employment; or

(ii) Disqualify himself or herself from further personal and substantial participation in that Federal agency procurement (see 3.104–6) until such time as the agency has authorized the official to resume participation in such procurement, in accordance with the requirements of 18 U.S.C. 208 and applicable agency regulations, on the grounds that—

(A) The person is no longer a bidder or offeror in that Federal agency procurement; or

(B) All discussions with the bidder or offeror regarding possible non-Federal employment have terminated without an agreement or arrangement for employment.

(d) *Prohibition on former official's acceptance of compensation from a contractor (subsection 27(d) of the Act).*

(1) A former official of a Federal agency may not accept compensation from a contractor as an employee, officer, director, or consultant of the contractor within a period of one year after such former official—

(i) Served, at the time of selection of the contractor or the award of a contract to that contractor, as the procuring contracting officer, the source selection authority, a member of a source selection evaluation board, or the chief of a financial or technical evaluation team in a procurement in which that contractor was selected for award of a contract in excess of \$10,000,000;

(ii) Served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of \$10,000,000 awarded to that contractor; or

(iii) Personally made for the Federal agency—

(A) A decision to award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order in excess of \$10,000,000 to that contractor;

(B) A decision to establish overhead or other rates applicable to a contract or contracts for that contractor that are valued in excess of \$10,000,000;

(C) A decision to approve issuance of a contract payment or payments in excess of \$10,000,000 to that contractor; or

(D) A decision to pay or settle a claim in excess of \$10,000,000 with that contractor.

(2) Nothing in paragraph (d)(1) of this subsection may be construed to prohibit a former official of a Federal agency from accepting compensation from any division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract referred to in paragraph (d)(1) of this subsection.

3.104–5 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(a) Except as specifically provided for in this subsection, no person or other entity may disclose contractor bid or proposal information or source selection information to any person other than a person authorized, in accordance with applicable agency regulations or procedures, by the head of the agency or designee, or the contracting officer, to receive such information.

(b) Contractor bid or proposal information and source selection information shall be protected from unauthorized disclosure in accordance with 14.401, 15.411, 15.413, applicable law, and agency regulations.

(c) In determining whether particular information is source selection information, see the definition in 3.104–3 and consult with agency officials as necessary. Individuals responsible for preparing material that may be source selection information under paragraph (10) of the definition shall mark the cover page and each page that the individual believes contains source selection information with the legend “SOURCE SELECTION INFORMATION—SEE FAR 3.104.” Although the information in paragraphs (1) through (9) of the definition in 3.104–3 is considered to be source selection information whether or not marked, all reasonable efforts shall be made to mark such material with the same legend.

(d) Except as provided in subparagraph (d)(4) of this subsection, if the contracting officer believes that information marked as proprietary is not proprietary, information otherwise marked as contractor bid or proposal information is not contractor bid or proposal information, or information marked in accordance with 52.215–12 is inappropriately marked, the contractor that has affixed the marking shall be notified in writing and given an opportunity to justify the marking.

(1) If the contractor agrees that the marking is not justified, or does not respond within the time specified in the notice, the contracting officer may remove the marking and the information may be released.

(2) If, after reviewing any justification submitted by the contractor, the contracting officer determines that the marking is not justified, the contracting officer shall notify the contractor in writing.

(3) Information marked by the contractor as proprietary, otherwise marked as contractor bid or proposal information, or marked in accordance with 52.215–12, shall not be released until—

(i) The review of the contractor's justification has been completed; or

(ii) The period specified for the contractor's response has elapsed, whichever is earlier. Thereafter, the contracting officer may release the information.

(4) With respect to technical data that are marked proprietary by a contractor, the contracting officer shall generally follow the procedures in 27.404(h).

(e) Nothing in this section restricts or prohibits—

(1) A contractor from disclosing its own bid or proposal information or the recipient from receiving that information;

(2) The disclosure or receipt of information, not otherwise protected, relating to a Federal agency procurement after it has been canceled by the Federal agency, before contract award, unless the Federal agency plans to resume the procurement;

(3) Individual meetings between a Federal agency official and an offeror or potential offeror for, or a recipient of, a contract or subcontract under a Federal agency procurement, provided that unauthorized disclosure or receipt of contractor bid or proposal information or source selection information does not occur; or

(4) The Government's use of technical data in a manner consistent with the Government's rights in the data.

(f) Nothing in this section shall be construed to authorize—

(1) The withholding of any information pursuant to a proper request from the Congress, any committee or subcommittee thereof, a Federal agency, the Comptroller General, or an Inspector General of a Federal agency, except as otherwise authorized by law or regulation. Any such release which contains contractor bid or proposal information or source selection information shall clearly notify the recipient that the information or portions thereof are contractor bid or proposal information or source selection information related to the conduct of a Federal agency procurement, the disclosure of which is restricted by section 27 of the Act;

(2) The withholding of information from, or restricting its receipt by, the Comptroller General of the United States in the course of a protest against the award or proposed award of a Federal agency procurement contract;

(3) The release of information after award of a contract or cancellation of a procurement if such information is contractor bid or proposal information or source selection information which pertains to another procurement; or

(4) The disclosure, solicitation, or receipt of bid or proposal information or source selection information after award where such disclosure, solicitation, or receipt is prohibited by law. See 3.104-1(b)(5) and subpart 24.2.

3.104-6 Disqualification.

(a) *Contacts through agents.* Disqualification pursuant to 3.104-4(c)(2) may be required even where contacts are through an agent or other intermediary of the agency official or an agent or other intermediary of a bidder or offeror. See 18 U.S.C. 208 and 5 CFR 2635.603(c).

(b) *Disqualification notice.* In addition to submitting the contact report required by 3.104-4(c)(1), an agency official who must disqualify himself or herself pursuant to 3.104-4(c)(2)(ii) shall promptly submit to the head of the contracting activity (HCA), or designee, a written notice of disqualification from further participation in the procurement. Concurrent copies of the notice shall be submitted to the contracting officer, the source selection authority if the contracting officer is not the source selection authority, and the agency official's immediate supervisor. As a minimum, the notice shall—

(1) Identify the procurement;

(2) Describe the nature of the agency official's participation in the procurement and specify the approximate dates or time period of participation; and

(3) Identify the bidder or offeror and describe its interest in the procurement.

(c) *Resumption of participation in a procurement.* (1) The individual shall remain disqualified until such time as the agency has authorized the official to resume participation in the procurement in accordance with 3.104-4(c)(2)(ii).

(2) Subsequent to a period of disqualification, if an agency wishes to reinstate the agency official to participation in the procurement, the HCA or designee may authorize immediate reinstatement or may authorize reinstatement following whatever additional period of disqualification the HCA determines is necessary to ensure the integrity of the procurement process. In determining that any additional period of disqualification is necessary, the HCA or designee shall consider any factors that might give rise to an appearance that the agency official acted without complete impartiality with respect to issues involved in the procurement. The HCA or designee shall consult with the agency ethics official in making a determination to reinstate an official. Decisions to reinstate an employee should be in writing. It is within the discretion of the HCA, or designee, to determine that the agency official shall not be reinstated to participation in the procurement.

(3) An employee must comply with the provisions of 18 U.S.C. 208 and 5 CFR part 2635 regarding any resumed participation in a procurement matter. An employee may not be reinstated to participate in a procurement matter affecting the financial interest of someone with whom he or she is seeking employment, unless he or she receives a waiver pursuant to 18 U.S.C. 208(b)(1) or (b)(3) or an authorization in accordance with the requirements of 5 CFR part 2635, as appropriate.

3.104-7 Ethics advisory opinions regarding prohibitions on a former official's acceptance of compensation from a contractor.

(a) An official or former official of a Federal agency who does not know whether he or she is or would be precluded by subsection 27(d) of the Act (see 3.104-4(d)) from accepting compensation from a particular contractor may request advice from the appropriate agency ethics official prior to accepting such compensation.

(b) The request for an advisory opinion shall be submitted in writing, shall be dated and signed, and shall include all information reasonably available to the official or former official that is relevant to the inquiry. As a minimum, the request shall include—

(1) Information about the procurement(s), or decision(s) on matters under 3.104-4(d)(1)(iii), involving the particular contractor, in which the individual was or is involved, including contract or solicitation numbers, dates of solicitation or award, a description of the supplies or services procured or to be procured, and contract amount;

(2) Information about the individual's participation in the procurement or decision, including the dates or time periods of that participation, and the nature of the individual's duties, responsibilities, or actions; and

(3) Information about the contractor, including a description of the products or services produced by the division or affiliate of the contractor from whom the individual proposes to accept compensation.

(c) Within 30 days after the date a request containing complete information is received, or as soon thereafter as practicable, the agency ethics official shall issue an opinion as to whether the proposed conduct is proper or would violate subsection 27(d) of the Act.

(d)(1) Where complete information is not included in the request, the agency ethics official may ask the requester to provide any information reasonably available to the requester. Additional information may also be requested from other persons, including the source selection authority, the contracting officer, or the requester's immediate supervisor.

(2) In issuing an opinion, the agency ethics official may rely upon the accuracy of information furnished by the requester or other agency sources, unless he or she has reason to believe that the information is fraudulent, misleading, or otherwise incorrect.

(3) If the requester is advised in a written opinion by the agency ethics official that the requester may accept compensation from a particular contractor, and accepts such compensation in good faith reliance on that advisory opinion, then neither the requester nor the contractor shall be found to have knowingly violated subsection 27(d) of the Act. If the requester or the contractor has actual knowledge or reason to believe that the opinion is based upon fraudulent, misleading, or otherwise incorrect information, their reliance upon the opinion will not be deemed to be in good faith.

3.104-8 Calculating the period of compensation prohibition.

The one-year prohibition on accepting compensation (see 3.104-4(d)(1)) begins to run as provided in this subsection:

(a) If the former official was serving in one of the positions specified in 3.104-4(d)(1)(i) on the date of the selection of the contractor, but not on the date of the award of the contract, the prohibition begins on the date of the selection of the contractor.

(b) If the former official was serving in one of the positions specified in 3.104-4(d)(1)(i) on the date of the award of the contract (whether or not they were serving on the date of the selection of the contractor), the prohibition begins on the date of the award of the contract.

(c) If the former official was serving in one of the positions specified in 3.104-4(d)(1)(ii), the prohibition begins on the last date the individual served in that position.

(d) If the former official personally made one of the decisions specified in 3.104-4(d)(1)(iii), the prohibition begins on the date the decision was made.

3.104-9 Contract clauses.

(a) The contracting officer shall insert the clause at 52.203-8, Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity, in solicitations and contracts with a value exceeding the simplified acquisition threshold.

(b) The contracting officer shall insert the clause at 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity, in solicitations and contracts with a value exceeding the simplified acquisition threshold.

3.104-10 Violations or possible violations.

(a) If the contracting officer receives or obtains information of a violation or possible violation of subsections 27 (a), (b), (c), or (d) of the Act (see 3.104-4), the contracting officer shall determine whether the reported violation or possible violation has any impact on the pending award or selection of the source therefor.

(1) If the contracting officer concludes that there is no impact on the procurement, the contracting officer shall forward the information concerning the violation or possible violation, accompanied by appropriate documentation supporting that conclusion, to an individual designated in accordance with agency procedures. With the concurrence of that individual, the contracting officer shall, without further approval, proceed with the procurement.

(2) If the individual reviewing the contracting officer's conclusion does not

agree with that conclusion, the individual shall advise the contracting officer to withhold award and shall promptly forward the information and documentation to the HCA or designee.

(3) If the contracting officer concludes that the violation or possible violation impacts the procurement, the contracting officer shall promptly forward the information to the HCA or designee.

(b) The HCA or designee receiving any information describing an actual or possible violation of subsections 27 (a), (b), (c), or (d) of the Act, shall review all information available and take appropriate action in accordance with agency procedures, such as—

(1) Advising the contracting officer to continue with the procurement;

(2) Causing an investigation to be conducted;

(3) Referring the information disclosed to appropriate criminal investigative agencies;

(4) Concluding that a violation occurred; or

(5) Recommending an agency head determination that the contractor, or someone acting for the contractor, has engaged in conduct constituting an offense punishable under subsection 27(e) of the Act, for the purpose of voiding or rescinding the contract.

(c) Before concluding that a bidder, offeror, contractor, or person has violated the Act, the HCA or designee may request information from appropriate parties regarding the violation or possible violation when considered in the best interests of the Government.

(d) If the HCA or designee concludes that the prohibitions of section 27 of the Act have been violated, then the HCA or designee may direct the contracting officer to—

(1) If a contract has not been awarded—

(i) Cancel the procurement;

(ii) Disqualify an offeror; or

(iii) Take any other appropriate actions in the interests of the Government.

(2) If a contract has been awarded—

(i) Effect appropriate contractual remedies, including profit recapture as provided for in the clause at 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity, or, if the contract has been rescinded under paragraph (d)(2)(ii) of this subsection, recovery of the amount expended under the contract;

(ii) Void or rescind the contract with respect to which—

(A) The contractor or someone acting for the contractor has been convicted for an offense where the conduct

constitutes a violation of subsections 27 (a) or (b) of the Act for the purpose of either—

(1) Exchanging the information covered by such subsections for anything of value; or

(2) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(B) The head of the agency, or designee, has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting an offense punishable under subsection 27(e)(1) of the Act; or

(iii) Take any other appropriate actions in the best interests of the Government.

(3) Refer the matter to the agency suspension and debarment official.

(e) The HCA or designee shall recommend or direct an administrative or contractual remedy commensurate with the severity and effect of the violation.

(f) If the HCA or designee receiving information concerning a violation or possible violation determines that award is justified by urgent and compelling circumstances, or is otherwise in the interests of the Government, the HCA may authorize the contracting officer to award the contract or execute the contract modification after notification to the head of the agency in accordance with agency procedures.

(g) The HCA may delegate his or her authority under this subsection to an individual at least one organizational level above the contracting officer and of General Officer, Flag, Senior Executive Service, or equivalent rank.

3.104-11 Criminal and civil penalties, and further administrative remedies.

Criminal and civil penalties, and administrative remedies, may apply to conduct which violates the Act (see 3.104-4). See 33.102(f) for special rules regarding bid protests. See 3.104-10 for administrative remedies relating to contracts.

(a) An official who knowingly fails to comply with the requirements of 3.104-4 shall be subject to the penalties and administrative action set forth in subsection 27(e) of the Act.

(b) A bidder or offeror who engages in employment discussion with an official subject to the restrictions of 3.104-4, knowing that the official has not complied with 3.104-4(c)(1), shall be subject to the criminal, civil or administrative penalties set forth in subsection 27(e) of the Act.

(c) An official who refuses to terminate employment discussions (see

3.104-6) may be subject to agency administrative actions under 5 CFR 2635.604(d) if the official's disqualification from participation in a particular procurement interferes substantially with the individual's ability to perform assigned duties.

4. Section 3.700(a) is revised to read as follows:

3.700 Scope of subpart.

(a) This subpart prescribes Governmentwide policies and procedures for exercising discretionary authority to declare void and rescind contracts in relation to which—

(1) There has been a final conviction for bribery, conflict of interest, disclosure or receipt of contractor bid or proposal information or source selection information in exchange for a thing of value or to give anyone a competitive advantage in the award of a Federal agency procurement contract, or similar misconduct; or

(2) There has been an agency head determination that contractor bid or proposal information or source selection information has been disclosed or received in exchange for a thing of value, or for the purpose of obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract.

* * * * *

5. Section 3.701 is revised to read as follows:

3.701 Purpose.

This subpart provides—

(a) An administrative remedy with respect to contracts in relation to which there has been—

(1) A final conviction for bribery, conflict of interest, disclosure or receipt of contractor bid or proposal information or source selection information in exchange for a thing of value or to give anyone a competitive advantage in the award of a Federal agency procurement contract, or similar misconduct; or

(2) An agency head determination that contractor bid or proposal information or source selection information has been disclosed or received in exchange for a thing of value, or for the purpose of obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; and

(b) A means to deter similar misconduct in the future by those who are involved in the award, performance, and administration of Government contracts.

6. Section 3.703 is amended by redesignating the text as paragraph

“(a)”, and by adding paragraph (b) to read as follows:

3.703 Authority.

* * * * *

(b) Subsection 27(e)(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the OFPP Act), as amended, requires a Federal agency, upon receiving information that a contractor or a person has engaged in conduct constituting a violation of subsection 27 (a) or (b) of the OFPP Act, to consider rescission of a contract with respect to which—

(1) The contractor or someone acting for the contractor has been convicted for an offense punishable under subsection 27(e)(1) of the OFPP Act; or

(2) The head of the agency, or designee, has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting such an offense.

7. Section 3.704 is amended in paragraph (b) by removing “FAR” and by adding paragraph (c) to read as follows:

3.704 Policy.

* * * * *

(c) If there is a final conviction for an offense punishable under subsection 27(e) of the OFPP Act, or if the head of the agency, or designee, has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting such an offense, then the head of the contracting activity shall consider, in addition to any other penalty prescribed by law or regulation—

(1) Declaring void and rescinding contracts, as appropriate, and recovering the amounts expended under the contracts by using the procedures at 3.705 (see 3.104-10); and

(2) Recommending the initiation of suspension or debarment proceedings in accordance with subpart 9.4.

8. Section 3.705 is amended by revising the last sentence in paragraph (c)(3) and paragraph (d)(3) to read as follows:

3.705 Procedures.

* * * * *

(c) * * *
(3) * * * However, no inquiry shall be made regarding the validity of a conviction.

* * * * *

(d) * * *
(3) Specifically identify the offense or final conviction on which the action is based;

* * * * *

PART 4—ADMINISTRATIVE MATTERS

9. Section 4.802(e) is revised to read as follows:

4.802 Contract files.

* * * * *

(e) Contents of contract files that are contractor bid or proposal information or source selection information as defined in 3.104-3 shall be protected from disclosure to unauthorized persons (see 3.104-5).

* * * * *

4.803 [Amended]

10. Section 4.803 is amended by removing paragraph (a)(42), and by redesignating paragraph (a)(43) as (a)(42).

PART 9—CONTRACTOR QUALIFICATIONS

9.105-3 [Amended]

11. Section 9.105-3(c) is amended by revising the parenthetical “(see 3.104-4 (j) and (k))” to read “(see 3.104-3)”.

9.106-3 [Amended]

12. Section 9.106-3 is amended in paragraph (a) by removing the paragraph designation “(a)”, and by removing paragraph (b).

9.505 [Amended]

13. Section 9.505 is amended in paragraph (b)(1) by removing “3.104-4(j)” and inserting “3.104-3” in its place, and in (b)(2) by removing “3.104-4(k)” and inserting “3.104-3” in its place.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.503 [Amended]

14. Section 12.503 is amended by removing paragraph (b)(4), and by redesignating paragraphs (b) (5) and (6) as (b) (4) and (5), respectively.

12.504 [Amended]

15. Section 12.504 is amended by removing paragraph (b)(3), and by redesignating paragraph (b)(4) as (b)(3).

PART 14—SEALED BIDDING

14.404-2 [Amended]

16. Section 14.404-2 is amended by removing paragraph (m).

PART 15—CONTRACTING BY NEGOTIATION

17. Section 15.413 is revised to read as follows:

15.413 Disclosure and use of information before award.

See 3.104 for statutory and regulatory requirements related to the disclosure of contractor bid or proposal information and source selection information.

15.413-2 [Amended]

18. Section 15.413-2 is amended by removing paragraph (f)(6).

19. Section 15.509 is amended by revising paragraph (f)(4), and by removing (h)(3) to read as follows:

15.509 Limited use of data.

* * * * *

(f) * * *

(4) Require any non-government evaluator to give a written agreement stating that data in the proposal will not be disclosed to others outside the Government.

* * * * *

20. Section 15.805-5 is amended by revising paragraph (j) and by removing paragraph (k) to read as follows:

15.805-5 Field pricing support.

* * * * *

(j) Field pricing reports, including audit and technical reports, may contain proprietary and/or source selection information (see 3.104-3), and the cover page and all pages containing such information should be marked with the appropriate legend and protected accordingly.

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

21. Section 19.811-1 is amended by removing paragraph (d).

19.811-2 [Amended]

22. Section 19.811-2 is amended by removing paragraph (b) and by redesignating paragraph (c) as (b).

PART 33—PROTESTS, DISPUTES, AND APPEALS

23. Section 33.102 is amended by adding paragraph (f) to read as follows:

33.102 General.

* * * * *

(f) No person may file a protest at GAO for a procurement integrity violation unless that person reported to the contracting officer the information constituting evidence of the violation within 14 days after the person first discovered the possible violation (41 U.S.C. 423(g)).

PART 37—SERVICE CONTRACTING**37.103 37.103 [Amended]**

24. Section 37.103 is amended by removing paragraph (c) and by redesignating paragraph (d) as (c).

PART 43—CONTRACT MODIFICATIONS**43.106 [Reserved]**

25. Section 43.106 is removed and reserved.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

26. Section 52.203-8 is revised to read as follows:

52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity.

As prescribed in 3.104-9(a), insert the following clause in solicitations and contracts:

CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

(a) If the Government receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the 1996 National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), the Government may—

(1) Cancel the solicitation, if the contract has not yet been awarded or issued; or
(2) Rescind the contract with respect to which—

(i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27 (a) or (b) of the Act for the purpose of either—

(A) Exchanging the information covered by such subsections for anything of value; or

(B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsections 27(e)(1) of the Act.

(b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.
(End of clause)

52.203-9 [Reserved]

27. Section 52.203-9 is removed and reserved.

28. Section 52.203-10 is amended by revising the introductory text, clause date, and paragraphs (a) and (b)(5) to read as follows:

52.203-10 Price or Fee Adjustment for Illegal or Improper Activity.

As prescribed in 3.104-9(b), insert the following clause:

PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

(a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of subsection 27 (a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in section 3.104 of the Federal Acquisition Regulation.

(b) * * *

(5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.

* * * * *

(End of clause)

52.203-13 [Reserved]

29. Section 52.203-13 is removed and reserved.

52.212-3 [Amended]

30. Section 52.212-3 is amended by revising the clause date to read "(JAN 1997)" and by removing paragraph (i).

PART 53—FORMS**53.203 [Reserved]**

31. Section 53.203 is removed and reserved.

53.302-333 [Removed]

32. In section 53.302-333, Optional Form 333 is removed.

[FR Doc. 96-33205 Filed 12-31-96; 8:45 am]

BILLING CODE 6820-EP-P

48 CFR Parts 1, 3, 4, 6, 8, 9, 12, 14, 16, 19, 23, 27, 29, 31, 32, 36, 37, 42, 45, 47, 49, 52, and 53

[FAC 90-45; FAR Case 96-312; Item II]

RIN 9000-AH23

Federal Acquisition Regulation; Certification Requirements

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 to amend the Federal Acquisition Regulation (FAR) to remove particular certification requirements for contractors and offerors. This final rule implements Section 4301(b) of Public Law 104-106. 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.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501-3856 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 90-45, FAR case 96-312. E-mail correspondence submitted over the Internet should be addressed to: 96-312@V.GSA.GOV

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Parts 1, 3, 4, 6, 8, 9, 12, 14, 16, 19, 23, 27, 29, 31, 32, 36, 37, 42, 45, 47, 49, 52, and 53 to remove particular certification requirements for contractors and offerors. The rule implements Section 4301(b) of the Clinger-Cohen Act of 1996 (Public Law 104-106). Section 4301(b) required the Administrator, Office of Federal Procurement Policy, to issue for public comment a proposal to remove from the FAR those certification requirements for contractors and offerors that are not specifically imposed by statute. A proposed rule was published in the Federal Register on September 12, 1996 (61 FR 48354).

Thirty comments were received from seven respondents. All comments were considered in the development of the final rule.

In response to the public comments, FAR 52.242-4, Certification of Indirect Costs, was amended to reduce the scope of the certification requirement and to remove the requirement to certify under penalty of perjury. The requirement at FAR 32.304-8 to provide certificates also was removed, and an editorial change was made at FAR 52.215-35 to substitute the word "offer" for "bid" in paragraph (a).

The certification at 52.213-1, Fast Payment, is being retained for several reasons: (a) One large industry trade organization, in its public comments, acknowledged that this certification is useful and potentially beneficial to industry; (b) The Government has higher confidence in the accuracy of the request for payment, since it is expected to receive a higher degree of scrutiny by the contractor before it is certified and submitted; and (c) The payment office is frequently separate and distinct from the contract administration office, and the certification provides the paying office with documentation that the items have been delivered independent of a separate source inspection documentation.

Several certifications associated with Foreign Contracting had been proposed for elimination. However, upon consideration of public comments received in response to the proposed rule, these certifications were retained, because the self-policing discipline of a certification requirement is important to enforcing a national policy grounded in

vital economic and security interests. The Government believes that elimination of these certification requirements would have created a need for offerors to submit more detailed information regarding the origin of offered products. Therefore, the certification is viewed as a less burdensome alternative. The certification required by 52.223-1, Clean Air and Water Certification, has been retained because the Government has concluded that the certification is the least burdensome and most effective way to avoid entering into a contract with a Clean Air Act or Clean Water Act violator. In the near future, we will be publishing for public comment a proposal to substitute a more limited clean air and water certification and a Clean Air and Water Act notification for commercial items. An associated change is made in FAR case 93-310, Item VI of this FAC. The certification required by 52.223-1, Clean Air and Water Certification, was also revised and retained because the Government concluded that it would be the least burdensome and most effective way to avoid entering into a contract with a Clean Air Act or Clean Water Act Violator. Interested parties are invited to submit comments on the retention of these certification requirements. Please cite Holding File 96-708-01, Regulatory Reform—Certifications, in correspondence. Comments should be limited to the retention of the following certifications for contractors and offerors which were proposed for elimination but have been retained as a result of the analysis of public comments.

FAR cite	Clause/provision No.	Title
22.810(a)(1)	52.222-21	Certification of Nonsegregated Facilities.
23.105(a)	52.223-1	Clean Air and Water Certification.
25.109(a)	52.225-1	Buy American Certificate.
25.305	52.225-6	Balance of Payments Program Certificate
	52.225-7	Balance of Payments Program.
25.408(a)(1)	52.225-8	Buy American Act—Trade Agreements—Balance of Payments Program Certificate.
25.408(a)(2)	52.225-9	Buy American Act—Trade Agreements—Balance of Payments Program.
25.408(a)(3)	52.225-20	Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate (amended).
25.408(a)(4)	52.225-21	Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program.
25.408(b)	Solicitation provisions and contract clauses.

B. Regulatory Flexibility Act

This final rule is expected to have a significant beneficial 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 reduces the number of certifications that offerors and

contractors must provide to the Government. A Final Regulatory Flexibility Analysis (FRFA) has been prepared and will be provided to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat. The analysis is summarized

as follows: The objective and legal basis for this rule is Section 4301(b) of the Clinger-Cohen Act of 1996 (Public Law 104-106). The rule implements Section 4301(b) by amending the FAR to remove particular certification requirements for contractors and offerors.

There were no public comments received in response to the initial regulatory flexibility analysis. Several changes were made in the final rule as a result of public comments received in response to the proposed rule. All of the certifications required by FAR Part 25 have been retained. The certification required by FAR 52.223-1 was also retained. The Certification of Final Indirect Costs at FAR 52.242-4 was revised to remove the requirement to sign the certification under penalty of perjury, and the requirement to provide certificates was deleted from FAR 32.304-8.

The rule will apply to all bidders or offerors, and contractors, large and small, whose direct economic interests would be affected by the award or failure to award a Government contract. The number of small entities to which the rule will apply is estimated to be between 35,000 and 45,000. This rule does not impose any additional reporting, recordkeeping, or other compliance requirements.

This rule is expected to have a beneficial impact on small entities by deleting existing certification requirements that are not required by statute.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Public Law 96-511) is deemed to apply because the final rule eliminates existing recordkeeping and information collection requirements approved by the Office of Management and Budget (OMB) under OMB Control Numbers 9000-0017, and 9000-0111. A paperwork burden of 67,375 hours is eliminated.

List of Subjects in 48 CFR Parts 1, 3, 4, 6, 8, 9, 12, 14, 16, 19, 23, 27, 29, 31, 32, 36, 37, 42, 45, 47, 49, 52, and 53

Government procurement.

Dated: December 24, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 1, 3, 4, 6, 8, 9, 12, 14, 16, 19, 23, 27, 29, 31, 32, 36, 37, 42, 45, 47, 49, 52, and 53 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 3, 4, 6, 8, 9, 12, 14, 16, 19, 23, 27, 29, 31, 32, 36, 37, 42, 45, 47, 49, 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

1.106 [Amended]

2. Section 1.106 is amended in the table following the text by removing the following entries along with their control numbers: 8.203-2, 9.5, and 52.208-1.

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3. Section 3.502-2(i)(1) is revised to read as follows:

3.502-2 Subcontractor kickbacks.

* * * * *

(i) * * *

(1) Have in place and follow reasonable procedures designed to prevent and detect violations of the Act in its own operations and direct business relationships (e.g., company ethics rules prohibiting kickbacks by employees, agents, or subcontractors; education programs for new employees and subcontractors, explaining policies about kickbacks, related company procedures and the consequences of detection; procurement procedures to minimize the opportunity for kickbacks; audit procedures designed to detect kickbacks; periodic surveys of subcontractors to elicit information about kickbacks; procedures to report kickbacks to law enforcement officials; annual declarations by employees of gifts or gratuities received from subcontractors; annual employee declarations that they have violated no company ethics rules; personnel practices that document unethical or illegal behavior and make such information available to prospective employers); and

* * * * *

PART 4—ADMINISTRATIVE MATTERS

4. Section 4.102 is amended by revising the last sentence of paragraph (d) to read as follows:

4.102 Contractor's signature.

* * * * *

(d) *Joint ventures.* * * * When a corporation is participating, the contracting officer shall verify that the corporation is authorized to participate in the joint venture.

* * * * *

PART 6—COMPETITION REQUIREMENTS

6.302-3 [Amended]

5. Section 6.302-3 is amended in paragraph (b)(1)(vi) by inserting "or" at

the end; in paragraph (b)(1)(vii) by removing ";" or" and inserting a period in its place; and by removing paragraph (b)(1)(viii).

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

6. Section 8.002 is amended by removing paragraph (a), redesignating paragraphs (b) through (f) as (a) through (e); and revising newly redesignated paragraphs (a) and (d) to read as follows:

8.002 Use of other Government supply sources.

* * * * *

(a) Public utility services (see part 41);

* * * * *

(d) Strategic and critical materials (e.g., metals and ores) from inventories exceeding Defense National Stockpile requirements (detailed information is available from the Defense National Stockpile Center, 8725 John J. Kingman Rd., Suite 4528, Fort Belvoir, VA 22060-6223; and

* * * * *

Subpart 8.2 [Reserved]

7. Subpart 8.2 is removed and reserved.

PART 9—CONTRACTOR QUALIFICATIONS

9.505-4 [Amended]

8. Section 9.505-4(c) is amended by removing the last sentence.

9. Section 9.506 is amended in paragraph (a) by revising the first sentence; in paragraph (d)(3) by replacing ";" and," with a period; and by removing paragraph (d)(4). The revised text reads as follows:

9.506 Procedures.

(a) If information concerning prospective contractors is necessary to identify and evaluate potential organizational conflicts of interest or to develop recommended actions, contracting officers first should seek the information from within the Government or from other readily available sources. * * *

* * * * *

9.507-1 [Amended]

10. Section 9.507-1 is amended by removing the paragraph (a) designation and removing paragraphs (b), (c), and (d).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

11. Section 12.503 is amended by revising paragraphs (b)(1) and (b)(4) to read as follows:

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

* * * *

(b) * * *

(1) 33 U.S.C. 1368, Requirement for a clause under the Federal Water Pollution Control Act (see 23.105).

* * * *

(4) 42 U.S.C. 7606, Requirements for a clause under the Clean Air Act (see 23.105).

* * * *

12.504 [Amended]

12. Section 12.504 is amended by removing paragraph (a)(16).

PART 14—SEALED BIDDING

14.405 [Amended]

13. Section 14.405(f) is amended by removing "certifications" and inserting "representations" in its place.

PART 16—TYPES OF CONTRACTS

16.306 [Amended]

14. Section 16.306 is amended in the second sentence of paragraph (d)(2) by removing "certification" and inserting "statement" in its place.

PART 19—SMALL BUSINESS PROGRAMS

19.001 [Amended]

15. At section 19.001, the definition "Small disadvantaged business concern" is amended in paragraph (b) by removing "certify" and inserting "represent" in its place.

16. Section 19.301 is amended by revising the first sentence of paragraph (a) to read as follows:

19.301 Representation by the offeror.

(a) To be eligible for award as a small business, an offeror must represent in good faith that it is a small business at the time of its written representation.

* * *

* * * *

17. Section 19.303 is amended by revising the introductory text of paragraph (c)(2); in paragraph (c)(2)(vi) by removing "certifying" and inserting "acknowledging" in its place; and by revising the second sentence of paragraph (c)(3) to read as follows:

19.303 Determining product or service classifications.

* * * *

(c) * * *

(2) The appeal shall be in writing and shall be addressed to the Office of Hearings and Appeals, Small Business Administration, Washington, DC 20416. No particular form is prescribed for the

appeal. However, time limits and procedures set forth in SBA's regulations at 13 CFR 121.11 are strictly enforced. The appellant shall submit an original and one legible copy of the appeal. In the case of telegraphic appeals, the telegraphic notice shall be confirmed by the next day mailing of a written appeal, in duplicate. By signing the submission, a party or its attorney attests that the statements and allegations in the submission are true to the best of its knowledge, and that the submission is not being filed for the purpose of delay or harassment. The appeal shall include—

* * * *

(3) * * * The contracting officer's response, if any, to the appeal must include appropriate argument and evidence, and must be filed with the Office of Hearings and Appeals no later than 5 business days after receipt of the appeal. * * *

19.501 [Amended]

18. Section 19.501 is amended by removing paragraph (h).

19.508 [Amended]

19. Section 19.508 is amended by removing paragraph (f).

20. Section 19.703 is amended in paragraph (a)(2) by revising the second and fourth sentences to read as follows:

19.703 Eligibility requirements for participating in the program.

(a) * * *

(2) * * * Individuals who represent that they are members of named groups (Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent-Asian Americans) may also represent themselves as socially and economically disadvantaged. * * * Concerns that are tribally owned entities or Native Hawaiian Organizations may represent themselves as socially and economically disadvantaged if they qualify under the requirements of 13 CFR 124.112 or 13 CFR 124.113, respectively. * * *

* * * *

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

23.102 [Amended]

21. Section 23.102 is amended in paragraph (d) by removing the reference "40 CFR part 15" and inserting "40 CFR part 32" in its place.

22. Section 23.302 is amended by revising paragraph (d)(1) to read as follows:

23.302 Policy.

* * * *

(d) * * *

(1) By the apparent successful offeror prior to contract award if hazardous materials are expected to be used during contract performance.

* * * *

23. Section 23.601 is amended by revising paragraph (c) to read as follows:

23.601 Requirements.

* * * *

(c) The clause permits the contracting officer to waive the notification if the contractor states that the notification on prior deliveries is still current. The contracting officer may waive the notice only after consultation with cognizant technical representatives.

* * * *

PART 27—PATENT, DATA, AND COPYRIGHTS

24. Section 27.303(e) is amended by revising the first sentence to read as follows:

27.303 Contract clauses.

* * * *

(e) For those agencies excepted under paragraph (a)(1)(i) of this section, only small business firms or non-profit organizations qualify for the clause at 52.227-11. * * *

* * * *

25. Section 27.406 is amended by revising paragraph (c); in paragraph (d)(1) and (d)(2), and twice in (d)(3) by removing "(C) certification" and inserting "(D) declaration"; and in paragraph (d)(2) by removing "certify" and inserting "declare" in its place. The revised text reads as follows:

27.406 Acquisition of data.

* * * *

(c) *Acceptance of data.* As required by 41 U.S.C. 418a(d)(7), acceptability of technical data delivered under a contract shall be in accordance with the appropriate contract clause as required by subpart 46.3, and the clause at 52.227-21, Technical Data Declaration, Revision, and Withholding of Payment—Major Systems, when it is included in the contract. (See paragraph (d) of this section.)

* * * *

27.409 [Amended]

26. Section 27.409 is amended in paragraph (q) by removing "Certification" and inserting "Declaration" in its place.

PART 29—TAXES**29.302 [Amended]**

27. Section 29.302 is amended in the second sentence of paragraph (b) by revising the word "Certificate" to read "Form".

28. Section 29.305 is amended in paragraph (a)(3) by revising the word "Certificate" to read "Form"; and by revising paragraph (b)(3) to read as follows:

29.305 State and local tax exemptions.

* * * * *

(b) * * *

(3) Under a contract or purchase order that contains no tax provision, if—

(i) Requested by the contractor and approved by the contracting officer or at the discretion of the contracting officer; and

(ii) Either the contract price does not include the tax or, if the transaction or property is tax exempt, the contractor consents to a reduction in the contract price.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

29. Section 31.110 is amended by revising the first sentence of paragraph (a) to read as follows:

31.110 Indirect cost rate certification and penalties on unallowable costs.

(a) Certain contracts require certification of the indirect cost rates proposed for final payment purposes.

* * * * *

31.205–22 Lobbying and political activity costs.

30. Section 31.205–22 is amended by removing paragraph (d) and redesignating paragraphs (e) and (f) as (d) and (e), respectively; and in the newly designated (d) by adding "(see 42.703–2)" after "unallowable".

PART 32—CONTRACT FINANCING**32.304–8 Amended]**

31. Section 32.304–8 is amended in paragraph (b)(3) by revising the word "certificates" to read "documentation".

32.805 [Amended]

32. Section 32.805 is amended in paragraph (a)(1)(iii) by removing "certified" and inserting "true" in its place.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

33. Section 36.205 is amended by revising paragraph (b)(3) to read as follows:

36.205 Statutory cost limitations.

* * * * *

(b) * * *

(3) That the price on each schedule shall include an approximate apportionment of all estimated direct costs, allocable indirect costs, and profit.

* * * * *

PART 37—SERVICE CONTRACTING

34. Section 37.402 is revised to read as follows:

37.402 Contracting officer responsibilities.

Contracting officers shall obtain evidence of insurability concerning medical liability insurance from the apparent successful offeror prior to contract award and shall obtain evidence of insurance demonstrating the required coverage prior to commencement of performance.

PART 42—CONTRACT ADMINISTRATION**42.302 [Amended]**

35. Section 42.302 is amended in paragraph (a)(18) by revising the word "certificates" to read "forms".

36. Section 42.703–2 is amended by revising paragraphs (a) and (c)(1); in paragraph (c)(2)(ii) by removing the word "potentially"; in paragraph (d) by inserting the word "final" after "of"; and by revising paragraph (f) to read as follows:

42.703–2 Certificate of indirect costs.

(a) *General.* In accordance with 10 U.S.C. 2324(h) and 41 U.S.C. 256(h), a proposal shall not be accepted and no agreement shall be made to establish final indirect cost rates unless the costs have been certified by the contractor.

* * * * *

(c) * * *

(1) If the contractor has not certified its proposal for final indirect cost rates and a waiver is not appropriate, the contracting officer may unilaterally establish the rates.

* * * * *

(f) *Contract clause.* (1) Except as provided in paragraph (f)(2) of this subsection, the clause at 52.242–4, Certification of Indirect Costs, shall be incorporated into all solicitations and contracts which provide for establishment of final indirect cost rates.

(2) The Department of Energy may provide an alternate clause in its agency supplement for its Management and Operating contracts.

PART 45—GOVERNMENT PROPERTY**45.606–1 [Amended]**

37. Section 45.606–1 is amended by removing the designation of paragraph (a); and by removing paragraph (b).

45.606–5 [Amended]

38. Section 45.606–5 is amended in the parenthetical at the end of paragraph (a)(2) by revising "45.606–1(a.)" to read "45.606–1.)"

PART 47—TRANSPORTATION

39. Section 47.303–17 is amended by revising paragraph (d)(3)(ii) to read as follows:

47.303–17 Contractor-prepaid commercial bills of lading, small package shipments.

* * * * *

(d) * * *

(3) * * *

(ii) The contractor agrees to furnish evidence of payment when requested by the Government.

* * * * *

47.305–11 [Amended]

40. Section 47.305–11 is amended by removing the designation of paragraph (a) and adding the text to the end of the undesignated introductory paragraph which precedes it; by removing paragraph (b); and redesignating paragraphs (a)(1) through (3) as (a) through (c).

41. Section 47.403–3 is amended in paragraph (a) by removing "certificate or"; and by revising paragraph (c) to read as follows:

47.403–3 Disallowance of expenditures.

* * * * *

(c) The justification requirement is satisfied by the contractor's use of a statement similar to the one contained in the clause at 52.247–63, Preference for U.S.-Flag Air Carriers. (See 47.405.)

42. Section 47.404 is amended by revising paragraph (b)(2) to read as follows:

47.404 Air freight forwarders.

* * * * *

(b) * * *

(2) justification for the use of foreign-flag air carriers similar to the one shown in the clause at 52.247–63, Preference for U.S.-Flag Air Carriers.

PART 49—TERMINATION OF CONTRACTS

43. Section 49.108–3 is amended by revising paragraph (b) to read as follows:

49.108–3 Settlement procedure.

* * * * *

(b) Except as provided in 49.108–4, the TCO shall require that—

(1) All subcontractor termination inventory be disposed of and accounted for in accordance with part 45; and

(2) The prime contractor submit, for approval or ratification, all termination settlements with subcontractors.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.208–1 and 52.208–2 [Removed and Reserved]

44. Sections 52.208–1 and 52.208–2 are removed and reserved.

45. Section 52.209–3 is amended in Alternate I by revising the date and paragraph (i) to read as follows:

52.209–3 First Article Approval—Contractor Testing.

* * * * *

Alternate I (JAN 1997). * * *

(i) The Contractor shall produce both the first article and the production quantity at the same facility.

* * * * *

46. Section 52.209–4 is amended by revising the date and paragraph (j) of Alternate I to read as follows:

52.209–4 First Article Approval—Government Testing.

* * * * *

Alternate I (JAN 1997). * * *

(j) The Contractor shall produce both the first article and the production quantity at the same facility.

* * * * *

52.209–7 and 52.209–8 [Removed]

47. Sections 52.209–7 and 52.209–8 are removed.

48. Section 52.212–3 is amended by revising the provision date, paragraph (c)(2), the introductory text of (c)(6), and the last sentence of the introductory text of (c)(6)(ii) to read as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS (JAN 1997)

* * * * *

(c) * * *

(2) *Small disadvantaged business concern.* The offeror represents that it is, is not a small disadvantaged business concern.

* * * * *

(6) Small Business Size for the Small Business Competitiveness Demonstration Program and for the Targeted Industry Categories under the Small Business Competitiveness Demonstration Program. *[Complete only if the offeror has represented itself to be a small business concern under the size standards for this solicitation.]*

* * * * *

(ii) * * * Offeror represents as follows:

* * * * *

49. Section 52.214–30 is revised to read as follows:

52.214–30 Annual Representations and Certifications—Sealed Bidding.

As prescribed in 14.201–6(u), insert the following provision:

ANNUAL REPRESENTATIONS AND CERTIFICATIONS—SEALED BIDDING (JAN 1997)

The bidder has (check the appropriate block):

(a) Submitted to the contracting office issuing this solicitation, annual representations and certifications dated _____ *[insert date of signature on submission]*, which are incorporated herein by reference, and are current, accurate, and complete as of the date of this bid, except as follows *[insert changes that affect only this solicitation; if "none," so state]*:

(b) Enclosed its annual representations and certifications.

(End of provision)

50. Section 52.215–35 is revised to read as follows:

52.215–35 Annual Representations and Certifications—Negotiation.

As prescribed in 15.407(i), insert the following provision:

ANNUAL REPRESENTATIONS AND CERTIFICATIONS—NEGOTIATION (JAN 1997)

The offeror has (check the appropriate block):

(a) Submitted to the contracting office issuing this solicitation, annual representations and certifications dated _____ *[insert date of signature on submission]* which are incorporated herein by reference and are current, accurate, and complete as of the date of this offer, except as follows *[insert changes that affect only this solicitation; if "none," so state]*:

(b) Enclosed its annual representations and certifications.

(End of provision)

52.216–2 [Amended]

51. Section 52.216–2 is amended by revising the clause date to read "(JAN 1997)"; and in paragraph (b) by removing the last sentence.

52.216–3 [Amended]

52. Section 52.216–3 is amended by revising the clause date to read "(JAN 1997)"; and in paragraph (b) by removing the last sentence.

52.216–4 [Amended]

53. Section 52.216–4 is amended by revising the clause date to read "(JAN 1997)"; and by removing paragraph (d) and redesignating paragraph (e) as (d).

52.219–1 [Amended]

54. Section 52.219–1 is amended by revising the provision date to read "(JAN 1997)"; and in paragraph (b)(1) by removing "and certifies".

52.219–15 [Removed and Reserved]

55. Section 52.219–15 is removed and reserved.

52.219–18 [Amended]

56. Section 52.219–18 is amended by revising the clause date to read "(JAN 1997)"; and in paragraph (b) by removing "certifies" and inserting "represents" in its place.

57. Section 52.219–19 is amended by revising the date and paragraph (b) of the provision to read as follows:

52.219–19 Small Business Concern Representation for the Small Business Competitiveness Demonstration Program.

* * * * *

SMALL BUSINESS CONCERN REPRESENTATION FOR THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM (JAN 1997)

* * * * *

(b) *[Complete only if the Offeror has represented itself under the provision at 52.219–1 as a small business concern under the size standards of this solicitation.]*

The Offeror is, is not an emerging small business.

* * * * *

52.219–21 [Amended]

58. Section 52.219–21 is amended by revising the clause date to read "(JAN 1997)"; in the parenthetical following the provision heading by removing "certified" and inserting "represented" in its place; and in the first paragraph of the provision by removing "and certifies".

59. Section 52.223–3 is amended by revising the clause date and paragraphs (c) and (e) to read as follows:

52.223–3 Hazardous Material Identification and Material Safety Data.

* * * * *

HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997)

* * * * *

(c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.

* * * * *

(e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.

* * * * *

60. Section 52.223-7 is amended by revising the clause date and paragraph (b)(2) to read as follows:

52.223-7 Notice of Radioactive Materials.

NOTICE OF RADIOACTIVE MATERIALS (JAN 1997)

(b) (2) State that the quantity of activity, characteristics, and composition of the radioactive material have not changed;

52.227-12 [Amended]

61. Section 52.227-12 is amended by revising the clause date to read "(JAN 1997)"; and in paragraph (f)(7) by removing "certifying" wherever it appears and inserting "stating" in its place.

52.227-13 [Amended]

62. Section 52.227-13 is amended by revising the clause date to read "(JAN 1997)"; and in paragraph (e)(3) by removing "certifying" wherever it appears and inserting "stating" in its place.

63. Section 52.227-21 is amended by revising the section and clause headings, the clause date, paragraph (b)(1), the first sentence of (b)(2), and (d)(1)(ii) to read as follows:

52.227-21 Technical Data Declaration, Revision, and Withholding of Payment—Major Systems.

TECHNICAL DATA DECLARATION, REVISION, AND WITHHOLDING OF PAYMENT—MAJOR SYSTEMS (JAN 1997)

(b) Technical data declaration. (1) All technical data that are subject to this clause shall be accompanied by the following declaration upon delivery:

TECHNICAL DATA DECLARATION (JAN 1997)

The Contractor, hereby declares that, to the best of its knowledge and belief, the technical data delivered herewith under Government contract No. (and subcontract, if appropriate) are complete, accurate, and comply with the requirements of the contract concerning such technical data.

(End of declaration)

(2) The Government shall rely on the declarations set out in paragraph (b)(1) of this clause in accepting delivery of the technical data, and in consideration thereof may, at any time during the period covered by this clause, request correction of any deficiencies which are not in compliance with contract requirements.

(d) (1)

(ii) Provide the declaration required by paragraph (b)(1) of this clause;

(End of clause)

64. Section 52.228-5 is amended by revising the clause date and the first sentence of paragraph (b) to read as follows:

52.228-5 Insurance—Work on a Government Installation.

INSURANCE—WORK ON A GOVERNMENT INSTALLATION (JAN 1997)

(b) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained.

65. Section 52.228-8 is amended by revising the clause date and the first sentence of paragraph (d) to read as follows:

52.228-8 Liability and Insurance—Leased Motor Vehicles.

LIABILITY AND INSURANCE—LEASED MOTOR VEHICLES (JAN 1997)

(d) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained.

66. Section 52.228-9 is amended by revising the clause date, the second sentence of paragraph (b), and paragraph (c)(2) to read as follows:

52.228-9 Cargo Insurance.

CARGO INSURANCE (JAN 1997)

(b) As evidence of insurance maintained, an authenticated copy of the cargo liability insurance policy or policies shall be furnished to [insert name of contracting agency].

(2) An authenticated copy of any renewal policy to [insert name of contracting agency] not less than 15 days prior to the expiration of any current policy on file with [insert name of contracting agency].

(End of clause)

67. Section 52.237-7 is amended by revising the clause date and the first sentence of paragraph (d) to read as follows:

52.237-7 Indemnification and Medical Liability Insurance.

INDEMNIFICATION AND MEDICAL LIABILITY INSURANCE (JAN 1997)

(d) Evidence of insurance documenting the required coverage for each health care

provider who will perform under this contract shall be provided to the Contracting Officer prior to the commencement of services under this contract.

68. Section 52.242-4 is amended by revising the section heading, clause title and date; paragraphs (a)(1), (b), and (c); and the Certificate following paragraph (c). The revised text reads as follows:

52.242-4 Certification of Final Indirect Costs.

CERTIFICATION OF FINAL INDIRECT COSTS (JAN 1997)

(a) (1) Certify any proposal to establish or modify final indirect cost rates;

(b) Failure by the Contractor to submit a signed certificate, as described in this clause, may result in final indirect costs at rates unilaterally established by the Contracting Officer.

(c) The certificate of final indirect costs shall read as follows:

CERTIFICATE OF FINAL INDIRECT COSTS

This is to certify that I have reviewed this proposal to establish final indirect cost rates and to the best of my knowledge and belief:

1. All costs included in this proposal (identify proposal and date) to establish final indirect cost rates for (identify period covered by rate) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) and its supplements applicable to the contracts to which the final indirect cost rates will apply; and

2. This proposal does not include any costs which are expressly unallowable under applicable cost principles of the FAR or its supplements.

Firm: Signature: Name of Certifying Official: Title: Date of Execution: (End of clause)

69. Section 52.245-8 is amended by revising the introductory text, the clause date, and the fourth and fifth sentences of paragraph (f) to read as follows:

52.245-8 Liability for the Facilities.

As prescribed in 45.302-6(b), insert the following clause:

LIABILITY FOR THE FACILITIES (JAN 1997)

(f) Documentation of insurance or an authenticated copy of such insurance shall be deposited promptly with the Contracting Officer. The Contractor shall, not less than 30 days before the expiration of such insurance, deliver to the Contracting Officer documentation of insurance or an authenticated copy of each renewal policy.

(End of clause)

70. Section 52.247-2 is amended by revising the introductory paragraph, the clause date and paragraph (a) to read as follows:

52.247-2 Permits, Authorities, or Franchises.

As prescribed in 47.207-1(a), insert the following clause:

PERMITS, AUTHORITIES, OR FRANCHISES (JAN 1997)

(a) The offeror does , does not , hold authorization from the Federal Highway Administration (FHWA) or other cognizant regulatory body. If authorization is held, it is as follows:

(Name of regulatory body)

(Authorization No.)

* * * * *

[End of clause]

52.247-54 [Removed and Reserved]

71. Section 52.247-54 is removed and reserved.

72. Section 52.247-63 is amended by revising the clause date and the definition "U.S.-flag air carrier"; in paragraph (b) by removing "49 U.S.C. 1517" and inserting "49 U.S.C. 40118"; and by revising paragraph (d) to read as follows:

52.247-63 Preference for U.S.-Flag Air Carriers.

* * * * *

PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JAN 1997)

* * * * *

(a) * * *

U.S.-flag air carrier, as used in this clause, means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

* * * * *

(d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on

vouchers involving such transportation essentially as follows:

STATEMENT OF UNAVAILABILITY OF U.S.-FLAG AIR CARRIERS

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the Federal Acquisition Regulation): [State reasons]:

(End of statement)

* * * * *

PART 53—FORMS

73. Section 53.214(e) is amended by revising the paragraph heading to read as follows:

53.214 Sealed bidding.

* * * * *

(e) *SF 129 (REV. 12/96), Solicitation Mailing List Application.* * * *

* * * * *

74. Section 53.215-1(f) is amended by revising the paragraph heading to read as follows:

53.215-1 Solicitation and receipt of proposals and quotations.

* * * * *

(f) *SF 129 (REV. 12/96), Solicitation Mailing List Application.* * * *

* * * * *

75. Section 53.222(g) is amended by revising the paragraph heading to read as follows:

53.222 Application of labor laws to Government acquisitions (SF's 99, 308, 1093, 1413, 1444, 1445, 1446, WH-347).

* * * * *

(g) *SF 1445 (REV. 12/96), Labor Standards Interview.* * * *

* * * * *

76. Section 53.229 is amended by revising the paragraph heading to read as follows:

53.229 Taxes (SF's 1094, 1094-A).

SF 1094 (REV. 12/96, U.S. Tax Exemption Form, and SF 1094-A (REV. 12/96), Tax Exemption Forms Accountability Record. * * *

77. Section 53.245 is amended in paragraphs (c), (f), (g), (h), (i), and (j) by revising the paragraph headings to read as follows:

53.245 Government property.

* * * * *

(c) *SF 1423 (REV. 12/96), Inventory Verification Survey.*

* * * * *

(f) *SF 1426 (REV. 12/96), Inventory Schedule A (Metals in Mill Product Form), and SF 1427 (REV. 7/89), Inventory Schedule A—Continuation Sheet (Metals in Mill Product Form).*

* * *

(g) *SF 1428 (REV. 12/96), Inventory Schedule B, and SF 1429 (REV. 7/89), Inventory Schedule B—Continuation Sheet.* * * *

(h) *SF 1430 (REV. 12/96), Inventory Schedule C (Work-in-Process) and SF 1431 (REV. 7/89), Inventory Schedule C—Continuation Sheet (Work-in-Process).* * * *

(i) *SF 1432 (REV. 12/96), Inventory Schedule D (Special Tooling and Special Test Equipment), and SF 1433 (REV. 7/89), Inventory Schedule D—Continuation Sheet (Special Tooling and Special Test Equipment).* * * *

(j) *SF 1434 (REV. 12/96), Termination Inventory Schedule E (Short Form for Use with SF 38 Only).* * * *

53.301-129 [Revised]

78. Section 53.301-129 is revised to read as follows:

53.301-129 SF 129, Solicitation Mailing List Application.

BILLING CODE 6820-EP-P

SOLICITATION MAILING LIST APPLICATION	1. TYPE OF APPLICATION <input type="checkbox"/> INITIAL <input type="checkbox"/> REVISION	2. DATE	OMB No.: 9000-0002 Expires: 10/31/97
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NOTE: Please complete all items on this form. Insert N/A in items not applicable. See reverse for instruction.
 Public reporting burden for this collection of information is estimated to average .58 hours 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.

3. SUBMIT TO	a. FEDERAL AGENCY'S NAME		4. APPLICANT	
	b. STREET ADDRESS		a. NAME	b. STREET ADDRESS
	c. CITY	d. STATE	e. ZIP CODE	c. COUNTY

5. TYPE OF ORGANIZATION (Check one)	6. ADDRESS TO WHICH SOLICITATIONS ARE TO BE MAILED (If different than Item 4)			
<input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> NON-PROFIT ORGANIZATION	a. STREET ADDRESS		b. COUNTY	
<input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> CORPORATION, INCORPORATED UNDER THE LAWS OF THE STATE OF:	c. CITY	d. STATE	e. ZIP CODE	

7. NAMES OF OFFICERS, OWNERS, OR PARTNERS		
a. PRESIDENT	b. VICE PRESIDENT	c. SECRETARY
d. TREASURER	e. OWNERS OR PARTNERS	

8. AFFILIATES OF APPLICANT		
NAME	LOCATION	NATURE OF AFFILIATION

9. PERSONS AUTHORIZED TO SIGN OFFERS AND CONTRACTS IN YOUR NAME (Indicate if agent)			
NAME	OFFICIAL CAPACITY	TELEPHONE NUMBER	
		AREA CODE	NUMBER

10. IDENTIFY EQUIPMENT, SUPPLIES, AND/OR SERVICES ON WHICH YOU DESIRE TO MAKE AN OFFER (See attached Federal Agency's supplemental listing and instruction, if any)

11a. SIZE OF BUSINESS (See definitions on reverse)	11b. AVERAGE NUMBER OF EMPLOYEES (Including affiliates) FOR FOUR PRECEDING CALENDAR QUARTERS	11c. AVERAGE ANNUAL SALES OR RECEIPTS FOR PRECEDING THREE FISCAL YEARS
<input type="checkbox"/> SMALL BUSINESS (If checked, complete items 11B and 11C) <input type="checkbox"/> OTHER THAN SMALL BUSINESS		\$

12. TYPE OF OWNERSHIP (See definitions on reverse) (Not applicable for other than small businesses)	13. TYPE OF BUSINESS (See definitions on reverse)	
<input type="checkbox"/> DISADVANTAGED BUSINESS <input type="checkbox"/> WOMAN-OWNED BUSINESS	<input type="checkbox"/> MANUFACTURER OR PRODUCER <input type="checkbox"/> SERVICE ESTABLISHMENT	<input type="checkbox"/> CONSTRUCTION CONCERN <input type="checkbox"/> RESEARCH AND DEVELOPMENT <input type="checkbox"/> SURPLUS DEALER

14. DUNS NO. (If available)	15. HOW LONG IN PRESENT BUSINESS?

16. FLOOR SPACE (Square Feet/M ²)		17. NET WORTH	
a. MANUFACTURING	b. WAREHOUSE	a. DATE	b. AMOUNT
			\$

18. SECURITY CLEARANCE (If applicable, check highest clearance authorized)					
FOR	TOP SECRET	SECRET	CONFIDENTIAL	c. NAMES OF AGENCIES GRANTING SECURITY CLEARANCES	d. DATES GRANTED
a. KEY PERSONNEL					
b. PLANT ONLY					

The information supplied herein (including all pages attached) is correct and neither the applicant nor any person (or concern) in any connection with the applicant as a principal or officer, so far as is known, is now debarred or otherwise declared ineligible by any agency of the Federal Government from making offers for furnishing materials, supplies, or services to the Government or any agency thereof.

19a. NAME OF PERSON AUTHORIZED TO SIGN (Type or print)	20. SIGNATURE	21. DATE SIGNED
19b. TITLE OF PERSON AUTHORIZED TO SIGN (Type or print)		

INSTRUCTIONS

Persons or concerns wishing to be added to a particular agency's bidder's mailing list for supplies or services shall file this properly completed Solicitation Mailing List Application, together with such other lists as may be attached to this application form, with each procurement office of the Federal agency with which they desire to do business. If a Federal agency has attached a Supplemental Commodity list with instructions, complete the application as instructed. Otherwise, identify in Item 10 the equipment, supplies, and/or services on which you desire to bid. (Provide Federal Supply Class or Standard Industrial Classification codes, if available.) The application shall be submitted and signed by the principal as distinguished from an agent, however constituted.

After placement on the bidder's mailing list of an agency, your failure to respond (submission of bid, or notice in writing, that you are unable to bid on that particular transaction but wish to remain on the active bidder's mailing list for that particular item) to solicitations will be understood by the agency to indicate lack of interest and concurrence in the removal of your name from the purchasing activity's solicitation mailing for items concerned.

SIZE OF BUSINESS DEFINITIONS (See Item 11A.)

a. **Small business concern** - A small business concern for the purpose of Government procurement is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is competing for Government contracts, and can further qualify under the criteria concerning number of employees, average annual receipts, or the other criteria, as prescribed by the Small Business Administration. (See Code of Federal Regulations, Title 13, Part 121, as amended, which contains detailed industry definitions and related procedures.)

b. **Affiliates** - Business concerns are affiliates of each other when either directly or indirectly (i) one concern controls or has the power to control the other, or (ii) a third party controls or has the power to control both. In determining whether concerns are independently owned and operated and whether or not affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationship. (See Items 8 and 11A.)

c. **Number of employees** - (Item 11B) In connection with the determination of small business status, "number of employees" means the average employment of any concern, including the employees of its domestic and foreign affiliates, based on the number of persons employed on a full-time, part-time, temporary or other basis during each of the pay periods of the preceding 12 months. If a concern has not been in existence for 12 months, "number of employees" means the average employment of such concern and its affiliates during the period that such concern has been in existence based on the number of persons employed during each of the pay periods of the period that such concern has been in business.

TYPE OF OWNERSHIP DEFINITIONS (See Item 12.)

a. **"Disadvantaged business concern"** - means any business concern (1) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (2) whose management and daily business operations are controlled by one or more of such individuals.

b. **"Women-owned business"** - means a business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.

TYPE OF BUSINESS DEFINITIONS (See Item 13.)

a. **"Manufacturer or producer"** - means a person (or concern) owning, operating, or maintaining a store, warehouse, or other establishment that produces, on the premises, the materials, supplies, articles or equipment of the general character of those listed in Item 10, or in the Federal Agency's Supplemental Commodity List, if attached.

b. **"Service establishment"** - means a concern (or person) which owns, operates, or maintains any type of business which is principally engaged in the furnishing of nonpersonal services, such as (but not limited to) repairing, cleaning, redecorating, or rental of personal property, including the furnishing of necessary repair parts or other supplies as a part of the services performed.

- **COMMERCE BUSINESS DAILY** - The Commerce Business Daily, published by the Department of Commerce, contains information concerning proposed procurements, sales, and contract awards. For further information concerning this publication, contact your local Commerce Field Office.

STANDARD FORM 129 (REV. 12-96) BACK

53.301-1094 [Revised]

79. Section 53.301-1094 is revised to read as follows:

53.301-1094 SF 1094, U.S. Tax Exemption Form.

BILLING CODE 6820-EP-P

Book No.

UNITED STATES TAX EXEMPTION FORMS
NSN 7540-01-152-9080
PREVIOUS EDITION NOT USABLE

These Are Accountable Forms

U.S. TAX EXEMPTION FORM	Read the instructions on the reverse side.	DEPARTMENT, AGENCY, OR OFFICE
ITEM PURCHASED FOR EXCLUSIVE USE OF THE U.S. GOVERNMENT <i>(Describe)</i>		
VENDOR FROM WHICH PURCHASED NAME ADDRESS (No., Street, City, State, and ZIP Code)	A tax exemption form has not previously been issued and the described item(s) has (have) been delivered and invoiced pursuant to: P. O. OR CONTRACT NO.	SERIAL NO. QUANTITY UNIT PRICE (\$)
The information on this form is true and correct to the best of my knowledge and belief.		AMOUNT OF TAX EXCLUDED (\$)
PURCHASER'S SIGNATURE, OFFICE TITLE, AND ADDRESS ▲		STATE LOCAL
SIGNATURE AND TITLE OF VENDOR'S REPRESENTATIVE ▲		FOR ADMINISTRATIVE OFFICE D.O. SYMBOL NO.
		VOUCHER NO. DATE:

STANDARD FORM 1094 (REV. 12-96)
 Prescribed by GSA-FAR (48 CFR) 53.229

INSTRUCTIONS

1. This form will be used to establish the Government's exemption or immunity from State or Local taxes whenever no other evidence is available.
2. This form shall NOT be used for:
 - (a) Purchases of quarters or subsistence made by employees in travel status.
 - (b) Expenses incident to use of a privately owned motor vehicle for which a mileage allowance has been authorized, or
 - (c) Merchandise purchased which is subject only to Federal Tax.
3. If the spaces provided on the face of this form are inadequate, attach a separate statement containing the required information.
4. If both State and local taxes are involved, use a separate form for each tax. The form will be provided to the vendor when the prices exclude State or local tax.
5. The serial number of each form prepared will be shown on the payment voucher.

THE FRAUDULENT USE OF THIS FORM FOR THE PURPOSE OF OBTAINING EXCEPTION FROM OR ADJUSTMENT OF TAXES IS PROHIBITED.

STANDARD FORM 1094 (REV.12-96) BACK

In case this book of United States Tax Exemption Forms is
lost, finder will please put band or string around cover and
mail to:

GENERAL SERVICES ADMINISTRATION
FEDERAL SUPPLY SERVICE
GENERAL PRODUCTS COMMODITY CENTER
ATTN: 7FXM
819 TAYLOR STREET
FORT WORTH TX 76102

53.301-1094A [Revised]

80. Section 53.301-1094A is revised to read as follows:

§ 53.301-1094A SF 1094A, Tax Exemption Forms Accountability Record.

BILLING CODE 6820-EP-P

TAX EXEMPTION FORMS ACCOUNTABILITY RECORD		To be used for convenience of the issuing agency for maintaining a control record of tax exemption forms issued.	
TAX EXEMPTION FORMS IN THIS BOOK NUMBERED	FROM	THROUGH	TAX EXEMPTION FORMS RETURNED UNUSED FOR REISSUE
	▲		▲
			FROM
			THROUGH
			REISSUED TO
ISSUED TO			
NAME			
TITLE			
OFFICE DESIGNATION			
ISSUING OFFICER		ISSUING OFFICER	
SIGNATURE		SIGNATURE	
TITLE AND OFFICE DESIGNATION		TITLE AND OFFICE DESIGNATION	
DATE ISSUED		DATE ISSUED	

STANDARD FORM 1094A (REV. 12-96)
Prescribed by GSA-FAR (48 CFR) 53.229

FORM NO.	DATE	Mark "X" in appropriate column to indicate type of tax	VENDOR NAME AND ADDRESS	ITEM PURCHASED	TAX EXCLUDED (Amount \$)	STATE	LOCAL	TRANSACTION REFERENCE
								Voucher No.:
								Voucher Date:
								PO/Cont. No.:
								Voucher No.:
								Voucher Date:
								PO/Cont. No.:
								Voucher No.:
								Voucher Date:
								PO/Cont. No.:
								Voucher No.:
								Voucher Date:
								PO/Cont. No.:

STANDARD FORM 1094A (REV. 12-96) BACK
 Prescribed by GSA-FAR (48 CFR) 53.229

53.301-1423 [Revised]

53.301-1423 SF 1423, Inventory Verification Survey.

81. Section 53.301-1423 is revised to read as follows:

BILLING CODE 6820-EP-P

INVENTORY VERIFICATION SURVEY (See FAR 45.606-3)		DATE	OMB No.: 9000-0015 Expires: 05/31/98		
Public reporting burden for this collection of information is estimated to average 1 hour 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.					
SECTION I - GENERAL					
1. FROM: (Include ZIP Code)		2. CONTRACT NUMBER			
3. TO: (Include ZIP Code)		4. CONTRACT/SUBCONTRACTOR			
5. SCHEDULES OF INVENTORY TO BE INSPECTED AND VERIFIED					
SF 1426 pages _____ through _____ \$ _____		SF 1432 pages _____ through _____ \$ _____			
SF 1429 pages _____ through _____ \$ _____		SF 1434 pages _____ through _____ \$ _____			
SF 1430 pages _____ through _____ \$ _____					
SECTION II - TECHNICAL VERIFICATION					
6. IS PROPERTY LISTED ON THE INVENTORY SCHEDULES ON HAND AND IN THE QUANTITIES INDICATED?	YES	NO	12. ARE THE WEIGHTS OF THE ITEMS RECOMMENDED AS SCRAP APPROXIMATELY CORRECT? IF WEIGHTS ARE NOT SHOWN, GIVE ESTIMATE OF WEIGHT BY BASIC MATERIAL CONTENT:	YES	NO
7. IS THE PROPERTY CORRECTLY DESCRIBED ON THE INVENTORY SCHEDULES?		*	13. DO THE ITEMS APPEAR TO HAVE COMMERCIAL VALUE OTHER THAN SCRAP?		*
8. IS THE PROPERTY SEGREGATED OR ADEQUATELY PROTECTED?		*	14. ARE THE ITEMS AGENCY-PECULIAR?		*
9. IS THE PROPERTY PROPERLY TAGGED?		*	15. DO ANY ITEMS REQUIRE SPECIAL PROCESSING (Fire arms, drugs, hazardous or sensitive items, or precious metals, etc.)?		*
10. ARE THE CONDITION CODES ACCURATE?		*	16. ARE COMMON ITEMS INCLUDED ON THE INVENTORY SCHEDULE?		*
11. ARE THE ITEMS LISTED ON SF 1432 CORRECTLY CATEGORIZED AS SPECIAL TOOLING OR SPECIAL TEST EQUIPMENT?		*			
SECTION III - TERMINATION INVENTORY					
COMPLETION OF THIS SECTION <input type="checkbox"/> IS <input type="checkbox"/> IS NOT REQUIRED (Requester, check one)					
17. DID WORK STOP PROMPTLY UPON RECEIPT OF THE TERMINATION NOTICE? DATE TO NOTICE:	YES	NO	20. DOES THE INVENTORY INCLUDE REJECTS? IF YES, EXPLAIN SPECIFIC LINE ITEM ENTRIES. OBTAIN FROM CONTRACTOR ESTIMATED COST OF REWORKING REJECTS ON SPECIFIC LINE ITEM BASIS.	YES	NO
18. DO THE QUANTITIES OF MATERIAL EXCEED THE AMOUNTS THAT WOULD HAVE BEEN REQUIRED TO COMPLETE THE TERMINATED PORTION OF THE CONTRACT? CAN THE ITEMS OF TERMINATION INVENTORY BE USED ON THE CONTINUING PORTION OF THE CONTRACT?	*		21a. HAVE COMPLETED ARTICLES BEEN INSPECTED AS TO QUALITY AND CONFORMANCE TO SPECIFICATIONS?		*
	*			b. DO THE COMPLETED ITEMS INSPECTED CONFORM TO CONTRACT SPECIFICATIONS?	
19. ARE ALL ITEMS AND QUANTITIES ALLOCABLE TO THE TERMINATION PORTION OF THIS CONTRACT OR ORDER?		*	c. DO OTHER THAN COMPLETED ITEMS CONFORM WITH TECHNICAL REQUIREMENTS OF THE CONTRACT OR ORDER?		*
22. REQUESTING OFFICE REMARKS (Where the answer to any question is placed in a block containing an asterisk (*) detailed comments of the verifier shall be included on the reverse of this form and identified by section and item number.)					
23. SIGNATURE OF REQUESTER					
INVENTORY VERIFICATION					
The above information is based on a physical Verification of Inventory listed under Item 5.					
24. NAME AND TITLE		25. SIGNATURE OF VERIFIER		26. DATE	

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition not usable

STANDARD FORM 1423 (REV. 12-96)
Prescribed by GSA-FAR (48 CFR) 53.245(c)

53.301-1426 [Revised]

82. Section 53.301-1426 is revised to read as follows:

53.301-1426 SF 1426, Inventory Schedule A (Metals in Mill Product Form).

BILLING CODE 6820-EP-P

INVENTORY SCHEDULE A
(METALS IN MILL PRODUCT FORM)
(See FAR Section 45.606 for instructions)

TYPE OF CONTRACT: DATE: OMB No.: 9000-0015 Expires: 05/31/98

PROPERTY CLASSIFICATION: PAGE: NO. OF PAGES:

TYPE: TERMINATION NONTERMINATION

PARTIAL FINAL

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing 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.

THIS SCHEDULE APPLIES TO (Check one)
 A PRIME CONTRACT WITH THE GOVERNMENT
 SUBCONTRACT(S) OR PURCHASE ORDER(S)
 SUBCONTRACT OR P.O. NO. REFERENCE NO.

COMPANY PREPARING AND SUBMITTING SCHEDULE

STREET ADDRESS: CITY: STATE: ZIP CODE:

CONTRACTOR WHO SENT NOTICE OF TERMINATION

STREET ADDRESS: CITY: STATE: ZIP CODE:

PRODUCT COVERED BY CONTRACT OR ORDER

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO.	DESCRIPTION	DIMENSIONS		UNIT OF MEASURE	COST		FOR USE OF CONTRACTING AGENCY ONLY							
			WIDTH I.D. for tube diameter of rod/pipes	LENGTH (b5)		UNIT	TOTAL								
	(a)	FORM SHAPE ROLLING TREATMENT (When applicable, type of edge. Example: HR coiled strip, CR flat sheets box rod, tubing in straight length, etc.)	HEAT TREATMENT, TEMPERING, HARDNESS FINISH, ETC. (Example: Annealed and pickled, 1/2 hard, polished, etc.)	SPECIFICATIONS, AND ALLOY OR OTHER MATERIALS DESIGNATION IN THE SPECIFICATION (Example: OO-T-951-D B16-42 Alloy 7 Grade B)	THICKNESS (Wall for tubing class for pipe, type for copper water tube)	FT/IN	IN/CM	(b4)	(b3)	(b2)	(b1)	(b)	(a)	(f)	(g)

INVENTORY SCHEDULE
The Contractor agrees to inform the Contracting Officer of any substantial change in the status of the inventory shown in this Schedule between the date hereof and the final disposition of such inventory. Subject to any authorized prior disposition, title to the inventory listed in this Schedule is hereby tendered to the Government and is warranted to be free and clear of all liens and encumbrances.

NAME OF CONTRACTOR: BY (Signature of Authorized Official): TITLE: DATE:

NAME OF SUPERVISORY ACCOUNTING OFFICIAL: TITLE:

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition not usable

STANDARD FORM 1426 (REV. 12-96)
Prescribed by GSA - FAR (48 CFR 53.2451)

53.301-1428 [Revised]

53.301-1428 SF 1428, Inventory Schedule

83. Section 53.301-1428 is revised to read as follows:

B.

BILLING CODE 6820-EP-P

INVENTORY SCHEDULE B		DATE	OMB No.: 9000-0015 Expires: 05/31/98
(See FAR Section 45.606 for instructions)		TYPE OF CONTRACT	
<input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL <input type="checkbox"/> TERMINATION <input type="checkbox"/> NONTERMINATION			
Public reporting burden for this collection of information is estimated to average 1 hour 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.			
TYPE OF INVENTORY <input type="checkbox"/> RAW MATERIALS (Other than metals) <input type="checkbox"/> PURCHASED PARTS <input type="checkbox"/> FINISHED COMPONENTS <input type="checkbox"/> FINISHED PRODUCT <input type="checkbox"/> PLANT EQUIPMENT <input type="checkbox"/> MISCELLANEOUS		PROPERTY CLASSIFICATION COMPANY PREPARING AND SUBMITTING SCHEDULE	
THIS SCHEDULE APPLIES TO (Check one) <input type="checkbox"/> A PRIME CONTRACT WITH THE GOVERNMENT <input type="checkbox"/> SUBCONTRACT OR PURCHASE ORDER <input type="checkbox"/> GOVERNMENT PRIME CONTRACT NO. <input type="checkbox"/> SUBCONTRACT OR P.O. NO. REFERENCE NO.		STREET ADDRESS CITY AND STATE (Include ZIP Code)	
CONTRACTOR WHO SENT NOTICE OF TERMINATION			
NAME			
ADDRESS (Include ZIP Code)			
PRODUCT COVERED BY CONTRACT OR ORDER			
FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO. (a)	ITEM DESCRIPTION (b)	FOR USE OF CONTRACTING AGENCY ONLY
	GOVERNMENT PART OR DRAWING NUMBER AND REVISION NUMBER (b1)	TYPE OF PACKING (Bulk, bbls., crates, etc.) (b2)	CONTRACTOR'S OFFER (g)
		CONDITION (Use code) (c)	UNIT TOTAL (f)
		QUANTITY MEASURE (d)	CONTRACTOR'S OFFER (g)
		UNIT OF MEASURE (d1)	UNIT (e)
		COST (For finished product, show contract price instead of cost)	TOTAL (f)
			(g)
INVENTORY SCHEDULE			
This inventory Schedule has been examined, and in the exercise of the signer's best judgment and to the best of the signer's knowledge, based upon information believed by the signer to be reliable, said Schedule has been prepared in accordance with applicable instructions; the inventory described is allocable to the designated contract and is located at the places specified; if the property reported is termination inventory, the quantities are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; this Schedule does not include any items reasonably usable, without loss to the Contractor, on its other work; and the costs shown on this Schedule are in accordance with the Contractor's records and books of account.			
The Contractor agrees to inform the Contracting Officer of any substantial change in the status of the inventory shown in this Schedule between the date hereof and the final disposition of such inventory.			
Subject to any authorized prior disposition, title to the inventory listed in this Schedule is hereby tendered to the Government and is warranted to be free and clear of all liens and encumbrances.			
NAME OF CONTRACTOR		DATE	
BY (Signature of Authorized Official)		TITLE	
NAME OF SUPERVISORY ACCOUNTING OFFICIAL		TITLE	

STANDARD FORM 1428 (REV. 12-96)
Prescribed by GSA-FAR (48 CFR) 53.245(g)

53.301-1430 [Revised]

53.301-1430 SF 1430, Inventory Schedule C (Work-in-Process).

84. Section 53.301-1430 is revised to read as follows:

BILLING CODE 6820-EP-P

INVENTORY SCHEDULE C (WORK-IN-PROCESS)
(See FAR Section 45.606 for instructions)

PARTIAL FINAL TERMINATION NONTERMINATION

OMB No.: 9000-0015 Expires: 05/31/98

PAGE NO. NO. OF PAGES

TYPE OF CONTRACT

DATE

Public reporting burden for this collection of information is estimated to average 1 hour 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

THIS SCHEDULE APPLIES TO (Check one)

A PRIME CONTRACT WITH THE GOVERNMENT SUBCONTRACT(S) OR PURCHASE ORDER(S) REFERENCE NO.

GOVERNMENT PRIME CONTRACT NO. SUBCONTRACT OR P.O. NO.

COMPANY PREPARING AND SUBMITTING SCHEDULE

STREET ADDRESS

CITY AND STATE (Include ZIP Code)

LOCATION OF MATERIAL

PRODUCT COVERED BY CONTRACT OR ORDER

CONTRACTOR WHO SENT NOTICE OF TERMINATION

NAME

ADDRESS (Include ZIP Code)

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO. (a)	DESCRIPTION		ESTIMATED WEIGHT (b1)	QUANTITY (d)	UNIT OF MEASURE (d1)	COST		CONTRACTOR'S OFFER (g)	FOR USE OF CONTRACTING AGENCY ONLY
		ITEM DESCRIPTION (b)	CONDITION (c) (Use code)				UNIT (e)	TOTAL (f)		

INVENTORY SCHEDULE

The Contractor agrees to inform the Contracting Officer of any substantial change in the status of the inventory shown in this Schedule between the date hereof and the final disposition of such inventory.

Subject to any authorized prior disposition, title to the inventory listed in this Schedule is hereby tendered to the Government and is warranted to be free and clear of all liens and encumbrances.

BY (Signature of Authorized Official)

DATE

TITLE

NAME OF SUPERVISORY ACCOUNTING OFFICIAL

TITLE

STANDARD FORM 1430 (REV. 12-96)
Prescribed by GSA - FAR (48 CFR) 53.245(l)

AUTHORIZED FOR LOCAL REPRODUCTION
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53.301-1432 [Revised]

53.301-1432 SF 1432, Inventory Schedule D (Special Tooling and Special Test Equipment).

85. Section 53.301-1432 is revised to read as follows:

BILLING CODE 6820-EP-P

INVENTORY SCHEDULE D (SPECIAL TOOLING AND SPECIAL TEST EQUIPMENT) <small>(See FAR Section 45.606 for instructions)</small>		DATE	OMB No.: 9000-0015 Expires: 05/31/98
<input type="checkbox"/> PARTIAL	<input type="checkbox"/> FINAL	<input type="checkbox"/> TERMINATION	PAGE NO. NO. OF PAGES
<input type="checkbox"/> NONTERMINATION		Public reporting burden for this collection of information is estimated to average 1 hour 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 20400.	
THIS SCHEDULE APPLIES TO (Check one)			
<input type="checkbox"/> A PRIME CONTRACT WITH THE GOVERNMENT	<input type="checkbox"/> SUBCONTRACT(S) OR PURCHASE ORDER(S)	COMPANY PREPARING AND SUBMITTING SCHEDULE	
GOVERNMENT PRIME CONTRACT NO.	SUBCONTRACT OR P.O. NO.	STREET ADDRESS	CITY AND STATE (Include ZIP Code)
CONTRACTOR WHO SENT NOTICE OF TERMINATION			
NAME			
ADDRESS (Include ZIP Code)			
PRODUCT COVERED BY CONTRACT OR ORDER			
SUBCONTRACT(S) OR PURCHASE ORDER(S) REFERENCE NO.	LOCATION OF MATERIAL		
INVENTORY SCHEDULE			
The Contractor agrees to inform the Contracting Officer of any substantial change in the status of the inventory shown in this Schedule between the date hereof and the final disposition of such inventory. Subject to any authorized prior disposition, title to the inventory listed in this Schedule is hereby tendered to the Government and it warranted to be free and clear of all liens and encumbrances.			
This Inventory Schedule has been examined, and in the exercise of the signer's best judgment and to the best of the signer's knowledge, based upon information believed by the signer to be reliable, said Schedule has been prepared in accordance with applicable instructions; the inventory described is allocable to the designated contract and is located at the places specified; if the property reported is termination inventory, the quantities are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; this Schedule does not include any items reasonably usable, without loss to the Contractor, on its other work; and the costs shown on this Schedule are in accordance with the Contractor's records and books of account.	BY (Signature of Authorized Official)		
NAME OF CONTRACTOR	TITLE	DATE	DATE
NAME OF SUPERVISORY ACCOUNTING OFFICIAL		TITLE	
STANDARD FORM 1432 (REV. 12-96) Prescribed by GSA - FAR (48 CFR) 53.246(l)			

53.301-1434 [Revised]

53.301-1434 SF 1434, Termination Inventory

86. Section 53.301-1434 is revised to read as follows:

Schedule E (Short Form For Use With SF 1438 Only).

BILLING CODE 6820-EP-P

TERMINATION INVENTORY SCHEDULE E
(SHORT FORM FOR USE WITH SF 1438 ONLY)
(See FAR Section 45.606 for instructions)

PARTIAL FINAL

Public reporting burden for this collection of information is estimated to average 1 hour 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.

THIS SCHEDULE APPLIES TO (check one)
 A PRIME CONTRACT WITH THE GOVERNMENT
 SUBCONTRACT(S) OR PURCHASE ORDER(S)
 REFERENCE NO. _____

GOVERNMENT PRIME CONTRACT NO. _____ SUBCONTRACT OR P.O. NO. _____

CONTRACTOR WHO SENT NOTICE OF TERMINATION

NAME _____

ADDRESS (Include Zip Code) _____

STREET ADDRESS _____

CITY AND STATE (Include ZIP Code) _____

LOCATION OF MATERIAL _____

COMPANY PREPARING AND SUBMITTING SCHEDULE _____

DATE _____ PAGE NO. _____ NO. OF PAGES _____

OMB No.: 9000-0015
Expires: 05/31/98

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO. (a)	ITEM DESCRIPTION (b)	GOVERNMENT PART OR DRAWING NUMBER AND REVISION NUMBER (b1)	TYPE OF PACKING (Bulk, bbls., crates, etc.) (b2)	CONDITION (Use code) (c)	QUANTITY (d)	UNIT OF MEASURE (d1)	COST (For finished product, show contract price instead of cost)		CONTRACTOR'S OFFER (g)	FOR USE OF CONTRACTING AGENCY ONLY
								UNIT (f)	TOTAL (f)		
TERMINATION INVENTORY											

TERMINATION INVENTORY

This inventory Schedule has been examined, and in the exercise of the signer's best judgment and to the best of the signer's knowledge, based upon information believed by the signer to be reliable, said Schedule has been prepared in accordance with applicable instructions; the inventory described is allocable to the designated contract and is located at the places specified; if the property reported is termination inventory, the quantities are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; this Schedule does not include any items reasonably usable, without loss to the Contractor, on its other work; and the costs shown on this Schedule are in accordance with the Contractor's records and books of account.

BY (Signature of Authorized Official) _____ TITLE _____

DATE _____

NAME OF CONTRACTOR _____

NAME OF SUPERVISORY ACCOUNTING OFFICIAL _____ TITLE _____

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STANDARD FORM 1434 (REV. 12-96)
Prescribed by GSA - FAR (48 CFR) 53.245(f)

53.301-1445 [Revised]

87. Section 53.301-1445 is revised to read as follows:

53.301-1445 SF 1445, Labor Standards Interview.

BILLING CODE 6820-EP-P

LABOR STANDARDS INTERVIEW						
CONTRACT NUMBER			EMPLOYEE INFORMATION			
NAME OF PRIME CONTRACTOR			LAST NAME	FIRST NAME	MI	
NAME OF EMPLOYER			STREET ADDRESS			
SUPERVISOR'S NAME			CITY	STATE	ZIP CODE	
LAST NAME	FIRST NAME	MI	WORK CLASSIFICATION		WAGE RATE	
ACTION					CHECK BELOW	
					YES	NO
Do you work over 8 hours per day?						
Do you work over 40 hours per week?						
Are you paid at least time and a half for overtime hours?						
Are you receiving any cash payments for fringe benefits required by the posted wage determination decision?						
WHAT DEDUCTIONS OTHER THAN TAXES AND SOCIAL SECURITY ARE MADE FROM YOUR PAY?						
HOW MANY HOURS DID YOU WORK ON YOUR LAST WORK DAY BEFORE THIS INTERVIEW?			TOOLS YOU USE			
DATE OF LAST WORK DAY BEFORE INTERVIEW (YYMMDD)						
DATE YOU BEGAN WORK ON THIS PROJECT (YYMMDD)						
THE ABOVE IS CORRECT TO THE BEST OF MY KNOWLEDGE						
EMPLOYEE'S SIGNATURE					DATE (YYMMDD)	
INTERVIEWER	SIGNATURE		TYPED OR PRINTED NAME		DATE (YYMMDD)	
INTERVIEWER'S COMMENTS						
WORK EMPLOYEE WAS DOING WHEN INTERVIEWED			ACTION (If explanation is needed, use comments section)		YES	NO
			IS EMPLOYEE PROPERLY CLASSIFIED AND PAID?			
			ARE WAGE RATES AND POSTERS DISPLAYED?			
FOR USE BY PAYROLL CHECKER						
IS ABOVE INFORMATION IN AGREEMENT WITH PAYROLL DATA?						
<input type="checkbox"/> YES <input type="checkbox"/> NO						
COMMENTS						
CHECKER						
LAST NAME		FIRST NAME		MI	JOB TITLE	
SIGNATURE					DATE (YYMMDD)	

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition not usable

STANDARD FORM 1445 (REV. 12-96)
Prescribed by GSA - FAR (48 CFR) 53.222(g)

48 CFR Part 2**[FAC 90-45; FAR Case 96-323; Item III]****RIN 9000-AH45****Federal Acquisition Regulation;
Humanitarian Operations**

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 to amend the Federal Acquisition Regulation (FAR) to implement Section 807 of the Fiscal Year 1997 Defense Authorization Act (Public Law 104-201). Section 807 increases the "simplified acquisition threshold" for a humanitarian or peacekeeping operation. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Paul L. Linfield at (202) 501-1757 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-45, FAR case 96-323.

SUPPLEMENTARY INFORMATION:**A. Background**

This final rule amends FAR Part 2 to implement Section 807 of the Fiscal Year 1997 Defense Authorization Act (Public Law 104-201). Section 807 amends 10 U.S.C. 2302(7) and 41 U.S.C. 259(d) to provide for a simplified acquisition threshold for humanitarian or peacekeeping operations in an amount equal to two times that specified in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403). Accordingly, the definition of "simplified acquisition threshold" at FAR 2.101 is amended to reflect an amount of \$200,000 for contracts to be awarded and performed, or purchases to be made, outside the United States in support of a humanitarian or peacekeeping operation.

B. Regulatory Flexibility Act

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,

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 cite 5 U.S.C. 601, *et seq.* (FAC 90-45, FAR case 96-323), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which 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 2

Government procurement.

Dated: December 24, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 2 is amended as set forth below:

**PART 2—DEFINITIONS OF WORDS
AND TERMS**

1. The authority citation for 48 CFR Part 2 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 2.101 is amended by revising the definition for "Simplified acquisition threshold" to read as follows:

2.101 Definitions.

* * * * *

Simplified acquisition threshold means \$100,000, except that in the case of any contract to be awarded and performed, or purchase to be made, outside the United States in support of a contingency operation (as defined in 10 U.S.C. 101(a)(13)) or a humanitarian or peacekeeping operation (as defined in 10 U.S.C. 2302(7) and 41 U.S.C. 259(d)), the term means \$200,000.

* * * * *

[FR Doc. 96-33207 Filed 12-31-96; 8:45 am]

BILLING CODE 6820-EP-P

48 CFR Parts 6, 15, and 24**[FAC 90-45; FAR Case 96-326; Item IV]****RIN 9000-AH46****Federal Acquisition Regulation;
Freedom of Information Act**

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 to amend the Federal Acquisition Regulation (FAR) to implement Section 821 of the Fiscal Year 1997 Defense Authorization Act (Public Law 104-201). Section 821 prohibits, with certain exceptions, Government release of competitive proposals under the Freedom of Information Act. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501-3856 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-45, FAR case 96-326.

SUPPLEMENTARY INFORMATION:**A. Background**

This final rule amends FAR Subpart 24.2, Freedom of Information Act (5 U.S.C. 552), to add a new section 24.202, Prohibitions. This new section implements section 821 of Public Law 104-201 by prohibiting, with certain exceptions, the release of proposals submitted in response to competitive solicitations. The rule also amends FAR sections 6.305 and 15.1006 to provide appropriate cross-references. (Note: The change to 15.804-5 that implements this rule in part is made under FAR case 96-306.)

B. Regulatory Flexibility Act

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, 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 cite 5 U.S.C. 601, *et seq.* (FAC 90-45, FAR case 96-326), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which 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 6, 15, and 24

Government procurement.

Dated: December 24, 1996.

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

Therefore, 48 CFR Parts 6, 15, and 24 are amended as set forth below:

1. The authority citation for 48 CFR Parts 6, 15, and 24 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 6—COMPETITION REQUIREMENTS

2. Section 6.305 is amended in paragraph (1) by revising the third sentence to read as follows:

6.305 Availability of the justification.

(1) * * * Contracting officers shall also be guided by the exemptions to disclosure of information contained in the Freedom of Information Act (5 U.S.C. 552) and the prohibitions against disclosure in 24.202 in determining whether other data should be removed.

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

3. Section 15.1006 is amended in paragraph (e) introductory text by revising the second sentence to read as follows:

15.1006 Postaward debriefing of offerors.

* * * * *

(e) * * * Moreover, debriefing shall not reveal any information prohibited from disclosure by 24.202 or exempt from release under the Freedom of Information Act, including—

* * * * *

PART 24—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

24.202 [Redesignated as 24.203]

4. Section 24.202 is redesignated as 24.203 and a new section 24.202 is added to read as follows:

24.202 Prohibitions.

(a) A proposal in the possession or control of the Government, submitted in response to a competitive solicitation, shall not be made available to any person under the Freedom of Information Act. This prohibition does not apply to a proposal, or any part of a proposal, that is—

(1) In the possession or control of NASA or the Coast Guard; or

(2) Set forth or incorporated by reference in a contract between the Government and the contractor that submitted the proposal. (See 10 U.S.C. 2305(g) and 41 U.S.C. 253b(m).)

(b) No agency shall disclose any information obtained pursuant to 15.804–5(b) that is exempt from disclosure under the Freedom of Information Act. (See 10 U.S.C. 2306a(d)(2)(C) and 41 U.S.C. 254b(d)(2)(C).)

[FR Doc. 96–33208 Filed 12–31–96; 8:45 am]

BILLING CODE 6820–EP–P

48 CFR Parts 4, 12, 15, 16, 25, 31, 46, and 52

[FAC 90–45; FAR Case 96–306; Item V]

RIN 9000–AH16

Federal Acquisition Regulation; Exceptions to Requirements for Certified Cost or Pricing Data

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 to amend the Federal Acquisition Regulation (FAR) to implement Section 4201 of the Federal Acquisition Reform Act of 1996. 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.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–45, FAR case 96–306.

SUPPLEMENTARY INFORMATION:

A. Background

This final FAR rule implements changes to the Truth in Negotiations Act (TINA) contained in Section 4201 of the Clinger-Cohen Act of 1996 (Pub. L. 104–106) and—

Simplifies obtaining a TINA exception for commercial items by eliminating the distinction between catalog or market-priced commercial items and all other commercial items;

Eliminates the subordination of the commercial item exception to the

traditional exceptions of adequate price competition, catalog or market-priced commercial items, or prices set by law or regulation, which previously was required by the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) (FASA);

Eliminates the criteria established by FASA for the commercial item exception (i.e., an exception could not be granted unless price reasonableness could be determined based on specific information requirements) and deletes the authority to obtain cost or pricing data for commercial item acquisitions when the criteria is not met; and

Eliminates the clause for postaward audit of information submitted to support the pricing of commercial item contracts.

The Federal Acquisition Reform Act of 1996 was subsequently named the Clinger-Cohen Act of 1996.

A proposed rule was published on August 7, 1996 (61 FR 41214). Sixteen comments were received from seven respondents. All comments were considered in the development of the final rule.

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 the submission of cost or pricing data.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which 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 4, 12, 15, 16, 25, 31, 46, and 52

Government procurement.

Dated: December 24, 1996.

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

Therefore, 48 CFR Parts 4, 12, 15, 16, 25, 31, 46, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 4, 12, 15, 16, 25, 31, 46, 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 4—ADMINISTRATIVE MATTERS

4.702 [Amended]

2. Section 4.702 is amended by removing paragraph (a)(3).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

3. Section 12.209 is revised to read as follows:

12.209 Determination of price reasonableness when contracting by negotiation.

When contracting by negotiation for commercial items, the policies and procedures in subpart 15.8 shall be used to establish the reasonableness of prices.

PART 15—CONTRACTING BY NEGOTIATION

4. Section 15.106 is revised to read as follows:

15.106 Contract clause.

(a) This section implements 10 U.S.C. 2313, 41 U.S.C. 254d, and OMB Circular No. A-133.

(b) The contracting officer shall, if contracting by negotiation, insert the clause at 52.215-2, Audit and Records—Negotiation, in solicitations and contracts except those—

(1) Not exceeding the simplified acquisition threshold;

(2) For commercial items exempted under 15.804-1; or

(3) For utility services at rates not exceeding those established to apply uniformly to the general public, plus any applicable reasonable connection charge.

(c) In facilities contracts, the contracting officer shall use the clause with its Alternate I. In cost-reimbursement contracts with educational institutions and other nonprofit organizations, the contracting officer shall use the clause with its Alternate II. If the examination of records by the Comptroller General is waived in accordance with 25.901, the contracting officer shall use the clause with its Alternate III.

15.106-1 and 15.106-2 [Removed]

5. Sections 15.106-1 and 15.106-2 are removed.

15.802 [Amended]

6. Section 15.802 is amended in the third sentence of paragraph (a) introductory text by revising “15.804-5(b)” to read “15.804-5”, and in paragraph (a)(1) by revising “15.804-5(a)(3)” to read “15.804-5(b)”.

7. Section 15.804-1 is amended by revising paragraph (a); removing (b)(2); redesignating (b)(3) through (b)(6) as (b)(2) through (b)(5), respectively, and revising newly designated (b)(3) and (b)(5); and by removing paragraphs (c) and (d). The revised text reads as follows:

15.804-1 Prohibition on obtaining cost or pricing data.

(a) *Exceptions to cost or pricing data requirements.* The contracting officer shall not, pursuant to 10 U.S.C. 2306a and 41 U.S.C. 254b, require submission of cost or pricing data (but may require information other than cost or pricing data to support a determination of price reasonableness or cost realism)—

(1) If the contracting officer determines that prices agreed upon are based on—

(i) Adequate price competition (see exception standards at paragraph (b)(1) of this subsection; or

(ii) Prices set by law or regulation (see exception standards at paragraph (b)(2) of this subsection).

(2) For acquisition of a commercial item (see exception standards at paragraph (b)(3) of this subsection).

(3) For exceptional cases where a waiver has been granted (see exception standards at paragraph (b)(4) of this subsection).

(4) For modifications to contracts or subcontracts for commercial items, if the basic contract or subcontract was awarded without the submission of cost or pricing data because the action was granted an exception from cost or pricing data requirements under paragraph (a)(1) or (a)(2) of this subsection and the modification does not change the contract or subcontract to a contract or subcontract for the acquisition of other than a commercial item (see exception standards at paragraph (b)(5) of this subsection).

(b) * * *

(3) *Commercial items.* An acquisition for an item that meets the commercial item definition in 2.101 is excepted from the requirement to obtain cost or pricing data.

(5) *Modifications.* This exception applies when the original contract or subcontract was exempt from cost or pricing data based on adequate price competition, price set by law or regulation, or was a contract or subcontract for the acquisition of a commercial item (15.804-1(a)(1) or (a)(2)). For modifications of contracts or subcontracts for commercial items, the exception at 15.804-1(a)(4) applies if the modification does not change the item from a commercial item to a

noncommercial item. However, if the modification to a contract or a subcontract changes the nature of the work under the contract or subcontract either by a change to the commercial item or by the addition of other noncommercial work, the contracting officer is not prohibited from obtaining cost or pricing data for the changed or added work.

8. Section 15.804-2 is amended in the second sentence of paragraph (a)(1), introductory text, by removing “15.804-1 (b)(5)” and inserting “15.804-1 (b)(4)”; and in paragraph (a)(1)(ii) by removing “15.804-1(b)(5)” and inserting “15.804-1(b)(4)” in its place; and by revising paragraph (a)(2) to read as follows:

15.804-2 Requiring cost or pricing data.

(a) * * *

(2) Unless prohibited because an exception at 15.804-1 (a)(1) or (a)(2) applies, the head of the contracting activity, without power of delegation, may authorize the contracting officer to obtain cost or pricing data for pricing actions below the pertinent threshold in paragraph (a)(1) of this subsection provided the action exceeds the simplified acquisition threshold. The head of the contracting activity shall justify the requirement for cost or pricing data. The documentation shall include a written finding that cost or pricing data are necessary to determine whether the price is fair and reasonable and the facts supporting that finding.

* * * * *

9. Section 15.804-5 is revised to read as follows:

15.804-5 Requiring information other than cost or pricing data.

(a) *General.* (1) If cost or pricing data are not required because an exception applies, or an action is at or below the cost or pricing data threshold, the contracting officer shall perform a price analysis to determine the reasonableness of the price and any need for further negotiation.

(2) The contracting officer shall require submission of information other than cost or pricing data only to the extent necessary to determine reasonableness of the price or cost realism. Unless an exception under 15.804-1(a)(1) applies, the contracting officer shall obtain, at a minimum, appropriate information on the prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price.

(3) The contractor's format for submitting such information shall generally be used (see 15.804-5(c)(2)).

(4) The contracting officer shall ensure that information used to support price negotiations is sufficiently current to permit negotiation of a fair and reasonable price. Requests for updated offeror information should be limited to information that affects the adequacy of the proposal for negotiations, such as changes in price lists. Such data shall not be certified in accordance with 15.804-4.

(b) *Adequate price competition.* When an acquisition is based on adequate price competition, generally no additional information is necessary to determine the reasonableness of price. However, if it is determined that additional information is necessary to determine the reasonableness of the price, the contracting officer shall, to the maximum extent practicable, obtain the additional information from sources other than the offeror. In addition, the contracting officer may request information to determine the cost realism of competing offers or to evaluate competing approaches.

(c) *Limitations relating to commercial items.* (1) Requests for sales data relating to commercial items shall be limited to data for the same or similar items during a relevant time period.

(2) The contracting officer shall, to the maximum extent practicable, limit the scope of the request for information relating to commercial items to include only information that is in the form regularly maintained by the offeror in commercial operations.

(3) Any information relating to commercial items obtained pursuant to this paragraph (c) that is prohibited from disclosure by 24.202(a) or exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552(b)) (see 24.202(b)) shall not be disclosed by the Government.

10. Section 15.804-6 is amended in paragraph (a)(5) by removing the words "or postaward" and in Table 15-2 by revising the fourth paragraph of Item 1 entitled "Established Catalog or Market Prices or Prices Set by Law or Regulation or Commercial Items Not Covered By Another Exception" to read as follows:

15.804-6 Instructions for submission of cost or pricing data or information other than cost or pricing data.

* * * * *

Prices Set by Law or Regulation or Commercial Item Exception—When an exception from the requirement to submit cost or pricing data is requested, whether the item was produced by others or by the offeror, provide justification for the exception.

* * * * *

11. Section 15.812-1 is amended by revising paragraph (b) and the fourth sentence of paragraph (c) to read as follows:

15.812-1 General.

* * * * *

(b) However, the policy in paragraph (a) of this subsection does not apply to any contract or subcontract for acquisition of a commercial item.

(c) * * * The information shall not be requested for commercial items. * * *

12. Section 15.812-2 is amended by revising paragraphs (a)(3) and (a)(5); and adding (a)(6) to read as follows:

15.812-2 Contract clause.

(a) * * *

(3) Utility services under part 41;

* * * * *

(5) Acquisitions of commercial items; and

(6) Contracts for petroleum products.

* * * * *

PART 16—TYPES OF CONTRACTS

13. Section 16.203-4 is amended by revising paragraphs (a)(1)(ii) and (b)(1)(ii) to read as follows:

16.203-4 Contract clauses.

(a)(1) * * *

* * * * *

(ii) The requirement is for standard supplies that have an established catalog or market price.

* * * * *

(b)(1) * * *

* * * * *

(ii) The requirement is for semistandard supplies for which the prices can be reasonably related to the prices of nearly equivalent standard supplies that have an established catalog or market price.

* * * * *

PART 25—FOREIGN ACQUISITION

25.901 [Amended]

14. Section 25.901 is amended in the first sentence of paragraph (b) by removing "15.106-1(b)" and inserting "15.106(b)" in its place.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

15. Section 31.205-26 is amended by revising paragraph (f) to read as follows:

31.205-26 Material costs.

* * * * *

(f) When a commercial item under paragraph (e) of this subsection is transferred at a price based on a catalog or market price, the price should be adjusted to reflect the quantities being

acquired and may be adjusted to reflect the actual cost of any modifications necessary because of contract requirements.

PART 46—QUALITY ASSURANCE

46.804 [Amended]

16. Section 46.804 is amended in the second sentence by removing "(see 15.804-1(b)(2))".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.215-2 [Amended]

17. Section 52.215-2 is amended in the introductory text by removing "15.106-1(b)" and inserting "15.106(b)" in its place; in Alternates I, II and III, by revising the Alternate dates to read "(JAN 1997)" and removing "15.106-1(c)" and inserting "15.106(c)" in its place.

18. Section 52.215-26 is revised to read as follows:

52.215-26 Integrity of Unit Prices.

As prescribed in 15.812-2, insert the following clause:

INTEGRITY OF UNIT PRICES (JAN 1997)

(a) Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items' base cost (e.g., manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of cost or pricing data not otherwise required by law or regulation.

(b) The Offeror/Contractor shall also identify those supplies which it will not manufacture or to which it will not contribute significant value when requested by the Contracting Officer. (End of clause)

Alternate I (JAN 1997). As prescribed in 15.812-2(b), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) The Offeror/Contractor shall also identify those supplies which it will not manufacture or to which it will not contribute significant value.

19. Section 52.215-41 is amended by revising the provision and Alternates II and III to read as follows:

52.215-41 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data.

* * * * *

REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (JAN 1997)

(a) *Exceptions from cost or pricing data.* (1) In lieu of submitting cost or pricing data,

offerors may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(i) *Identification of the law or regulation establishing the price offered.* If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include—

(A) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.

(B) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.

(C) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. Access does not extend to cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the catalog or marketplace.

(b) *Requirements for cost or pricing data.* If the offeror is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The offeror shall submit cost or pricing data on Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), with supporting attachments prepared in accordance with Table 15-2 of FAR 15.804-6(b)(2).

(2) As soon as practicable after agreement on price, but before contract award (except for unpriced actions such as letter contracts), the offeror shall submit a Certificate of Current Cost or Pricing Data, as prescribed in FAR 15.804-4.

(End of provision)

* * * * *

Alternate II (JAN 1997). As prescribed in 15.804-8(h), add the following paragraph (c) to the basic provision:

(c) When the proposal is submitted, also submit one copy each, including the SF 1411 and supporting attachments, to (1) the Administrative Contracting Officer, and (2) the Contract Auditor.

Alternate III (JAN 1997). As prescribed in 15.804-8(h), add the following paragraph (c) to the basic provision (if Alternate II is also used, redesignated as paragraph (d)):

(c) Submit the cost portion of the proposal via the following electronic media: (Insert media format, e.g., electronic spreadsheet format, electronic mail, etc.).

* * * * *

20. Section 52.215-42 is amended by revising the clause; and revising the date and the last sentence in paragraph (b) of Alternate IV to read as follows:

52.215-42 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications.

* * * * *

REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA—MODIFICATIONS (JAN 1997)

(a) *Exceptions from cost or pricing data.* (1) In lieu of submitting cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth at FAR 15.804-2(a)(1) on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(i) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) Information on modifications of contracts or subcontracts for commercial items.

(A) If (1) the original contract or subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition, or prices set by law or regulation, or was a contract or subcontract for the acquisition of a commercial item, and (2) the modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

(B) For a commercial item exception, the Contractor shall provide, at a minimum, information on prices at which the same item or similar items have previously been sold

that is adequate for evaluating the reasonableness of the price of the modification. Such information may include:

(1) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.

(2) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.

(3) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of price. Access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

(b) *Requirements for cost or pricing data.* If the Contractor is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The Contractor shall submit cost or pricing data on Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), with supporting attachments prepared in accordance with Table 15-2 of FAR 15.804-6(b)(2).

(2) As soon as practical after agreement on price, but before award (except for unpriced actions), the Contractor shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.804-4.

(End of clause)

* * * * *

Alternate IV (JAN 1997) * * *

(b) * * * *Standard Form 1448, Proposal Cover Sheet (Cost or Pricing Data Not Required), may be used for information other than cost or pricing data.*

52.215-43 [Removed]

21. Section 52.215-43 is removed.

22. Section 52.216-2 is amended by revising the introductory paragraph, the clause date, and the third sentence in paragraph (a) to read as follows:

52.216-2 Economic Price Adjustment—Standard Supplies.

As prescribed in 16.203-4(a), insert the following clause. The clause may be modified by increasing the 10 percent limit on aggregate increases specified in subparagraph (c)(1), upon approval by the chief of the contracting office.

**ECONOMIC PRICE ADJUSTMENT—
STANDARD SUPPLIES (JAN 1997)**

(a) * * * The term "established price" means a price that (1) is an established catalog or market price for a commercial item sold in substantial quantities to the general public, and (2) is the net price after applying any standard trade discounts offered by the Contractor.

* * * * *

23. Section 52.216-3 is amended by revising the introductory paragraph, the clause date, and the second sentence of paragraph (a) to read as follows:

**52.216-3 Economic Price Adjustment—
Semistandard Supplies.**

As prescribed in 16.203-4(b), insert the following clause. The clause may be modified by increasing the 10 percent limit on aggregate increases specified in subparagraph (c)(1), upon approval by the chief of the contracting office.

**ECONOMIC PRICE ADJUSTMENT—
STANDARD SUPPLIES (JAN 1997)**

(a) * * * The term "established price" means a price that (1) is an established catalog or market price for a commercial item sold in substantial quantities to the general public, and (2) is the net price after applying any standard trade discounts offered by the Contractor. * * *

[FR Doc. 96-33209 Filed 12-31-96; 8:45 am]

BILLING CODE 6820-EP-P

**48 CFR Parts 5, 14, 15, 17, 25, 27, and
52**

[FAC 90-45; FAR Case 93-310; Item VI]

RIN 9000-AF60

**Federal Acquisition Regulation;
Implementation of the North American
Free Trade Agreement Implementation
Act**

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

ACTION: Interim rule adopted as final with changes.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule implementing the North American Free Trade Agreement (NAFTA) Implementation Act related to applications of the Buy American Act provisions to acquisition of certain Mexican and Canadian products. 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.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Paul L. Linfield at (202) 501-1757 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 90-45, FAR case 93-310.

SUPPLEMENTARY INFORMATION:

A. Background

An interim rule was published in the Federal Register on January 5, 1994 (59 FR 544, FAC 90-19), FAR case 93-310, to implement NAFTA. Based on the analysis of public comments, a revised interim rule was published in the Federal Register on June 20, 1996 (61 FR 31646) (FAC 90-39). One late public comment was received and considered, but was not incorporated in the final rule. This final rule does contain revisions resulting from public comments received on FAR Case 96-312 published as Item II in this FAC. Upon consideration of those public comments, certifications eliminated under the interim rule published at 61 FR 31646 are being retained. The Government believes if the certifications were eliminated, offerors would be required to submit more detailed information regarding the origins of offered products. Without this information, enforcing a national policy grounded in vital economic and security interests would be extremely difficult. To satisfy this national policy interest, the self-policing discipline of a certification was determined to be the less burdensome alternative.

B. Regulatory Flexibility Act

This final rule is expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule waives the Buy American Act for certain Mexican and Canadian products. A Final Regulatory Flexibility Analysis (FRFA) has been prepared. A copy of the FRFA may be obtained from the FAR Secretariat. The FRFA is summarized as follows: This final rule generally applies to all businesses, large and small, that contract with Federal agencies other than the Department of Defense for supply contracts with an estimated value above \$25,000. This final rule also applies to Federal construction contracts, including those awarded by the Department of Defense, with an acquisition value of \$6,500,000 or more. Although U.S. businesses may face increased competition from Canadian or Mexican firms, they may also find an

increased market for their materials in Canada and Mexico.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies because the provision at FAR 52.225-20 requires offerors to list the line item number and the country of origin for any end product other than a domestic end product. Accordingly, a request for clearance of the information collection requirement was submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* and has been approved under OMB Control Number 9000-0130.

List of Subjects in 48 CFR Parts 5, 14, 15, 17, 25, 27, and 52

Government procurement.

Dated: December 24, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

**Interim Rule Adopted as Final With
Changes**

Accordingly, the interim rule amending 48 CFR Parts 5, 14, 15, 17, 25, 27, and 52, which was published at 59 FR 544 on January 5, 1994, and amended by the interim rule published at 61 FR 31646 on June 20, 1996, is adopted as final with changes as set forth below:

1. The authority citation for 48 CFR Parts 5, 14, 15, 17, 25, 27, 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 25—FOREIGN ACQUISITION

25.408 [Amended]

2. Section 25.408 is amended in paragraph (a)(3) by removing the word "Provision" in the title of the provision and inserting "Certificate".

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

3. Section 52.212-3 is amended by revising the date of the provision and paragraphs (g)(1)(i), (g)(1)(iii), and (g)(2) to read as follows:

**52.212-3 Offeror Representations and
Certifications—Commercial Items.**

* * * * *

**OFFEROR REPRESENTATIONS AND
CERTIFICATIONS—COMMERCIAL ITEMS
(JAN 1997)**

* * * * *

(g)(1) * * *

(i) The offeror certifies that each end product being offered, except those listed in paragraph (g)(1)(ii) of this provision, is a domestic end product (as defined in the clause entitled "Buy American Act—North American Free Trade Agreement

Implementation Act—Balance of Payments Program,” and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

* * * * *

(iii) Offers will be evaluated by giving certain preferences to domestic end products or NAFTA country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (g)(1)(ii) of this provision, offerors must identify and certify below those excluded end products that are NAFTA country end products. Products that are not identified and certified below will not be deemed NAFTA country end products. The offeror certifies that the following supplies qualify as “NAFTA country end products” as that term is defined in the clause entitled “Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program”:

(Insert line item numbers)

* * * * *

(2) *Alternate I.* If Alternate I to the clause at 52.225-21 is included in this solicitation, substitute the following paragraph (g)(1)(iii) for paragraph (g)(1)(iii) of this provision:

(g)(1)(iii) Offers will be evaluated by giving certain preferences to domestic end products or Canadian end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (b) of this provision, offerors must identify and certify below those excluded end products that are Canadian end products. Products that are not identified and certified below will not be deemed Canadian end products.

The offeror certifies that the following supplies qualify as “Canadian end products” as that term is defined in the clause entitled “Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program”:

(Insert line item numbers)

* * * * *

(End of provision)

4. Section 52.225-20 is amended in the section heading and provision heading by removing the word “Provision” and inserting “Certificate”; revising the date of the provision and its Alternate I to read “(JAN 1997)”; revising paragraph (a) of the provision; revising the first paragraph of paragraph (c) of the provision and of Alternate I; and by inserting the words “offeror certifies that the” after the first word “The” in the first sentence of the second paragraph of paragraph (c) of the provision and of Alternate I to read as follows:

52.225-20 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate.

* * * * *

BUY AMERICAN ACT—NORTH AMERICAN FREE TRADE AGREEMENT IMPLEMENTATION ACT—BALANCE OF PAYMENTS PROGRAM CERTIFICATE

(JAN 1997)

(a) The offeror certifies that each end product being offered, except those listed in paragraph (b) of this provision, is a domestic end product (as defined in the clause entitled “Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program”) and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

* * * * *

(c) Offers will be evaluated by giving certain preferences to domestic end products or NAFTA country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (b) of this provision, offerors must identify and certify below those excluded end products that are NAFTA country end products. Products that are not identified and certified below will not be deemed NAFTA country end products.

* * * * *

Alternate I (JAN 1997). * * *

(c) Offers will be evaluated by giving certain preferences to domestic end products or Canadian end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (b) of this provision, offerors must identify and certify below those excluded end products that are Canadian end products. Products that are not identified below will not be deemed Canadian end products.

* * * * *

52.225-21 [Amended]

5. Section 52.225-21 is amended by revising the date of the clause to read “(JAN 1997)” and by removing the word “specifying” in the fourth sentence of paragraph (c) of the clause and of Alternate I and inserting “certifying”.

[FR Doc. 96-33210 Filed 12-31-96; 8:45 am]

BILLING CODE 6820-EP-P

48 CFR Parts 5, 6, 11, 12 and 13

[FAC 90-45; FAR Case 96-307; Item VII]

RIN 9000-AH20

Federal Acquisition Regulation; Application of Special Simplified Procedures to Certain 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 have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to implement Section 4202 of the Clinger-Cohen Act of 1996 (Public Law 104-106). Section 4202 requires revisions to the FAR to incorporate special simplified procedures for the acquisition of certain commercial items with a value greater than the simplified acquisition threshold (\$100,000) but not greater than \$5 million. The purpose of this revision is to vest contracting officers with additional procedural discretion, so that commercial item acquisitions in this dollar range may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both the Government and industry. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Victoria Moss at (202) 501-4764 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-45, FAR case 96-307.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the Federal Acquisition Regulation to implement section 4202 of the Clinger-Cohen Act of 1996 (Public Law 104-106). Section 4202 authorizes special simplified procedures for acquisitions of commercial items at amounts greater than the simplified acquisition threshold (\$100,000) but not greater than \$5 million, when the contracting officer reasonably expects, based on the nature of the commercial items sought and on market research, that offers will include only commercial items. The authority to use the special simplified procedures under this section expires on January 1, 2000. Section 4202 also amends 41 U.S.C. 416 to permit issuance of solicitations for commercial items in fewer than 15 days after the synopsis notice is published.

A proposed rule was published in the Federal Register on September 6, 1996 (61 FR 47384). Twenty-four sources

submitted comments in response to the proposed rule. All comments were considered in the development of the final rule. Among other changes adopted in this final rule, the proposed language at 13.604-2, Alternative negotiation techniques, which introduced into the FAR an auctioning-like concept, has been removed from this final rule for further study and analysis under new FAR case 96-024.

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 it is expected to increase the number of Federal contracts awarded using procedures that are familiar to small entities. A Final Regulatory Flexibility Analysis (FRFA) has been prepared and will be provided to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat. The analysis is summarized as follows: One public comment was received in response to the initial regulatory flexibility analysis. The respondent stated that the analysis did not indicate that regulatory alternatives were considered in the process of drafting the proposed rule, and that there was no estimated measure or quantification of small business impact or number and dollar value of Federal contracts likely to be affected. The final regulatory flexibility analysis contains a more complete description of the alternatives that were considered for the purpose of minimizing any adverse impact on small businesses and reflects data extrapolated from the Federal Procurement Data System which show that in fiscal year 1995, 73 percent of all purchases made under the procedures used in Part 13 were awarded to small businesses. As stated in the initial regulatory flexibility analysis, the Federal Procurement Data System is just beginning to track acquisitions of commercial items. Until more complete data are collected, it will be difficult to precisely estimate the number of small entities to which the rule will apply. The rule imposes no new reporting, recordkeeping, or other compliance requirements. We considered whether flexible compliance with this rule would be appropriate. Since the rule is expected to have a beneficial impact on industry, it was determined that flexible compliance would not be appropriate in this case. Instead, the rule is intended to apply to both small and large entities equally so that both may benefit. However, in developing the final rule,

alternatives were considered, and revisions were made, to minimize possible economic impact on small entities. The language on alternative negotiation techniques has been removed from the rule pending further study and analysis. At the present time, this rule does not extend authority to use the special test procedures for construction. The proposed language included on construction, in Part 13, was not intended to address the applicability of the test procedures to construction and the language in the final rule has been amended to eliminate this ambiguity. The broader issue of the applicability of the FAR's commercial item policies to construction contracting is under review.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which 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 5, 6, 11, 12 and 13

Government procurement.

Dated: December 24, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 5, 6, 11, 12 and 13 are amended as set forth below:

1. The authority citation for 48 CFR Parts 5, 6, 11, 12 and 13 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. 2301 to 2331; and 42 U.S.C. 2473(c).

PART 5—PUBLICIZING CONTRACT ACTIONS

2. Section 5.203 is amended by revising paragraph (a) and adding paragraph (h) to read as follows:

5.203 Publicizing and response time.

(a) A notice of contract action shall be published in the *Commerce Business Daily* at least 15 days before issuance of a solicitation except when that, for acquisitions of commercial items, the contracting officer may—

- (1) Establish a shorter period for issuance of the solicitation; or
- (2) Use the combined CBD synopsis/solicitation procedure (see 12.603).

(h) In addition to other requirements set forth in this section, for acquisitions

subject to NAFTA or the Trade Agreements Act (see subpart 25.4), the period of time between publication of the synopsis notice and receipt of offers shall be no less than 40 days. However, if the acquisition falls within a general category identified in an annual forecast, the availability of which is published in the CBD, the contracting officer may reduce this time period to as few as 10 days.

3. Section 5.207 is amended by revising paragraph (e)(3) to read as follows:

5.207 Preparation and transmittal of synopses.

* * * * *

(e) * * *

(3) Except for contract actions equal to or less than the simplified acquisition threshold or acquisitions of commercial items, the synopsis shall refer to Numbered Note 22 for noncompetitive contract actions. If it is anticipated that award will be made via a delivery order to an existing basic ordering agreement, the synopsis shall so state.

* * * * *

PART 6—COMPETITION REQUIREMENTS

4. Section 6.001(a) is revised to read as follows:

6.001 Applicability.

* * * * *

(a) Contracts awarded using the simplified acquisition procedures of part 13 (but see 13.602 for requirements pertaining to sole source acquisitions of commercial items under subpart 13.6);

* * * * *

PART 11—SUBSCRIBING AGENCY NEEDS

5. Section 11.002 is amended by revising paragraph (a)(1)(ii) and adding paragraph (e) to read as follows:

11.002 Policy.

(a) * * *

(1) * * *

(ii) Only include restrictive provisions or conditions to the extent necessary to satisfy the needs of the agency or as authorized by law.

* * * * *

(e) Some or all of the performance levels or performance specifications in a solicitation may be identified as targets rather than as fixed or minimum requirements.

6. Section 11.104 is amended by revising paragraph (a) to read as follows:

11.104 Items peculiar to one manufacturer.

* * * * *

(a) The particular brand-name, product, or feature is essential to the Government's requirements, and market research indicates other companies' similar products, or products lacking the particular feature, do not meet, or cannot be modified to meet, the agency's minimum needs; and

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

7. Section 12.202 is amended by revising paragraph (b) to read as follows:

12.202 Market research and description of agency need.

* * * * *

(b) The description of agency need must contain sufficient detail for potential offerors of commercial items to know which commercial products or services may be suitable. Generally, for acquisitions in excess of the simplified acquisition threshold, an agency's statement of need for a commercial item will describe the type of product or service to be acquired and explain how the agency intends to use the product or service in terms of function to be performed, performance requirement or essential physical characteristics. Describing the agency's needs in these terms allows offerors to propose methods that will best meet the needs of the Government.

* * * * *

8. Section 12.203 is amended by adding a sentence to the end of the paragraph to read as follows:

12.203 Procedures for solicitation, evaluation, and award.

* * * For acquisitions of commercial items exceeding the simplified acquisition threshold but not exceeding \$5,000,000, including options, contracting activities shall employ the simplified procedures authorized by subpart 13.6 to the maximum extent practicable.

9. Section 12.204 is revised to read as follows:

12.204 Solicitation/contract form.

(a) The contracting officer shall use the Standard Form 1449, Solicitation/Contract/Order for Commercial Items, if (1) the acquisition is expected to exceed the simplified acquisition threshold; (2) a paper solicitation or contract is being issued; and (3) procedures at 12.603 are not being used. Use of the SF 1449 is nonmandatory but encouraged for commercial acquisitions not exceeding the simplified acquisition threshold.

(b) Consistent with the requirements at 5.203 (a) and (h), the contracting

officer may allow fewer than 15 days before issuance of the solicitation.

10. Section 12.205 is amended by revising paragraph (c) to read as follows:

12.205 Offers.

* * * * *

(c) Consistent with the requirements at 5.203 (b) and (h), the contracting officer may allow fewer than 30 days response time for receipt of offers for commercial items.

11. Section 12.213 is revised to read as follows:

12.213 Other commercial practices.

It is a common practice in the commercial marketplace for both the buyer and seller to propose terms and conditions written from their particular perspectives. The terms and conditions prescribed in this part seek to balance the interests of both the buyer and seller. These terms and conditions are generally appropriate for use in a wide range of acquisitions. However, market research may indicate other commercial practices that are appropriate for the acquisition of the particular item. These practices should be considered for incorporation into the solicitation and contract if the contracting officer determines them appropriate in concluding a business arrangement satisfactory to both parties and not otherwise precluded by law or Executive order.

12. Section 12.302(a) is revised to read as follows:

12.302 Tailoring of provisions and clauses for the acquisition of commercial items.

(a) *General.* The provisions and clauses established in this subpart are intended to address, to the maximum extent practicable, commercial market practices for a wide range of potential Government acquisitions of commercial items. However, because of the broad range of commercial items acquired by the Government, variations in commercial practices, and the relative volume of the Government's acquisitions in the specific market, contracting officers may, within the limitations of this subpart, and after conducting appropriate market research, tailor the provision at 52.212—1, Instructions to Offerors-Commercial Items, and the clause at 52.212—4, Contract Terms and Conditions-Commercial Items, to adapt to the market conditions for each acquisition.

* * * * *

13. Section 12.602 is amended by revising paragraph (a) to read as follows:

12.602 Streamlined evaluation of offers.

(a) When evaluation factors are used, the contracting officer may insert a

provision substantially the same as the provision at 52.212—2, Evaluation—Commercial Items, in solicitations for commercial items or comply with the procedures in 13.106—2 if the acquisition is being made using simplified acquisition procedures. When the provision at 52.212—2 is used, paragraph (a) of the provision shall be tailored to the specific acquisition to describe the evaluation factors and relative importance of those factors. However, when using the simplified acquisition procedures in part 13, contracting officers are not required to describe the relative importance of evaluation factors.

* * * * *

14. Section 12.603 is amended by revising paragraph (c)(3)(ii) to read as follows:

12.603 Streamlined solicitation for commercial items.

* * * * *

(c) * * *

(3) * * *

(ii) When using the combined CBD synopsis/solicitation, contracting officers shall establish a response time in accordance with 5.203(b) (but see 5.203(h)).

* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

15. Section 13.000 is revised to read as follows:

13.000 Scope of part.

This part prescribes policies and procedures for the acquisition of supplies and services, including construction, research and development, and commercial items, the aggregate amount of which does not exceed the simplified acquisition threshold (see 2.101). Section 13.601 provides special authority for acquisitions of commercial items exceeding the simplified acquisition threshold but not greater than \$5,000,000, including options. See part 12, Acquisition of Commercial Items, for policies applicable to the acquisition of commercial items exceeding the micro-purchase threshold. See 36.602—5 for simplified procedures to be used when acquiring architect-engineering services.

16. Section 13.103 is amended by revising paragraphs (b), (c) and (j) to read as follows:

13.103 Policy.

* * * * *

(b) The contracting office shall not use simplified acquisition procedures for contract actions exceeding \$50,000 after December 31, 1999, unless the office's

cognizant agency has certified full FACNET capability in accordance with 4.505-2. This limitation does not apply to acquisitions of commercial items conducted using subpart 13.6.

(c) Simplified acquisition procedures shall not be used in the acquisition of supplies and services initially estimated to exceed the simplified acquisition threshold (or \$5,000,000, including options, for acquisitions of commercial items using subpart 13.6), even though resulting awards do not exceed the applicable threshold. Requirements aggregating more than the simplified acquisition threshold (or \$5,000,000, including options, if using subpart 13.6) or the micro-purchase threshold shall not be broken down into several purchases that are less than the applicable threshold merely to permit use of simplified acquisition procedures, or to avoid any requirements that apply to purchases exceeding the micro-purchase threshold.

* * * * *

(j) Contracting officers are encouraged to use innovative approaches in awarding contracts using the simplified acquisition procedures under the authority of this part. For acquisitions of other than commercial items not expected to exceed the simplified acquisition threshold, contracting officers may use any appropriate combination of the procedures in part 13, 14, 15, 35, or 36, including the use of Standard Form (SF) 1442, Solicitation, Offer and Award (Construction, Alteration, or Repair), for construction contracts (see 36.701(b)). For acquisitions of commercial items not expected to exceed \$5 million, contracting officers may use any appropriate combination of the procedures in parts 12, 13, 14 and 15 (see 13.103(c)).

* * * * *

17. Section 13.104 is amended by revising paragraph (b) to read as follows:

13.104 Procedures.

* * * * *

(b) Related items (such as small hardware items or spare parts for vehicles) may be included in one solicitation and the award made on an "all-or none" or "multiple award" basis if suppliers are so advised when quotations or offers are requested.

* * * * *

18. Section 13.106-2 is amended by revising paragraphs (a)(1) through (a)(3), (a)(4) introductory text, (a)(5), (a)(6), (b)(1), (b)(3), (c)(1), (c)(2), (d)(3) and (d)(4)(ii); redesignating (a)(6) through (8) as (a)(7) through (9), respectively; and

by adding new (a)(6), and (a)(10) to read as follows:

13.106-2 Purchases exceeding the micro-purchase threshold.

(a) *Soliciting competition.* (1) Contracting officers shall promote competition to the maximum extent practicable to obtain supplies and services from the source whose offer is the most advantageous to the Government, based, as appropriate, on either price alone or price and other factors (e.g., past performance and quality) including the administrative cost of the purchase. Contracting officers are encouraged to use best value. Solicitations shall notify suppliers of the basis upon which award is to be made.

(2) For acquisitions not exceeding the simplified acquisition threshold where FACNET is not available, or an exemption set forth in 4.506 applies, quotations may be solicited through other appropriate means (e.g., orally, or in writing). The contracting officer shall comply with the requirements of 5.101 when not soliciting via FACNET. When a synopsis is required, sufficient information to permit suppliers to develop quotations or offers may be incorporated into a combined synopsis/solicitation. In such cases, the contracting officer is not required to issue a separate solicitation. For commercial item acquisitions, also see 12.603.

(3) For acquisitions not exceeding \$25,000, requests for quotations should be solicited orally to the maximum extent practicable when FACNET is not available or a written determination has been made that it is not practicable or cost-effective to purchase via FACNET. Paper solicitations for contract actions not expected to exceed \$25,000 should only be issued only when obtaining electronic or oral quotations is not considered economical or practicable. Written solicitations shall be issued for construction contracts over \$2,000.

(4) If a synopsis is not required (e.g., the acquisition does not exceed \$25,000 or an exemption to the synopsis requirement applies) and FACNET is not being used, solicitation of at least three sources generally may be considered to promote competition to the maximum extent practicable. In such circumstances, maximum practicable competition ordinarily can be obtained without soliciting quotations or offers from sources outside the local trade area. If practicable, two sources not included in the previous solicitation should be requested to furnish quotations or offers. The following factors influence the

number of quotations or offers required in connection with any particular purchase:

* * * * *

(5) For purchases not exceeding the simplified acquisition threshold, Contracting officers may solicit from one source if the contracting officer determines that the circumstances of the contract action deem only one source reasonably available.

(6) For sole source acquisitions of commercial items in excess of the simplified acquisition threshold conducted pursuant to subpart 13.6, the requirements at 13.602(a) apply.

(7) Contracting officers shall not limit competition to suppliers of well-known and widely distributed makes or brands (see 11.104), or solicit quotations or offers on a personal preference basis.

* * * * *

(10) Solicitations are not required to state the relative importance assigned to each evaluation factor and subfactor, nor are they required to include subfactors.

(b) *Evaluation of quotations or offers.*

(1) When evaluating quotations or offers, the evaluation must be made on the basis established in the solicitation. All quotations or offers must be considered. However, the contracting officer has broad discretion in fashioning suitable evaluation procedures. The procedures prescribed in parts 14 and 15 are not mandatory. At the contracting officer's discretion, one or more, but not necessarily all, of the evaluation procedures in part 14 or 15 may be used. Formal evaluation plans, establishment of a competitive range, conduct of discussions, and scoring of quotes or offers are not required. Contracting offices may conduct comparative evaluations of offers. Evaluation of other factors, such as past performance, does not require the creation or existence of a formal data base, but may be based on such information as the contracting officer's knowledge of and previous experience with the item or service being purchased, customer surveys, or other reasonable basis.

* * * * *

(3) Contracting officers shall evaluate quotations or offers inclusive of transportation charges from the shipping point of the supplier to the delivery destination.

* * * * *

(c) *Award.* (1) Occasionally an item can be obtained only from a supplier that quotes a minimum order price or quantity that either unreasonably exceeds stated quantity requirements or results in an unreasonable price for the

quantities required. In these instances, the contracting officer should inform the requiring activity of all facts regarding the quotation or offer and ask it to confirm or alter its requirement. The file shall be documented to support the final action taken.

(2) For acquisitions not exceeding the simplified acquisition threshold, except for awards conducted through FACNET, notification to unsuccessful suppliers shall be given only if requested.

* * * * *

(d) * * *

(3) If only one source is solicited and the acquisition does not exceed the simplified acquisition threshold, an additional notation shall be made to explain the absence of competition, except for acquisition of utility services available only from one source.

(4) * * *

(ii) *Written solicitations (see 2.101).*

For acquisitions not exceeding the simplified acquisition threshold, written records of solicitations/offers may be limited to notes or abstracts to show prices, delivery, references to printed price lists used, the supplier or suppliers contacted, and other pertinent data.

* * * * *

19. Section 13.107 is amended by revising paragraph (a) to read as follows:

13.107 Solicitation forms.

(a) For use of the SF 1449, Solicitation/Contract/Order for Commercial Items, see 12.204.

* * * * *

20. Section 13.202 is amended by revising paragraph (b)(2) to read as follows:

13.202 Establishment of blanket purchase agreements (BPAs).

* * * * *

(b) * * *

(2) Consider suppliers whose past performance has shown them to be dependable, and who offer quality supplies or services at consistently lower prices and who have provided numerous purchases at or below the simplified acquisition threshold.

* * * * *

21. Section 13.204 is amended by revising paragraphs (a) and (b) to read as follows:

13.204 Purchases under blanket purchase agreements.

(a) The use of a BPA does not authorize purchases that are not otherwise authorized by law or regulation. For example, the BPA, being a method of simplifying the making of individual purchases, shall not be used to avoid the simplified acquisition

threshold, or \$5,000,000 for acquisitions of commercial items conducted under subpart 13.6.

(b) Unless otherwise specified in agency regulations, individual purchases under BPAs, except those under BPAs established in accordance with 13.202(c)(3), shall not exceed the simplified acquisition threshold, or \$5,000,000, for acquisitions of commercial items conducted under subpart 13.6.

* * * * *

22. Subpart 13.6, consisting of sections 13.601 and 13.602, is added to read as follows:

Subpart 13.6-Test Program for Certain Commercial Items

Sec.

13.601 General.

13.602 Special documentation requirements.

13.601 General.

(a) This subpart authorizes, as a test program, use of simplified procedures for the acquisition of supplies and services in amounts greater than the simplified acquisition threshold but not exceeding \$5,000,000, including options, if the contracting officer reasonably expects, based on the nature of the supplies or services sought, and on market research, that offers will include only commercial items. Under this test program, contracting officers may use any simplified acquisition procedure in this part, subject to any specific dollar limitation applicable to the particular procedure. The purpose of this test program is to vest contracting officers with additional procedural discretion and flexibility, so that commercial item acquisitions in this dollar range may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both the Government and industry (10 U.S.C. 2304(g) and 2305 and 41 U.S.C. 253(g) and 253a and 253b).

(b) For the period of this test, contracting activities shall employ the simplified procedures authorized by the test to the maximum extent practicable.

(c) When acquiring commercial items using the procedures in this part, the requirements of part 12 apply subject to the order of precedence provided at 12.102(c). This includes use of the provisions and clauses at subpart 12.3.

(d) The authority to issue solicitations under this subpart shall expire on January 1, 2000. Contracts may be awarded after the expiration of this authority for solicitations issued before the expiration of the authority.

13.602 Special documentation requirements.

(a) *Sole source acquisitions.*

Acquisitions conducted under simplified acquisition procedures are exempt from the requirements in part 6. However, contracting officers shall not conduct sole source acquisitions, as defined in 6.003, under this subpart unless the need to do so is justified in writing and approved at the levels specified in paragraphs (a)(1) and (a)(2) of this section. Contracting officers shall prepare sole source justifications using the format at 6.303-2, modified to reflect an acquisition under the authority of the test program for commercial items (section 4202 of the Clinger-Cohen Act). Justifications and approvals are required under this subpart only for sole source acquisitions.

(1) For a proposed contract exceeding \$100,000 but not exceeding \$500,000, the contracting officer's certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief will serve as approval, unless a higher approval level is established in agency procedures.

(2) For a proposed contract exceeding \$500,000, the approval shall be by the competition advocate for the procuring activity, designated pursuant to 6.501; or an official described in 6.304 (a)(3) or (a)(4). This authority is not delegable.

(b) *Contract file documentation.* The contract file shall include—

(1) A brief written description of the procedures used in awarding the contract, including the fact that the test procedures in FAR 13.6 were used;

(2) The number of offers received;

(3) An explanation, tailored to the size and complexity of the acquisition, of the basis for the contract award decision; and

(4) Any justification approved under paragraph (a) of this section.

[FR Doc. 96-33211 Filed 12-31-96; 8:45 am]

BILLING CODE 6820-EP-P

48 CFR Part 9

[FAC 90-45; FAR Case 96-320; Item VIII]

RIN 9000-AH47

Federal Acquisition Regulation; Compliance with Immigration and Nationality Act Provisions

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

ACTION: Interim rule adopted as final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to convert the interim rule published at 61 FR 41472, August 8, 1996, to a final rule without change. The rule amended the Federal Acquisition Regulation (FAR) to implement Executive Order 12989 of February 13, 1996, Economy and Efficiency in Government Procurement Through Compliance With Certain Immigration and Naturalization Act Provisions. 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.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Paul L. Linfield at (202) 501-1757 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 90-45, FAR case 96-320.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule implements Executive Order 12989 of February 13, 1996, which provides that a contractor may be debarred upon a determination by the Attorney General that the contractor is not in compliance with the employment provisions of the Immigration and Nationality Act. No comments were received in response to the interim rule published on August 8, 1996.

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 only a small number of Federal contractors are likely to be the subject of a determination by the Attorney General that they are not in compliance with the employment provisions of the Immigration and Nationality Act.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not impose recordkeeping or information collection requirements, which 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 9

Government procurement.

Dated: December 24, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final

The interim rule published as Item II of FAC 90-41 (61 FR 41472, August 8, 1996) is converted to a final rule without change. The rule amended FAR 9.406 to specify that a contractor may be debarred upon a determination by the Attorney General that the contractor is not in compliance with the employment provisions of the Immigration and Nationality Act.

The authority citation for 48 CFR Part 9 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).
[FR Doc. 96-33212 Filed 12-31-96; 8:45 am]

BILLING CODE 6820-EP-P

48 CFR Part 25

[FAC 90-45; FAR Case 96-017; Item IX]

RIN 9000-AH48

Federal Acquisition Regulation; Caribbean Basin and Designated Countries

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 to amend the Federal Acquisition Regulation (FAR) to update the lists of Caribbean Basin countries and designated countries included in the definitions at FAR 25.401. 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.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Linfield at (202) 501-1757 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-45, FAR case 96-0174.

SUPPLEMENTARY INFORMATION:

A. Background

As directed by the Office of the United States Trade Representative, this

final rule updates the lists of Caribbean Basin countries and designated countries included in the definitions at FAR 25.401. Haiti, Nicaragua, and Panama are added to the list of Caribbean Basin countries. Ten least-developed countries are added to the list of designated countries pursuant to Section 504(c)(6) of the Trade Act of 1974, as amended. In addition, Singapore is added as a designated country pursuant to Section 1-101 of Executive Order 12260 (61 FR 11233, March 19, 1996). The designation of Singapore does not apply to procurements by the Department of Energy, the Department of Transportation, the Army Corps of Engineers, the Tennessee Valley Authority, or the Bureau of Reclamation.

Sudan is removed from the list of designated countries because the Acting U.S. Trade Representative has withdrawn the designation of Sudan under the Trade Agreements Act of 1979, as amended, in light of the political situation in Sudan and the lack of normal economic relations between the United States and Sudan.

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 cite 5 U.S.C. 601, *et seq.* (FAC 90-45, FAR case 96-017), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which 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 25

Government procurement.

Dated: December 24, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 25 is amended as set forth below:

PART 25—FOREIGN ACQUISITION

1. The authority citation for 48 CFR Part 25 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 25.401 is amended by revising the definitions "Caribbean Basin country" and "Designated country" to read as follows:

25.401 Definitions.

* * * * *

Caribbean Basin country, as used in this subpart, means a country designated by the President as a beneficiary under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701, et seq.) and listed as follows:

Antigua and Barbuda
Aruba
Bahamas
Barbados
Belize
British Virgin Islands
Costa Rica
Dominica
Dominican Republic
El Salvador
Grenada
Guatemala
Guyana
Haiti
Honduras
Jamaica
Montserrat
Netherlands Antilles
Nicaragua
Panama
St. Kitts and Nevis
St. Lucia
St. Vincent and the Grenadines
Trinidad and Tobago

* * * * *

Designated country, as used in this subpart, means a country or instrumentality designated under the Trade Agreements Act of 1979 and listed as follows:

Aruba
Austria
Bangladesh
Belgium
Benin
Bhutan
Botswana
Burkina Faso
Burundi
Canada
Cape Verde
Central African Republic
Chad
Comoros
Denmark
Djibouti
Equatorial Guinea
Finland
France
Gambia
Germany
Greece
Guinea

Guinea-Bissau
Haiti
Ireland
Israel
Italy
Japan
Kiribati
Lesotho
Liechtenstein
Luxembourg
Malawi
Maldives
Mali
Mozambique
Nepal
Netherlands
Niger
Norway
Portugal
Republic of Korea
Rwanda
Sao Tome and Principe
Sierra Leone
Singapore
Somalia
Spain
Sweden
Switzerland
Tanzania U.R.
Togo
Tuvalu
Uganda
United Kingdom
Vanuatu
Western Samoa
Yemen

[FR Doc. 96-33213 Filed 12-31-96; 8:45 am]

BILLING CODE 6820-EP-P

48 CFR Part 25

[FAC 90-45; FAR Case 96-020; Item X]

RIN 9000-AH49

**Federal Acquisition Regulation;
Caribbean Basin Country End
Products—Renewal of Treatment as
Eligible**

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 amended the Federal Acquisition Regulation (FAR) to implement the extension by the U.S. Trade Representative of the date of eligibility under the Trade Agreements Act for products of Caribbean Basin countries. 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.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Paul L. Linfield at (202) 501-1757 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 90-45, FAR case 96-020.

SUPPLEMENTARY INFORMATION:

A. Background

FAR 25.404(b) provides that products of Caribbean Basin countries which are eligible for duty-free treatment under the Caribbean Basin Economic Recovery Act shall be treated as eligible products under the Trade Agreements Act. This final rule extends the eligibility date from September 30, 1996, to September 30, 1997, except that for products of Panama, the date is extended through September 30, 1998, in accordance with the notice published by the U.S. Trade Representative on September 30, 1996 (61 FR 51134).

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 cite 5 U.S.C. 601, et seq. (FAC 90-45, FAR case 96-020), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which 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 25

Government procurement.

Dated: December 24, 1996.

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

Therefore, 48 CFR Part 25 is amended as set forth below:

PART 25—FOREIGN ACQUISITION

1. The authority citation for 48 CFR Part 25 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 25.402(b) is revised to read as follows:

25.402 Policy.

* * * * *

(b) The U.S. Trade Representative has determined that in order to promote further economic recovery of the Caribbean Basin countries (as defined in 25.401), products originating in those countries which are eligible for duty-free treatment under the Caribbean Basin Economic Recovery Act shall be treated as eligible products for the purposes of this subpart. Except for products of Panama, this determination is effective until September 30, 1997. For products of Panama, this determination is effective until September 30, 1998. These dates may be extended by the U.S. Trade Representative by means of a notice in the Federal Register.

* * * * *

[FR Doc. 96-33214 Filed 12-31-96; 8:45 am]

BILLING CODE 6820-EP-P

48 CFR Part 31

[FAC 90-45; FAR Case 96-325; Item XI]

RIN 9000-AH50

Federal Acquisition Regulation; Compensation of Certain Contractor Personnel

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

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 809 of the Fiscal Year 1997 National Defense Authorization Act (Pub. L. 104-201) by placing a Governmentwide ceiling on allowable compensation costs for contractor personnel in senior management positions under contracts that are awarded during fiscal year 1997. 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.

DATES: *Effective Date:* January 1, 1997.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before March 3, 1997 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR

Secretariat (VRS), 18th & F Streets, NW, Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405. Please cite FAC 90-45, FAR case 96-325 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph DeStefano at (202) 501-1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-45, FAR case 96-325.

SUPPLEMENTARY INFORMATION:**A. Background**

Section 809 of the Fiscal Year 1997 National Defense Authorization Act (Pub. L. 104-201) limits, during fiscal year 1997, allowable compensation costs to \$250,000 per year for contractor personnel in senior management positions. Section 809 defines "compensation" as the total amount of wages and elective deferrals for the year concerned, as these terms are defined in Sections 3401(a) and 402(g)(3), respectively, of the Internal Revenue Code of 1986. Section 809 also limits the application of the compensation ceiling to an "officer" of a company "who is determined to be in a senior management position as established by regulation." The interim rule defines an "officer in a senior management position" as the contractor's Chief Executive Officer (CEO), or any individual acting in a similar capacity, and the contractor's four most highly compensated officers in senior management positions, other than the CEO. This definition is consistent with the standard employed by the United States Securities and Exchange Commission (SEC) in its executive compensation disclosure rules. The SEC requires that publicly traded companies disclose to their stockholders the compensation of the CEO (or any individual acting in a similar capacity) as well as that of their four most highly paid senior executive officers, other than the CEO, who earn more than \$100,000 per year in salary and bonus.

The interim FAR rule adds a new requirement at 31.205-6(p) to implement the statutory ceiling on allowable compensation costs for officers in senior management positions. This restriction applies to contracts awarded during fiscal year 1997, for compensation costs of certain contractor personnel that are incurred during fiscal year 1997, and that are in excess of \$250,000 per year. This restriction also applies to the five most highly compensated individuals in senior management positions at intermediate

home offices and/or segments if a contractor is organizationally subdivided into such units.

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. In addition, this rule is limited to businesses that incur costs prior to October 1, 1997, under contracts awarded during fiscal year 1997, for compensation in excess of \$250,000 per year for an officer in a senior management position. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subpart also will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAR Case 96-325), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which 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 to ensure that contracting activities become aware of the statutory ceiling on allowable compensation costs for certain contractor personnel when forward pricing contracts to be awarded during fiscal year 1997. This rule implements Section 809 of the Fiscal Year 1997 National Defense Authorization Act (Pub. L. 104-201) and applies to Governmentwide contracts awarded during fiscal year 1997. 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: December 24, 1996.

Edward C. Loeb,

Director, Office of Federal Acquisition Policy.

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 by adding paragraph (p) to read as follows:

31.205-6 Compensation for personal services.

* * * * *

(p) *Limitation on allowability of compensation for certain contractor personnel.* (1) For contracts awarded during fiscal year 1997, costs incurred from October 1, 1996, through September 30, 1997, for compensation of an officer in a senior management position in excess of \$250,000 per year are unallowable (Section 809 of Public Law 104-201).

(2) As used in this paragraph:

(i) *Compensation* means—

(A) The total amount of taxable wages paid to the employee for the year concerned; plus

(B) The total amount of elective deferred compensation earned by the employee in the year concerned.

(ii) *Officer in a senior management position* means—

(A) The contractor's Chief Executive Officer (CEO) or any individual acting in a similar capacity;

(B) The contractor's four most highly compensated officers in senior management positions, other than the CEO; and

(C) If the contractor is organizationally subdivided into intermediate home offices and/or segments, the five most highly compensated individuals in senior management positions at each such intermediate home office and/or segment.

[FR Doc. 96-33215 Filed 12-31-96; 8:45 am]

BILLING CODE 6820-EP-P

48 CFR Part 33

[FAC 90-45; FAR Case 95-309; Item XII]

RIN 9000-AH10

Federal Acquisition Regulation; Agency Procurement Protests

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 to amend the Federal Acquisition Regulation (FAR) to provide for informal, procedurally simple, and inexpensive resolution of protests. This final rule implements Executive Order 12979, Agency Procurement Protests. 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.

EFFECTIVE DATE: March 3, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501-3856 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 90-45, FAR case 95-309.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule revises the agency procurement protest procedures at FAR 33.103 to implement Executive Order 12979 of October 25, 1995, Agency Procurement Protests (60 FR 55171, October 27, 1995). An interim rule was published in the Federal Register at 61 FR 39219, July 26, 1996. Six sources submitted public comments. All comments, including comments from GAO, were considered in developing the final rule.

B. Regulatory Flexibility Act

A Final Regulatory Flexibility Analysis (FRFA) has been performed. A copy of the FRFA may be obtained from the FAR Secretariat. The analysis is summarized as follows:

This rule implements Executive Order 12979, Agency Procurement Protests, which requires the heads of the executive departments and agencies engaged in the procurement of supplies and services to prescribe administrative procedures for the resolution of procurement protests as an alternative to protests in a forum outside the procuring agencies. There were no public

comments received in response to the Initial Regulatory Flexibility Analysis. Several changes were made as a result of public comments in response to the interim rule. The time to file a protest was reduced from 14 to 10 days after the basis of protest is known, or should be known, to conform with revisions to General Accounting Office protest procedures. The rule was revised to clarify that agencies may designate an official, other than the contracting officer, to receive protests. Agencies may also designate whether a review of a protest by an official other than the contracting officer is instead of, or in addition to, review of the protest by the contracting officer. The rule was revised to permit agencies to exchange information with a protester while considering the protest.

The rule will apply to all actual or potential bidders or offerors, large and small, whose direct economic interests would be affected by the award or failure to award a Government contract. The number of small entities to which the rule will apply is estimated to be between 35,000 and 45,000. This rule does not impose any reporting, recordkeeping, or other compliance requirements.

This rule is expected to have a beneficial impact on small entities by prescribing informal, procedurally simple, and inexpensive means to resolve protests. The rule encourages the use of alternative dispute resolution techniques, third party neutrals, and another agency's personnel as alternative protest resolution methods.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which 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 33

Government procurement.

Dated: December 24, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 33 is amended as set forth below:

PART 33—PROTESTS, DISPUTES, AND APPEALS

1. The authority citation for 48 CFR Part 33 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 33.103 is amended—

a. in paragraph (c) by removing “and permitted by law”;

b. by revising paragraphs (d)(2)(i) and (d)(4);

c. in paragraph (e) by revising “14 days” to read “10 days”;

d. in the first sentence of paragraphs (f)(1) and (f)(2) by inserting the word "agency" after the word "pending";

e. by adding paragraph (f)(4); and

f. by revising paragraphs (g) and (h) to read as follows:

33.103 Protests to the agency.

* * * * *

(d) * * *

(2) Protests shall include the following information:

(i) Name, address, and fax and telephone numbers of the protester.

* * * * *

(4) In accordance with agency procedures, interested parties may request an independent review of their protest at a level above the contracting officer; solicitations should advise potential bidders and offerors that this review is available. Agency procedures and/or solicitations shall notify potential bidders and offerors whether this independent review is available as an alternative to consideration by the contracting officer of a protest or is available as an appeal of a contracting officer decision on a protest. Agencies shall designate the official(s) who are to conduct this independent review, but the official(s) need not be within the contracting officer's supervisory chain. When practicable, officials designated to conduct the independent review should not have had previous personal involvement in the procurement. If there is an agency appellate review of the contracting officer's decision on the protest, it will not extend GAO's timeliness requirements. Therefore, any subsequent protest to the GAO must be filed within 10 days of knowledge of initial adverse agency action (4 CFR 21.2(a)(3)).

* * * * *

(f) * * *

(4) Pursuing an agency protest does not extend the time for obtaining a stay at GAO. Agencies may include, as part of the agency protest process, a voluntary suspension period when agencies protests are denied and the protester subsequently files at GAO.

(g) Agencies shall make their best efforts to resolve agency protests within 35 days after the protest is filed. To the extent permitted by law and regulation, the parties may exchange relevant information.

(h) Agency protest decisions shall be well-reasoned, and explain the agency position. The protest decision shall be provided to the protester using a method that provides evidence of receipt.

[FR Doc. 96-33216 Filed 12-31-96; 8:45 am]

[BILLING CODE 6820-EP-P]

48 CFR Parts 1, 5, 14, and 36

[FAC 90-45; FAR Case 96-305; Item XIII]

RIN 9000-AH17

Federal Acquisition Regulation; Two-Phase Design Build Selection Procedures

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 to amend the Federal Acquisition Regulation (FAR) to implement Section 4105 of the Clinger-Cohen Act of 1996 (Public Law 104-106), which authorizes the use of two-phase design-build procedures for construction contracting. 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.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501-3856 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-5, FAR case 96-305.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule with request for public comment was published in the Federal Register at 61 FR 41212, August 7, 1996. Comments were received from 77 respondents. After analysis of the public comments and further consideration of the proposed language, the rule was revised at FAR 36.104, 36.301(b)(2), and 36.303-1 to more closely conform to the provisions of Section 4105 of Public Law 104-106. In addition, examples of phase-two evaluation factors have been added at FAR 36.303-(a).

B. Regulatory Flexibility Act

This final rule 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 rule reduces the cost of proposal preparation for those offerors not selected for Phase Two, when two-phase design-build procedures are used. A Final Regulatory Flexibility Analysis (FRFA) has been prepared and is summarized as follows:

We estimate that approximately 1,465 small businesses responding to two-phase design-build solicitations annually may save proposal costs on an average of eight separate solicitations each. This final rule imposes no new reporting or recordkeeping requirements.

A copy of the FRFA will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the FRFA 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 cite 5 U.S.C. 601, *et seq.* (FAR Case 96-305), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which 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 1, 5, 14, and 36

Government procurement.

Dated: December 24, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 1, 5, 14, and 36 is amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 5, 14, and 36 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 REGULATION SYSTEM

1.106 [Amended]

2. Section 1.106 is amended in the list following the introductory paragraph by removing the FAR segment "36.302" and inserting "36.213-2".

PART 5—PUBLICIZING CONTRACT ACTIONS

3. Section 5.204 is amended by revising the first sentence to read as follows:

5.204 Presolicitation notices.

Contracting officers shall publicize presolicitation notices in the CBD (see 15.404 and 36.213-2). * * *

PART 14—SEALED BIDDING

4. Section 14.202-1 is amended in paragraph (a) by revising the first parenthetical to read as follows:

14.202-1 Bidding time.

(a) * * * (For construction contracts, see 36.213-3(a)). * * *

5. Section 14.211 is amended by revising the first sentence of paragraph (a) to read as follows:

14.211 Release of acquisition information.

(a) *Before solicitation.* Information concerning proposed acquisitions shall not be released outside the Government before solicitation except for presolicitation notices in accordance with 14.205-4(c) or 36.213-2, or long-range acquisition estimates in accordance with 5.404, or synopses in accordance with 5.201. * * *

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

6. Section 36.102 is amended by adding, in alphabetical order, the definitions "Design", "Design-bid-build", "Design-build", and "Two-phase design-build selection procedures" to read as follows:

36.102 Definitions.

Design, as used in this part, means defining the construction requirement (including the functional relationships and technical systems to be used, such as architectural, environmental, structural, electrical, mechanical, and fire protection), producing the technical specifications and drawings, and preparing the construction cost estimate.

Design-bid-build, as used in this part, means the traditional delivery method where design and construction are sequential and contracted for separately with two contracts and two contractors.

Design-build, as used in this part, means combining design and construction in a single contract with one contractor.

Two-phase design-build selection procedures, as used in this part, is a selection method in which a limited number of offerors (normally five or fewer) is selected during Phase One to submit detailed proposals for Phase Two (see subpart 36.3).

7. Section 36.104 is added to read as follows:

36.104 Policy.

Unless the traditional acquisition approach of design-bid-build established under the Brooks Architect-Engineers Act (41 U.S.C. 541, *et seq.*) or another acquisition procedure authorized by law is used, the contracting officer shall use the two-phase selection procedures authorized by 10 U.S.C. 2305a or 41 U.S.C. 253m when entering into a contract for the design and construction of a public building, facility, or work, if the contracting officer makes a determination that the procedures are appropriate for use (see subpart 36.3). Other acquisition procedures authorized by law include the procedures established in this part and other parts of this chapter and, for DoD, the design-build process described in 10 U.S.C. 2862.

Subpart 36.3 [Redesignated as 36.213 and Amended]**36.301-36.304 [Redesignated as 36.213-1-36.213-4]**

8. Subpart 36.3 is redesignated as section 36.213 and the heading is revised to read "Special procedures for sealed bidding in construction contracting."; and sections 36.301 through 36.304 are redesignated as 36.213-1 through 36.213-4, respectively.

Subpart 36.4 [Removed]**36.401 [Removed]****36.402 [Redesignated as 36.214]****36.403 [Redesignated as 36.215]**

9. Subpart heading 36.4 and section 36.401 are removed; and sections 36.402 and 36.403 are redesignated as 36.214 and 36.215, respectively, and the section headings revised to read as follows:

36.214 Special procedures for price negotiation in construction contracting.**36.215 Special procedure for cost-reimbursement contracts for construction.**

10. Subpart 36.3, consisting of sections 36.300 through 36.303-2, is added to read as follows:

Subpart 36.3—Two-Phase Design-Build Selection Procedures**Sec.**

36.300 Scope of subpart.

36.301 Use of two-phase design-build selection procedures.

36.302 Scope of work.

36.303 Procedures.

36.303-1 Phase One.

36.303-2 Phase Two.

Subpart 36.3—Two-Phase Design-Build Selection Procedures**36.300 Scope of subpart.**

This subpart prescribes policies and procedures for the use of the two-phase design-build selection procedures authorized by 10 U.S.C. 2305a and 41 U.S.C. 253m.

36.301 Use of two-phase design-build selection procedures.

(a) During formal or informal acquisition planning (see part 7), if considering the use of two-phase design-build selection procedures, the contracting officer shall conduct the evaluation in paragraph (b) of this section.

(b) The two-phase design-build selection procedures shall be used when the contracting officer determines that this method is appropriate, based on the following:

(1) Three or more offers are anticipated.

(2) Design work must be performed by offerors before developing price or cost proposals, and offerors will incur a substantial amount of expense in preparing offers.

(3) The following criteria have been considered:

(i) The extent to which the project requirements have been adequately defined.

(ii) The time constraints for delivery of the project.

(iii) The capability and experience of potential contractors.

(iv) The suitability of the project for use of the two-phase selection method.

(v) The capability of the agency to manage the two-phase selection process.

(vi) Other criteria established by the head of the contracting activity.

36.302 Scope of work.

The agency shall develop, either in-house or by contract, a scope of work that defines the project and states the Government's requirements. The scope of work may include criteria and preliminary design, budget parameters, and schedule or delivery requirements. If the agency contracts for development of the scope of work, the procedures in subpart 36.6 shall be used.

36.303 Procedures.

One solicitation may be issued covering both phases, or two solicitations may be issued in sequence. Proposals will be evaluated in Phase One to determine which offerors will submit proposals for Phase Two. One contract will be awarded using competitive negotiation.

36.303-1 Phase One.

(a) Phase One of the solicitation(s) shall include—

- (1) The scope of work;
- (2) The phase-one evaluation factors, including—
 - (i) Technical approach (but not detailed design or technical information);
 - (ii) Technical qualifications, such as—
 - (A) Specialized experience and technical competence;
 - (B) Capability to perform;
 - (C) Past performance of the offeror's team (including the architect-engineer and construction members); and
 - (iii) Other appropriate factors (excluding cost or price related factors, which are not permitted in Phase One);
- (3) Phase-two evaluation factors (see 36.303-2); and
- (4) A statement of the maximum number of offerors that will be selected to submit phase-two proposals. The maximum number specified shall not exceed five unless the contracting officer determines, for that particular solicitation, that a number greater than five is in the Government's interest and is consistent with the purposes and objectives of two-phase design-build contracting).

(b) After evaluating phase-one proposals, the contracting officer shall select the most highly qualified offerors (not to exceed the maximum number specified in the solicitation in accordance with 36.303-1(a)(4)) and request that only those offerors submit phase-two proposals.

36.303-2 Phase Two.

(a) Phase Two of the solicitation(s) shall be prepared in accordance with part 15, and include phase-two evaluation factors, developed in accordance with 15.605. Examples of potential phase-two technical evaluation factors include design concepts, management approach, key personnel, and proposed technical solutions.

(b) Phase Two of the solicitation(s) shall require submission of technical and price proposals, which shall be evaluated separately, in accordance with part 15.

11. Subpart 36.4 is added and reserved to read as follows:

Subpart 36.4—Commercial Practices [Reserved]

[FR Doc. 96-33217 Filed 12-31-96; 8:45 am]

BILLING CODE 6820-EP

48 CFR Parts 39 and 52

[FAC 90-45; FAR Case 96-607; Item XIV]

RIN 9000-AH51

Federal Acquisition Regulation; Year 2000 Compliance

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 are amending the FAR on an interim basis to increase awareness of Year 2000 procurement issues and to ensure that solicitations and contracts address Year 2000 issues. 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.

DATES: *Effective Date:* January 1, 1997. *Comment Date:* Comments should be submitted to the FAR Secretariat at the address shown below on or before March 3, 1997 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 18th & F Streets, NW, Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405. Please cite FAC 90-45, FAR case 96-607 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill, at (202) 501-3856 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 90-45, FAR case 96-607.

SUPPLEMENTARY INFORMATION:**A. Background**

Many information technology systems will have operational difficulties due to the use of two-digit years in date representations. While commonly thought to be a problem of old legacy systems, it can also be a problem in information technology services and products that are for sale today.

At the recommendation of the Chief Information Officers Council and the interagency working group on the year 2000, the Federal Government intends to only acquire products that will work in the year 2000. This interim rule is intended to assist in the implementation of that intent. It provides a uniform

approach and definition for addressing the year 2000 problem in the many, unique information technology acquisitions that will occur between now and the year 2000.

The rule defines the term "year 2000 compliant." It also requires that agencies assure that when acquiring information technology which will be required to perform date/time processing involving dates subsequent to December 31, 1999, the solicitations and contracts either require year 2000 compliant technology, or require that non-compliant information technology be upgraded to be compliant in a timely manner. The rule also recommends that agency solicitations describe existing information technology that will be used with the information technology to be acquired and identify whether the existing information technology is Year 2000 compliant.

Additional information about the year 2000 problem and the activities of the interagency working group on the year 2000 can be found on the group's home page located at URL <http://www.itpolicy.gsa.gov>.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule primarily pertains to internal Government acquisition planning guidance regarding the acquisition of major systems of information technology. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR part also will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite FAR case 96-607 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this interim rule does not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which 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, the Administrator of General Services (GSA), and the Administrator

36.303-1 Phase One.

(a) Phase One of the solicitation(s) shall include—

- (1) The scope of work;
- (2) The phase-one evaluation factors, including—
 - (i) Technical approach (but not detailed design or technical information);
 - (ii) Technical qualifications, such as—
 - (A) Specialized experience and technical competence;
 - (B) Capability to perform;
 - (C) Past performance of the offeror's team (including the architect-engineer and construction members); and
 - (iii) Other appropriate factors (excluding cost or price related factors, which are not permitted in Phase One);
- (3) Phase-two evaluation factors (see 36.303-2); and
- (4) A statement of the maximum number of offerors that will be selected to submit phase-two proposals. The maximum number specified shall not exceed five unless the contracting officer determines, for that particular solicitation, that a number greater than five is in the Government's interest and is consistent with the purposes and objectives of two-phase design-build contracting).

(b) After evaluating phase-one proposals, the contracting officer shall select the most highly qualified offerors (not to exceed the maximum number specified in the solicitation in accordance with 36.303-1(a)(4)) and request that only those offerors submit phase-two proposals.

36.303-2 Phase Two.

(a) Phase Two of the solicitation(s) shall be prepared in accordance with part 15, and include phase-two evaluation factors, developed in accordance with 15.605. Examples of potential phase-two technical evaluation factors include design concepts, management approach, key personnel, and proposed technical solutions.

(b) Phase Two of the solicitation(s) shall require submission of technical and price proposals, which shall be evaluated separately, in accordance with part 15.

11. Subpart 36.4 is added and reserved to read as follows:

Subpart 36.4—Commercial Practices [Reserved]

[FR Doc. 96-33217 Filed 12-31-96; 8:45 am]

BILLING CODE 6820-EP

48 CFR Parts 39 and 52

[FAC 90-45; FAR Case 96-607; Item XIV]

RIN 9000-AH51

Federal Acquisition Regulation; Year 2000 Compliance

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 are amending the FAR on an interim basis to increase awareness of Year 2000 procurement issues and to ensure that solicitations and contracts address Year 2000 issues. 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.

DATES: *Effective Date:* January 1, 1997. *Comment Date:* Comments should be submitted to the FAR Secretariat at the address shown below on or before March 3, 1997 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 18th & F Streets, NW, Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405. Please cite FAC 90-45, FAR case 96-607 in all correspondence related to this case.

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SUPPLEMENTARY INFORMATION:**A. Background**

Many information technology systems will have operational difficulties due to the use of two-digit years in date representations. While commonly thought to be a problem of old legacy systems, it can also be a problem in information technology services and products that are for sale today.

At the recommendation of the Chief Information Officers Council and the interagency working group on the year 2000, the Federal Government intends to only acquire products that will work in the year 2000. This interim rule is intended to assist in the implementation of that intent. It provides a uniform

approach and definition for addressing the year 2000 problem in the many, unique information technology acquisitions that will occur between now and the year 2000.

The rule defines the term "year 2000 compliant." It also requires that agencies assure that when acquiring information technology which will be required to perform date/time processing involving dates subsequent to December 31, 1999, the solicitations and contracts either require year 2000 compliant technology, or require that non-compliant information technology be upgraded to be compliant in a timely manner. The rule also recommends that agency solicitations describe existing information technology that will be used with the information technology to be acquired and identify whether the existing information technology is Year 2000 compliant.

Additional information about the year 2000 problem and the activities of the interagency working group on the year 2000 can be found on the group's home page located at URL <http://www.itpolicy.gsa.gov>.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule primarily pertains to internal Government acquisition planning guidance regarding the acquisition of major systems of information technology. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR part also will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite FAR case 96-607 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this interim rule does not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which 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, the Administrator of General Services (GSA), and the Administrator

of the National Aeronautics and Space Administration that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to ensure that Federal agencies do not procure non-compliant information technology products that would otherwise require premature replacement or costly repairs to make them Year 2000 compliant before December 31, 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 39 and 52

Government procurement.

Dated: December 24, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 39 and 52 are amended as set forth below:

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

1. The authority citation for 48 CFR Parts 39 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).

2. Section 39.002 is amended by adding, in alphabetical order, the definition "Year 2000 compliant" to read as follows:

39.002 Definitions.

* * * * *

Year 2000 compliant means information technology that accurately processes date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations. Furthermore, Year 2000 compliant information technology, when used in combination with other information technology, shall accurately process date/time data if the other information technology properly exchanges date/time data with it.

39.106 [Redesignated as 39.107]

3. Section 39.106 is redesignated as 39.107, and a new section 39.106 is added to read as follows:

39.106 Year 2000 compliance.

When acquiring information technology that will be required to perform date/time processing involving dates subsequent to December 31, 1999, agencies shall ensure that solicitations and contracts—

(a)(1) Require the information technology to be Year 2000 compliant; or

(2) Require that non-compliant information technology be upgraded to be Year 2000 compliant prior to the earlier of

(i) the earliest date on which the information technology may be required to perform date/time processing involving dates later than December 31, 1999, or

(ii) December 31, 1999; and

(b) As appropriate, describe existing information technology that will be used with the information technology to be acquired and identify whether the existing information technology is Year 2000 compliant.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.239-1 [Amended]

4. Section 52.239-1 is amended in the introductory text by revising "39.106" to read "39.107".

[FR Doc. 96-33218 Filed 12-31-96; 8:45 am]

BILLING CODE 6820-EP-P

48 CFR Part 42

[FAC 90-45; FAR Case 96-324; Item XV]

RIN 9000-AH52

Federal Acquisition Regulation; Limitation on Indirect Cost Audits

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 to amend the Federal Acquisition Regulation (FAR) implementing Section 808 of the FY 97 Defense Authorization Act (Pub. L. 104-201), which expands required audit reciprocity among Federal agencies to include post-award audits. 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.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-45, FAR case 96-324.

SUPPLEMENTARY INFORMATION:

A. Background

This FAR change implements Section 808 of the Fiscal Year 1997 National Defense Authorization Act (Public Law 104-201). Section 808 amends 10 U.S.C. 2313(d) and 41 U.S.C. 254d(d) to expand required audit reciprocity among Federal agencies to include post-award audits. Section 808 was effective September 23, 1996. 10 U.S.C. 2313(d) and 41 U.S.C. 254d(d) were added by the Federal Acquisition Streamlining Act of 1994, Sections 2201(a)(1) and 2251(a) (Public Law 103-355), to include reciprocity on pre-award audits.

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 cite 5 U.S.C. 601, *et seq.* (FAC 90-45, FAR case 96-324), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which 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 42

Government procurement.

Dated: December 24, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 42 amended as set forth below:

PART 42—CONTRACT ADMINISTRATION

1. The authority citation for 48 CFR Part 42 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 42.703-1 is amended by revising paragraph (a) to read as follows:

42.703-1 Policy.

(a) A single agency (see 42.705-1(a)) shall be responsible for establishing indirect cost rates for each business unit. These rates shall be binding on all agencies and their contracting offices, unless otherwise specifically prohibited

by statute. An agency shall not perform an audit of indirect cost rates when the contracting officer determines that the objectives of the audit can reasonably be met by accepting the results of an audit that was conducted by any other department or agency of the Federal Government (10 U.S.C. 2313(d) and 41 U.S.C. 254d(d)).

* * * * *

[FR Doc. 96-33219 Filed 12-31-96; 8:45 am]

BILLING CODE 6820-EP-P

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 as the Federal Acquisition Regulation (FAR) Council. 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) 90-45 which amend the FAR. The rules marked with an asterisk (*) are those for which a final 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 90-45 which precedes this notice. This document may be obtained from the Internet at <http://www.gsa.gov/far/SECG>.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, FAR Secretariat, (202) 501-4755.

SUPPLEMENTARY INFORMATION:

LIST OF RULES IN FAC 90-45

Item	Subject	FAR case	Analyst
I*	Procurement Integrity	96-314	Linfield.
II *	Certification Requirements	96-312	O'Neill.
III	Humanitarian Operations	96-323	Linfield.
IV	Freedom of Information Act	96-326	O'Neill.
V	Exceptions to Requirements for Certified Cost or Pricing Data	96-306	Olson.
VI *	Implementation of the North American Free Trade Agreement Implementation Act	93-310	Linfield
VII *	Application of Special Simplified Procedures to Certain Commercial Items	96-307	Moss.
VIII	Compliance with Immigration and Nationality Act Provisions	96-320	Linfield.
IX	Caribbean Basin and Designated Countries	96-017	Linfield.
X	Caribbean Basin Country End Products—Renewal of Treatment as Eligible	96-020	Linfield.
XI	Compensation of Certain Contractor Personnel (Interim)	96-325	DeStefano.
XII *	Agency Procurement Protests	95-309	O'Neill.
XIII *	Two-Phase Design Build Selection Procedures	96-305	O'Neill.
XIV	Year 2000 Compliance (Interim)	96-607	O'Neill.
XV	Limitation on Indirect Cost Audits	96-324	Olson.

Item I—Procurement Integrity (FAR Case 96-314)

This final rule amends the FAR to implement the procurement integrity provisions of Section 27 of the Office of Federal Procurement Policy (OFPP) Act, as amended by Section 4304 of the 1996 National Defense Authorization Act. Section 4304 is part of the Clinger-Cohen Act of 1996. Section 3.104 is rewritten. Unlike the previous statute, some of the post-employment restrictions in the rewritten 3.104 apply to post-award activities. The final rule eliminates all of the procurement integrity certifications required by the previous statute.

The final rule makes other significant changes. The new post-employment restrictions apply to services provided or decisions made on or after January 1, 1997; the old restrictions apply for former officials whose employment ended before January 1, 1997. The clause at 52.203-10 is revised. The clauses at 52.203-9 and 52.203-13, and the Optional Form 333 at 53.202-1, are

removed. The solicitation provision at 52.203-8 is replaced with a new clause to provide the means to void or rescind contracts where there has been a violation of the procurement integrity restrictions.

Item II—Certification Requirements (FAR Case 96-312)

This final rule amends FAR Parts 1, 3, 4, 6, 8, 9, 12, 14, 16, 19, 23, 27, 29, 31, 32, 36, 37, 42, 45, 47, 49, 52, and 53 to remove certain certification requirements for contractors and offerors that are not specifically required by statute. The rule implements Section 4301(b) of the Clinger-Cohen Act of 1996 (Public Law 104-106).

Item III—Humanitarian Operations (FAR Case 96-323)

This final rule amends the definition of “simplified acquisition threshold” at FAR 2.101 to increase the threshold to \$200,000 for contracts to be awarded and performed, or purchases to be made, outside the United States in

support of a humanitarian or peacekeeping operation. The rule implements 10 U.S.C. 2302(7) and 41 U.S.C. 259(d) as amended by Section 807 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201).

Item IV—Freedom of Information Act (FAR Case 96-326)

This final rule amends FAR Subpart 24.2 to implement Section 821 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201). Section 821 prohibits, with certain exceptions, Government release of competitive proposals under the Freedom of Information Act.

Item V—Exceptions to Requirements for Certified Cost or Pricing Data (FAR Case 96-306)

This final rule implements Section 4201 of the Clinger-Cohen Act of 1996 (Public Law 104-106). Section 4201: (1) Exempts suppliers of commercial items under Federal contracts from the requirement to submit costs or pricing

data; (2) provides for the submission of information other than cost or pricing data to the extent necessary to determine price reasonableness; and (3) removes specific audit authorities pertaining to information provided by commercial suppliers. Accordingly, FAR 15.8, 52.215-26, 52.215-41, and 52.215-42 are amended to revise requirements pertaining to the submission of information relating to commercial items; FAR 52.215-43 is removed; and other associated changes are made in FAR Parts 4, 12, 15, 16, 25, 31, 46, and 52.

Item VI—Implementation of the North American Free Trade Agreement Implementation Act (FAR Case 93-310)

The interim rule published as FAC 90-19 and amended by FAC 90-39 is converted to a final rule with changes. The final rule amends FAR Part 25. The final rule revisions result from public comments received on FAR Case 96-312 published as Item II in this FAC. Upon consideration of those public comments, certifications eliminated under the interim rule published in FAC 90-39 were reinstated.

Item VII—Application of Special Simplified Procedures to Certain Commercial Items (FAR Case 96-307)

This final rule amends FAR Parts 5, 6, 11, 12, and 13 to implement section 4202 of the Clinger-Cohen Act of 1996 (Public Law 104-106). Section 4202 requires revisions to the FAR to incorporate special simplified procedures for the acquisition of certain commercial items with a value greater than the simplified acquisition threshold (\$100,000) but not greater than \$5 million. The purpose of this revision is to vest contracting officers with additional procedural discretion and flexibility, so that commercial item acquisitions in this dollar range may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both the Government and industry.

Item VIII—Compliance With Immigration and Nationality Act Provisions (FAR Case 96-320)

The interim rule published as Item II of FAC 90-41 is converted to a final rule without change. The final rule amends FAR 9.406 to specify that a contractor may be debarred upon a determination by the Attorney General that the contractor is not in compliance with the employment provisions of the Immigration and Nationality Act. The rule implements Executive Order 12989, Economy and Efficiency in Government Procurement Through Compliance With Certain Immigration and Naturalization Act Provisions.

Item IX—Caribbean Basin and Designated Countries (FAR Case 96-017)

This final rule amends FAR 25.401 to update the lists of countries included in the definitions of "Caribbean Basin country" and "Designated country".

Item X—Caribbean Basin Country End Products—Renewal of Treatment as Eligible (FAR Case 96-020)

This final rule amends FAR 25.402(b) to implement the extension by the U.S. Trade Representative of the date of eligibility under the Trade Agreements Act for products of Caribbean Basin countries.

Item XI—Compensation of Certain Contractor Personnel (FAR Case 96-325)

This interim rule adds a new requirement at FAR 31.205-6(p) to implement Section 809 of the Fiscal Year (FY) 1997 National Defense Authorization Act (Public Law 104-201). Section 809 places a Governmentwide ceiling of \$250,000 per year on allowable compensation costs for contractor personnel in senior management positions under contracts awarded during FY 1997.

Item XII—Agency Procurement Protests (FAR Case 95-309)

The interim rule published as Item XIII of FAC 90-40 is revised and finalized. The rule amends FAR 33.103

to implement Executive Order 12979, Agency Procurement Protests. Executive Order 12979 provides for inexpensive, informal, procedurally simple, and expeditious resolution of agency protests, including the use of alternative dispute resolution techniques, third party neutrals, and another agency's personnel.

Item XIII—Two-Phase Design-Build Selection Procedures (FAR Case 96-305)

This final rule amends FAR Part 36 to implement Section 4105 of the Clinger-Cohen Act of 1996 (Public Law 104-106), which authorizes the use of two-phase design-build procedures for construction contracting. Two phase design-build construction contracting provides for the selection of a limited number of offerors (normally five or fewer), during Phase One of the solicitation process, to submit detailed proposals for Phase Two.

Item XIV—Year 2000 Compliance (FAR Case 96-607)

This interim rule amends FAR Part 39 to increase awareness of Year 2000 procurement issues and to ensure that solicitations and contracts address Year 2000 issues.

Item XV—Limitation on Indirect Cost Audits (FAR Case 96-324)

This final rule amends FAR Part 42 to implement Section 808 of the FY 97 National Defense Authorization Act (Public Law 104-201). Section 808 amends 10 U.S.C. 2313(d) and 41 U.S.C. 254d(d) to expand required audit reciprocity among Federal agencies to include post-award audits. 10 U.S.C. 2313(d) and 41 U.S.C. 254d(d) were added by the Federal Acquisition Streamlining Act of 1994, Sections 2201(a)(1) and 2251(a) of Public Law 103-355, to include reciprocity on pre-award audits.

Dated: December 24, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

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