



Friday
September 24, 1999

Part II

**Department of Defense
General Services
Administration**

**National Aeronautics and
Space Administration**

48 CFR Chapter 1 and Parts 1, 5, 6, et al.

Federal Acquisition Regulation; Federal Acquisition Circular 97-14 and Small Entity Compliance Guide; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 97-14; Introduction

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

ACTION: Summary presentation of final and interim rules, and technical amendments.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules issued by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 97-14. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at <http://www.arnet.gov/far>.

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

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 97-14 and specific FAR case number(s). Interested parties may also visit our website at <http://www.arnet.gov/far>.

Item	Subject	FAR case	Analyst
I	Very Small Business Concerns	98-013	Moss.
II	Historically Underutilized Business Zone (HUBZone) Empowerment Contracting Program	97-307	Moss.
III	Use of Competitive Proposals	99-001	DeStefano.
IV	Javits-Wagner-O'Day Proposed Revisions	98-602	DeStefano.
V	OMB Circular A-119	98-004	Moss.
VI	Determination of Price Reasonableness and Commerciality (Interim)	98-300	Olson.
VII	Conforming Late Offer Treatment	97-030	DeStefano.
VIII	Evaluation of Proposals for Professional Services	97-038	Olson.
IX	Option Clause Consistency	98-606	DeStefano.
X	Compensation for Senior Executives	98-301	Nelson.
XI	Interest and Other Financial Costs	98-006	Nelson.
XII	Cost-Reimbursement Architect-Engineer Contracts	97-043	O'Neill.
XIII	Conditionally Accepted Items	98-002	Klein.
XIV	Value Engineering Change Proposals/PAT	97-031	Klein.
XV	Cost Accounting Standards Post-Award Notification	98-003	Nelson.
XVI	Technical Amendments.		

SUPPLEMENTARY INFORMATION:

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

Federal Acquisition Circular 97-14 amends the FAR as specified below:

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

This final rule converts the interim rule published as Item II of FAC 97-11 to a final rule with changes. The interim rule amended FAR 5.207, 8.404, 12.303, 19.000, 19.001, 19.102, 19.502-2, 19.901 through 19.904, 52.212-5, and 52.219-5, to implement the Small Business Administration's Very Small Business Pilot Program (13 CFR Parts 121 and 125). This program became effective on January 4, 1999.

Item II—Historically Underutilized Business Zone (HUBZone) Empowerment Contracting Program (FAR Case 97-307)

This final rule converts the interim rule published as Item I of FAC 97-10 to a final rule with amendments at FAR 6.201, 19.306, 19.307, 19.800, 19.1303, and the provision at 52.219-1. This final

rule amends the FAR to implement the Small Business Administration's Historically Underutilized Business (HUBZone) Program. The purpose of the program is to provide Federal contracting assistance for qualified small business concerns located in historically underutilized business zones in an effort to increase employment opportunities, investment, and economic development in these areas. The program provides for set-asides, sole source awards, and price evaluation preferences for HUBZone small business concerns and establishes goals for awards to such concerns.

Item III—Use of Competitive Proposals (FAR Case 99-001)

This final rule amends FAR 6.401 to delete the requirement for contracting officers to explain in writing their rationale for choosing to use competitive proposals rather than sealed bidding.

Item IV—Javits-Wagner-O'Day Proposed Revisions (FAR Case 98-602)

This final rule adds a new section, FAR 8.716, and amends paragraph (a) of FAR 42.1203 to provide procedures for recognizing a name change or a successor in interest for a Javits-Wagner-

O'Day Act participating nonprofit agency providing supplies or services on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled.

Item V—OMB Circular A-119 (FAR Case 98-004)

This final rule amends FAR 11.101, 11.107, 11.201, and adds a provision at 52.211-7 to address the use of voluntary consensus standards in accordance with the requirements of Office of Management and Budget (OMB) Circular A-119.

Item VI—Determination of Price Reasonableness and Commerciality (FAR Case 98-300)

This interim rule revises FAR 12.209, 13.106-3(a)(2), and amends Subpart 15.4 to implement Section 803 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261). Section 803 requires amending the FAR to provide specific guidance concerning—

- The appropriate application and precedence of various price analysis tools;
- The circumstances under which contracting officers should require

offerors of exempt commercial items to provide information other than cost or pricing data; and

- The role and responsibility of support organizations in determining price reasonableness.

This interim rule also revises FAR 15.403-3(a) to implement Section 808 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261). Section 808 requires amending the FAR to—

- Clarify procedures associated with obtaining information other than cost or pricing data when acquiring commercial items;

- Establish that offerors who fail to comply with requirements to provide the information shall be ineligible for award; and

- Establish exceptions, as appropriate.

Item VII—Conforming Late Offer Treatment (FAR Case 97-030)

This final rule amends FAR 14.201-6, 14.304, and 15.208, the provisions at 52.212-1, 52.214-7, 52.214-23, and 52.215-1, and removes 52.214-32 and 52.214-33 to provide uniform guidance regarding receipt of late offers for commercial, sealed bid, and negotiated acquisitions.

Item VIII—Evaluation of Proposals for Professional Services (FAR Case 97-038)

This final rule amends FAR 15.305(a)(1) and 37.115-2(c) to provide guidance on the evaluation of proposals that include uncompensated overtime hours.

Item IX—Option Clause Consistency (FAR Case 98-606)

This final rule amends FAR 17.208(g) to clarify that the time period for providing a preliminary notice of the Government's intent to exercise a contract option in the clause at FAR 52.217-9 may be tailored and amends the clause at FAR 52.217-8 to make the format of the Option to Extend Services clause consistent with the format of other option clauses in the FAR.

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

This final rule covers the interim rule published as Item VIII of FAC 97-11 to a final rule without change. The rule amends FAR Part 31 to implement Section 804 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261). Section 804 revises the definition of "senior executive" at 10 U.S.C. 2324(1)(5) and at 41 U.S.C. 256(m)(2) to be "the five most highly compensated

employees in management positions at each home office and each segment of the contractor" even though the home office or segment might not report directly to the contractor's headquarters.

Item XI—Interest and Other Financial Costs (FAR Case 98-006)

This final rule amends FAR 31.205-20 to make minor changes to the cost principle concerning "interest and other financial costs."

Item XII—Cost-Reimbursement Architect-Engineer Contracts (FAR Case 97-043)

This final rule amends the clause prescriptions at FAR 36.609, 44.204, 49.503, and the clause preface at 52.236-25, Requirements for Registration of Designers, to include application of certain clauses to cost-reimbursement architect-engineer contracts.

Item XIII—Conditionally Accepted Items (FAR Case 98-002)

This final rule amends FAR 46.101 to add a definition of conditional acceptance; and FAR 46.407 to require that, when conditionally accepting nonconforming items, amounts withheld from payments should be at least sufficient to cover the cost and related profit to correct deficiencies and complete unfinished work. FAR 46.407 has also been revised to require that the basis for the amounts withheld be documented in the contract file.

Item XIV—Value Engineering Change Proposals/PAT (FAR Case 97-031)

This final rule amends the value engineering change proposal (VECP) guidance in FAR 48.001, 48.102, 48.104, 48.201, and the FAR clause at 52.248-1 to allow the contracting officer to increase the sharing period from 36 to a range of 36 to 60 months; increase the contractor's share of instant, concurrent and future savings under the incentive/voluntary sharing arrangement from 50 to a range of 50 to 75 percent; and increase the contractor's share of collateral savings from 20 to a range of 20 to 100 percent on a case-by-case basis for each VECP.

Item XV—Cost Accounting Standards Post-Award Notification (FAR Case 98-003)

This final rule revises paragraph (e) of the clause at FAR 52.230-6, Administration of Cost Accounting Standards, to reduce the subcontractor information that a contractor is required to provide to its cognizant contract administration office (CAO) when requesting the CAO to perform

administration for Cost Accounting Standards matters.

Item XVI—Technical Amendments

Amendments are being made at 1.106, 15.305, 19.102, 52.211-6, and 52.219-18 in order to update references and make editorial changes.

Dated: September 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 97-14 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 97-14 are effective November 23, 1999, except for Items VI and XVI, which are effective September 24, 1999. Sections 19.102 and 52.219-18, which are included in Item XVI, are effective November 23, 1999.

Dated: September 10, 1999.

Eleanor R. Spector,

Director, Defense Procurement.

Dated: September 13, 1999.

J. Les Davison,

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

Dated: September 13, 1999.

Tom Luedtke,

Associate Administrator for Procurement, National Aeronautics and Space Administration.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

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

[FAC 97-14; FAR Case 98-013; Item I]

RIN 9000-AI29

Federal Acquisition Regulation; Very Small Business Concerns

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement the Small Business Administration's (SBA) Very Small Business Pilot Program. This program became effective on January 4, 1999.

EFFECTIVE DATE: November 23, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405 (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501-4764. Please cite FAC 97-14, FAR case 98-013.

SUPPLEMENTARY INFORMATION:

A. Background

Section 304 of the Small Business Administration Reauthorization and Amendments Act of 1994 (Pub. L. 103-403) authorized the SBA Administrator to establish and carry out a pilot program for very small business (VSB) concerns. The Small Business Administration (SBA) published a final rule in the **Federal Register** on September 2, 1998, (63 FR 46640), amending 13 CFR Parts 121 and 125 to establish a pilot program for VSB business concerns. The purpose of the program is to improve access to Government contract opportunities for concerns that are substantially below SBA's size standards by reserving certain acquisitions for competition among VSB concerns. Implementation of the program is limited to geographic areas served by 10 SBA district offices. A VSB concern is defined as a small business that has 15 or fewer employees together with average annual receipts that do not exceed \$1 million. Any procurement that has an anticipated dollar value exceeding \$2,500 but not greater than \$50,000 may be set aside for VSB concerns. A contracting officer must set aside for VSB concerns any such service or construction requirement that will be performed within the geographical boundaries served by a designated SBA district office if there is a reasonable expectation of obtaining fair and reasonable offers from two or more responsible VSB concerns headquartered within the geographical area served by that designated SBA district. In the case of a procurement for supplies, a contracting officer must set aside any such requirement for VSBs if the contracting office is located within the geographical area served by a

designated SBA district, and there is a reasonable expectation of obtaining fair and reasonable offers from two or more responsible VSB concerns headquartered within the geographical area served by that designated SBA district. The program will expire on September 30, 2000.

The Councils published an interim rule in the **Federal Register** on March 4, 1999, (64 FR 10535). Five respondents submitted comments in response to the interim rule. The Councils considered all comments in the development of the final rule.

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

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule does not impose any new requirements on large or small contractors. The Small Business Administration has certified that the revisions to 13 CFR Parts 121 and 125 being implemented by this rule will not have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

C. Paperwork Reduction Act

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

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

Government procurement.

Dated: September 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final With Changes

Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR Parts 5, 8, 12, 19, and 52, which was published in the **Federal Register** on March 4, 1999, (64 FR 10535), as a final rule with the following changes:

PART 19—SMALL BUSINESS PROGRAMS

1. The authority citation for 48 CFR Part 19, and 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).

19.904 [Amended]

2. In section 19.904, remove from paragraphs (a) introductory text, (b), (c), and (d) "shall" and insert "must", in their places.

19.905 [Amended]

3. In section 19.905, remove from the introductory text, paragraph (a) introductory text, and paragraph (b) "The contracting officer shall use" and insert "Insert", in their places.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 6, 7, 8, 12, 13, 14, 15, 19, 26, 52, and 53

[FAC 97-14; FAR Case 97-307; Item II]

RIN 9000-AI20

Federal Acquisition Regulation; Historically Underutilized Business Zone (HUBZone) Empowerment Contracting Program

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed to adopt the interim rule published in the **Federal Register** as Item I of Federal Acquisition Circular 97-10 at 63 FR 70265, December 18, 1998, and the correcting amendment published at 64 FR 3196, January 20, 1999, as a final rule with changes. The rule amends the Federal Acquisition Regulation (FAR) to implement revisions made to Small Business Administration (SBA) regulations covering the Historically Underutilized Business Zone (HUBZone) Program.

EFFECTIVE DATE: November 23, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501-4764. Please cite FAC 97-14, FAR case 97-307.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 63 FR 70265, December 18, 1998, and a correcting amendment at 64 FR 3196, January 20, 1999. This final rule amends FAR Parts 6, 19, and 52 to comply with revisions made to the SBA's HUBZone Program contained in 13 CFR Parts 121, 125, and 126 (63 FR 31896, June 11, 1998), and to make editorial revisions. The purpose of the HUBZone Program is to provide Federal contracting assistance for qualified small business concerns located in distressed communities in an effort to increase employment opportunities, investment, and economic development in these communities. The program provides for set-asides for firms that meet the definition of a HUBZone small business concern (SBC), sole source awards to HUBZone SBCs, and price evaluation preferences for HUBZone SBCs in acquisitions conducted using full and open competition, and establishes a Governmentwide goal for HUBZone awards. Until September 30, 2000, ten Government agencies are required to comply with the prime contract HUBZone Program. After that date, the program will apply to all Federal agencies employing one or more contracting officers.

Seven respondents submitted comments in response to the interim rule. The Councils considered all comments in the development of the final rule.

This rule was subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, applies to this final rule. Therefore, the Councils completed a Final Regulatory Flexibility Analysis (FRFA). Interested parties may obtain a copy of the FRFA from the FAR Secretariat. It is summarized as follows:

The purpose of the HUBZone Program is to provide Federal contracting assistance for qualified small business concerns (SBCs) located in historically underutilized business

zones in an effort to increase employment opportunities, investment, and economic development in such areas. The HUBZone Program will benefit SBCs by increasing the number of Federal Government contracts awarded to them. There is a statutory goal for HUBZone SBCs to receive 3 percent of contract dollars by fiscal year 2003. The HUBZone Act of 1997, Title VI of Public Law 105-135, 111 Stat. 2592 (December 2, 1997), created the HUBZone Program and directed the Administrator of the Small Business Administration to promulgate implementing regulations. On June 11, 1998, the SBA issued a final rule setting forth the program requirements for qualification as a HUBZone SBC, the Federal contracting assistance available to qualified HUBZone SBCs, and other aspects of this program. This Federal Acquisition Regulation (FAR) rule further implements the SBA rule. There were no public comments received in response to the Initial Regulatory Flexibility Analysis. The small entities affected by this rule are those who fit within the definition of a small business concern as defined by SBA in 13 CFR Part 121 and new Part 126 and who participate in Government contracting. Because the program is new, we cannot estimate precisely the number or classes of small entities that this rule will affect. However, SBA estimates that more than 30,000 SBCs will apply for certification as qualified HUBZone SBCs. These 30,000 HUBZone SBCs will be spread over about 7,000 census tracts, about 900 non-metropolitan counties, 310 Indian reservations, and 217 Alaska Native villages. With respect to projected reporting and recordkeeping requirements, this FAR rule requires that Government prime contractors with contracts that require subcontracting plans to seek out HUBZone SBCs as subcontractors, as well as to maintain records and report on those subcontracts awarded to HUBZone SBCs. These requirements do not apply to small businesses. We selected alternatives that would minimize any adverse economic impact on small business. In general, we modeled the rule's procurement mechanisms, to the extent permitted by the SBA rule, on those already in use within the Government. This approach should make the requirements of the rules immediately familiar to many small businesses that already have extensive experience in dealing with Government contracting offices. Moreover, we structured each individual mechanism to strike an appropriate balance between the interests of HUBZone and non-HUBZone small businesses, and to minimize the overall burden of compliance on small business. For example, we did not make the price evaluation adjustment applicable to all competitive procurements, but rather only to acquisitions that are not reserved or set aside for small business concerns, or where a small business would not be displaced.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104-13) applies because the final rule contains information collection requirements currently approved under OMB Control Numbers 9000-0006 and 9000-0007.

List of Subjects in 48 CFR Parts 5, 6, 7, 8, 12, 13, 14, 15, 19, 26, 52, and 53

Government procurement.

Dated: September 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final With Changes

Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR parts 5, 6, 7, 8, 12, 13, 14, 15, 19, 26, 52, and 53 that was published at 63 FR 70265, December 18, 1998, and the correcting amendment published at 64 FR 3196, January 20, 1999, as a final rule with the following changes:

1. The authority citation for 48 CFR parts 6, 19, and 52, continues to read as follows:

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

PART 6—COMPETITION REQUIREMENTS

2. Revise section 6.201 to read as follows:

6.201 Policy.

Acquisitions made under this subpart require use of the competitive procedures prescribed in 6.102.

PART 19—SMALL BUSINESS PROGRAMS

3. Amend section 19.306 to revise paragraphs (c), (e), and (k) to read as follows:

19.306 Protesting a firm's status as a HUBZone small business concern.

* * * * *

(c) All protests must be in writing and must state all specific grounds for the protest. Assertions that a protested concern is not a qualified HUBZone small business concern, without setting forth specific facts or allegations, are insufficient. An offeror must submit its protest to the contracting officer. The contracting officer and the SBA must submit protests to SBA's Associate Administrator for the HUBZone Program (AA/HUB).

* * * * *

(e) Except for premature protests, the contracting officer must forward any protest received, notwithstanding whether the contracting officer believes that the protest is insufficiently specific or untimely, to: AA/HUB, U.S. Small Business Administration, 409 3rd Street, SW, Washington, DC 20416. The AA/HUB will notify the protester and the contracting officer of the date the protest was received and whether the protest

will be processed or dismissed for lack of timeliness or specificity.

* * * * *

(k) The ADA/GC&8(a)BD will make its decision within 5 business days of the receipt of the appeal, if practicable, and will base its decision only on the information and documentation in the protest record as supplemented by the appeal. SBA will provide a copy of the decision to the contracting officer, the protester, and the protested HUBZone small business concern. The SBA decision, if received before award, will apply to the pending acquisition. SBA rulings received after award will not apply to that acquisition. The ADA/GC&8(a)BD's decision is the final decision.

4. Revise section 19.307 to read as follows:

19.307 Solicitation provisions.

(a)(1) Insert the provision at 52.219-1, Small Business Program Representations, in solicitations exceeding the micro-purchase threshold when the contractor will perform the contract inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

(2)(i) Use the provision with its Alternate I in solicitations issued by the following agencies on or before September 30, 2000:

- (A) Department of Agriculture.
- (B) Department of Defense.
- (C) Department of Energy.
- (D) Department of Health and Human Services.
- (E) Department of Housing and Urban Development.
- (F) Department of Transportation.
- (G) Department of Veterans Affairs.
- (H) Environmental Protection Agency.
- (I) General Services Administration.
- (J) National Aeronautics and Space Administration.

(ii) Use the provision with its Alternate I in solicitations issued by all Federal agencies after September 30, 2000.

(3) Use the provision with its Alternate II in solicitations issued by DoD, NASA, or the Coast Guard that the contracting officer expects will exceed the threshold at 4.601(a).

(b) Insert the provision at 52.219-22, Small Disadvantaged Business Status, in solicitations that include the clause at 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, or 52.219-25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting. Use the provision with its Alternate I in solicitations for acquisitions for which a price

evaluation adjustment for small disadvantaged business concerns is authorized on a regional basis.

(c) When contracting by sealed bidding, insert the provision at 52.219-2, Equal Low Bids, in solicitations and contracts when the contractor will perform the contract inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

5. Amend section 19.800 to revise paragraph (e) to read as follows:

19.800 General.

* * * * *

(e) Before deciding to set aside an acquisition in accordance with Subpart 19.5 or 19.13, the contracting officer should review the acquisition for offering under the 8(a) Program. If the acquisition is offered to the SBA, SBA regulations (13 CFR 126.607(b)) give first priority to HUBZone 8(a) concerns.

* * * * *

6. Amend section 19.1303 to revise paragraph (b) to read as follows:

19.1303 Status as a qualified HUBZone small business concern.

* * * * *

(b) If the SBA determines that a concern is a qualified HUBZone small business concern, it will issue a certification to that effect and will add the concern to the List of Qualified HUBZone Small Business Concerns on its Internet website at <http://www.sba.gov/hubzone>. A firm on the list is eligible for HUBZone program preferences without regard to the place of performance. The concern must appear on the list to be a HUBZone small business concern.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Amend section 52.219-1 to revise Alternates I and II to read as follows:

52.219-1 Small Business Program Representations.

* * * * *

Alternate I (Nov 1999). As prescribed in 19.307(a)(2), add the following paragraph (b)(4) to the basic provision:

(4) [Complete only if offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents, as part of its offer, that—

(i) It ___ is, ___ is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office, or HUBZone employee percentage has occurred

since it was certified by the Small Business Administration in accordance with 13 CFR Part 126; and

(ii) It ___ is, ___ is not a joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (b)(4)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture: _____.] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

Alternate II (Nov 1999). As prescribed in 19.307(a)(3), add the following paragraph (b)(5) to the basic provision:

(5) [Complete if offeror represented itself as disadvantaged in paragraph (b)(2) of this provision.] The offeror shall check the category in which its ownership falls:

- ___ Black American.
- ___ Hispanic American.
- ___ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).
- ___ Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).
- ___ Subcontinent Asian (Asian-Indian American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).
- ___ Individual/concern, other than one of the preceding.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 6

[FAC 97-14; FAR Case 99-001; Item III]

RIN 9000-A144

Federal Acquisition Regulation; Use of Competitive Proposals

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council

(Councils) have agreed to a final rule amending the Federal Acquisition Regulation (FAR) to delete the requirement for contracting officers to explain in writing their rationale for choosing to use competitive proposals rather than sealed bidding.

EFFECTIVE DATE: November 23, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph DeStefano, Procurement Analyst, at (202) 501-1758. Please cite FAC 97-14, FAR case 99-001.

SUPPLEMENTARY INFORMATION:

A. Background

This change streamlines the acquisition process by eliminating a nonstatutory requirement. It should be noted that the Competition in Contracting Act (Pub. L. 98-369), dated July 18, 1984, contains no requirement for written documentation.

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

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR subpart in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97-14, FAR case 99-001), in correspondence.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 6

Government procurement.

Dated: September 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR Part 6 as set forth below:

PART 6—COMPETITION REQUIREMENTS

1. The authority citation for 48 CFR Part 6 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. In section 6.401, revise the introductory text to read as follows:

6.401 Sealed bidding and competitive proposals.

Sealed bidding and competitive proposals, as described in Parts 14 and 15, are both acceptable procedures for use under Subparts 6.1, 6.2; and, when appropriate, under Subpart 6.3.

* * * * *

[FR Doc. 99-24412 Filed 9-23-99; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8 and 42

[FAC 97-14; FAR Case 98-602; Item IV]

RIN 9000-A116

Federal Acquisition Regulation; Javits-Wagner-O'Day Proposed Revisions

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to provide procedures for recognizing a name change or a successor in interest for Javits-Wagner-O'Day Act (JWOD) participating nonprofit agencies.

EFFECTIVE DATE: November 23, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501-1758. Please cite FAC 97-14, FAR case 98-602.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule adds a new section, FAR 8.716, to provide procedures for recognizing a name change or a

successor in interest for a JWOD participating nonprofit agency providing supplies or services on the Procurement List maintained by the Committee For Purchase From People Who Are Blind or Severely Disabled, and amends paragraph (a) of FAR 42.1203 to exempt JWOD participating nonprofit agencies from requirements of that section pertaining to the processing of a name change or a successor in interest.

The rule is consistent with 41 U.S.C. 48, which pertains to the requirement (with certain exceptions) to procure supplies and services that are on the Procurement List issued by the Committee For Purchase From People Who Are Blind or Severely Disabled (Committee). The rule does not change the relationship between the Committee and JWOD participating nonprofit agencies concerning the compliance with State and local law before and during contract performance. The rule also does not change the Committee's obligation to insure that only responsible contractors provide supplies and services that are included on the Procurement List.

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

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely sets forth an existing practice and clarifies that certain administrative procedures pertaining to a name change or a successor in interest do not apply to JWOD participating nonprofit agencies.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 8 and 42

Government procurement.

Dated: September 14, 1999.

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

Therefore, DoD, GSA, and NASA amend 48 CFR Parts 8 and 42 as set forth below:

1. The authority citation for 48 CFR Parts 8 and 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).

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. Add a new section 8.716 to read as follows:

8.716 Change-of-name and successor in interest procedures.

When the Committee recognizes a name change or a successor in interest for a JWOD participating nonprofit agency providing supplies or services on the Procurement List—

(a) The Committee will provide a notice of a change to the Procurement List to the cognizant contracting officers; and

(b) Upon receipt of a notice of a change to the Procurement List from the Committee, the contracting officer must—

(1) Prepare a Standard Form (SF) 30, Amendment of Solicitation/Modification of Contract, incorporating a summary of the notice and attaching a list of contracts affected; and

(2) Distribute the SF 30, including a copy to the Committee.

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

3. Amend section 42.1203 to revise paragraph (a) to read as follows:

42.1203 Processing agreements.

(a) If a contractor wishes the Government to recognize a successor in interest to its contracts or a name change, the contractor must submit a written request to the responsible contracting officer (see 42.1202). If the contractor received its contract under Subpart 8.7 under the Javits-Wagner-O'Day Act, use the procedures at 8.716 instead.

* * * * *

[FR Doc. 99-24413 Filed 9-23-99; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 11 and 52

[FAC 97-14; FAR Case 98-004; Item V]

RIN 9000-A112

Federal Acquisition Regulation; OMB Circular A-119

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to address the use of voluntary consensus standards in accordance with the requirements of Office of Management and Budget (OMB) Circular A-119.

EFFECTIVE DATE: November 23, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501-4764. Please cite FAC 97-14, FAR case 98-004.

SUPPLEMENTARY INFORMATION:

A. Background

The Office of Management and Budget published a revised OMB Circular A-119, "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities," in the **Federal Register** at 63 FR 8545, February 19, 1998. This rule revises FAR Subparts 11.1 and 11.2 and adds a new solicitation provision at 52.211-7 to implement the revised OMB circular.

A proposed rule was published in the **Federal Register** at 63 FR 68344, December 10, 1998. All comments were considered in the development of this final rule.

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

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely amends the FAR to reflect the Government's preference for the use of voluntary consensus standards in accordance with OMB Circular A-119. The rule permits, but does not require, offerors to propose alternatives to Government-unique standards when responding to Government solicitations.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) applies because the final rule contains information collection requirements.

The Office of Management and Budget approved the information collection under clearance number 9000-0153 through February 28, 2002. This final rule does not affect those previously approved information collection requirements.

List of Subjects in 48 CFR Parts 11 and 52

Government procurement.

Dated: September 14, 1999.

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

Therefore, DoD, GSA, and NASA amend 48 CFR Parts 11 and 52 as set forth below:

1. The authority citation for 48 CFR Parts 11 and 52 continues to read as follows:

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

PART 11—DESCRIBING AGENCY NEEDS

2. In section 11.101, add paragraph (c) to read as follows:

§ 11.101 Order of precedence for requirements documents.

* * * * *

(c) In accordance with OMB Circular A-119, "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities," agencies must use voluntary consensus standards, when they exist, in lieu of Government-unique standards, except where inconsistent with law or otherwise impractical. The private sector manages and administers voluntary consensus standards. Such standards are not

mandated by law (e.g., industry standards such as ISO 9000).

3. Revise section 11.107 to read as follows:

§ 11.107 Solicitation provision.

(a) Insert the provision at 52.211-6, Brand Name or Equal, when brand name or equal purchase descriptions are included in a solicitation.

(b) Insert the provision at 52.211-7, Alternatives to Government-Unique Standards, in solicitations that use Government-unique standards when the agency uses the transaction-based reporting method to report its use of voluntary consensus standards to the National Institute of Standards and Technology (see OMB Circular A-119, "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities"). Use of the provision is optional for agencies that report their use of voluntary consensus standards to the National Institute of Standards and Technology using the categorical reporting method. Agencies that manage their specifications on a contract-by-contract basis use the transaction-based method of reporting. Agencies that manage their specifications centrally use the categorical method of reporting. Agency regulations regarding specification management describe which method is used.

4. Revise paragraph (e) in section 11.201 to read as follows:

§ 11.201 Identification and availability of specifications.

* * * * *

(e) Agencies may purchase some nongovernment standards, including voluntary consensus standards, from the National Technical Information Service's Fedworld Information Network. Agencies may also obtain nongovernment standards from the standards developing organization responsible for the preparation, publication, or maintenance of the standard, or from an authorized document reseller. The National Institute of Standards and Technology can assist agencies in identifying sources for, and content of, nongovernment standards. DoD activities may obtain from the DoDSSP those nongovernment standards, including voluntary consensus standards, adopted for use by defense activities.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Add section 52.211-7 to read as follows:

§ 52.211-7 Alternatives to Government-unique standards.

As prescribed in 11.107(b), insert the following provision:

Alternatives to Government-Unique Standards (Nov 1999)

(a) This solicitation includes Government-unique standards. The offeror may propose voluntary consensus standards that meet the Government's requirements as alternatives to the Government-unique standards. The Government will accept use of the voluntary consensus standard instead of the Government-unique standard if it meets the Government's requirements unless inconsistent with law or otherwise impractical.

(b) If an alternative standard is proposed, the offeror must furnish data and/or information regarding the alternative in sufficient detail for the Government to determine if it meets the Government's requirements. Acceptance of the alternative standard is a unilateral decision made solely at the discretion of the Government.

(c) Offers that do not comply with the Government-unique standards specified in this solicitation may be determined to be nonresponsive or unacceptable. The offeror may submit an offer that complies with the Government-unique standards specified in this solicitation, in addition to any proposed alternative standard(s).

(End of provision)

[FR Doc. 99-24414 Filed 9-23-99; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12, 13, and 15

[FAC 97-14; FAR Case 98-300; Item VI]

RIN 9000-AI45

Federal Acquisition Regulation; Determination of Price Reasonableness and Commerciality

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

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Sections 803 and 808 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261).

EFFECTIVE DATE: September 24, 1999.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before November 23, 1999 to be considered in the formulation of a final rule.

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

Address e-mail comments submitted via the Internet to: farcase.98-300@gsa.gov

Please submit comments only and cite FAC 97-14, FAR case 98-300 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson at (202) 501-0692. Please cite FAC 97-14, FAR case 98-300.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils initiated this case to implement Sections 803 and 808 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261) as follows:

(a) Section 803 of Public Law 105-261. (1) Paragraphs (a)(2)(A) through (a)(2)(C) of Section 803 of Public Law 105-261 require that the FAR provide specific guidance concerning—

(i) The appropriate application and precedence of various price analysis tools;

(ii) The circumstances under which contracting officers should require offerors of exempt commercial items to provide information other than cost or pricing data; and

(iii) The role and responsibility of support organizations in determining price reasonableness.

(2) Paragraph (a)(2)(D) of Section 803 is not implemented under this case.

(b) Section 808 of Public Law 105-261. Section 808 of Public Law 105-261 requires amending the FAR to—

(1) Clarify procedures associated with obtaining information other than cost or pricing data;

(2) Establish that offerors who fail to comply with requirements to provide the information shall be ineligible for award; and

(3) Establish exceptions, as appropriate.

This is not a significant regulatory action and, therefore, was not subject to Office of Management and Budget

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

B. Regulatory Flexibility Act

This interim rule may have a significant cost or administrative impact on contractors or offerors within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because offerors may be ineligible for award if they fail to provide the required information other than cost or pricing data. We have prepared an Initial Regulatory Flexibility Analysis (IRFA) that is summarized as follows:

The rule will apply to all offerors, large or small, that respond to solicitations for commercial items which require submission of information other than cost or pricing data. We expect few, if any, offerors to fail to comply with the requirements to provide information other than cost or pricing data.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR subpart in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 97-14, FAR case 98-300), in correspondence.

C. Paperwork Reduction Act

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

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because this rule implements Section 808 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261), which required implementation in the FAR by April 15, 1999. However, pursuant to Public Law 98-577 and FAR 1.501, the Councils will consider public comments received

in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 12, 13, and 15

Government procurement.

Dated: September 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR Parts 12, 13, and 15 as set forth below:

1. The authority citation for 48 CFR Parts 12, 13, and 15 continues to read as follows:

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

PART 12—ACQUISITION OF COMMERCIAL ITEMS

2. Revise section 12.209 read as follows:

12.209 Determination of price reasonableness.

When contracting for commercial items, the contracting officer must establish price reasonableness in accordance with 13.106-3, 14.408-2, or Subpart 15.4, as applicable.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

3. Amend section 13.106-3 in the introductory text of paragraph (a) by removing "shall" and adding "must" in its place, and by revising paragraph (a)(2) to read as follows:

13.106-3 Award and documentation.

(a) * * *

(2) If only one response is received, include a statement of price reasonableness in the contract file. The contracting officer may base the statement on—

(i) Market research;

(ii) Comparison of the proposed price with prices found reasonable on previous purchases;

(iii) Current price lists, catalogs, or advertisements. However, inclusion of a price in a price list, catalog, or advertisement does not, in and of itself, establish fairness and reasonableness of the price;

(iv) A comparison with similar items in a related industry;

(v) The contracting officer's personal knowledge of the item being purchased;

(vi) Comparison to an independent Government estimate; or

(vii) Any other reasonable basis.

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

4. Amend section 15.403-1 to add a sentence to the end of paragraph (c)(3) to read as follows:

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

* * * * *

(c) * * *

(3) * * * If the contracting officer determines that an item claimed to be commercial is, in fact, not commercial and that no other exception or waiver applies, the contracting officer must require submission of cost or pricing data.

* * * * *

5. Amend section 15.403-3 to revise paragraphs (a) and (c) to read as follows:

15.403-3 Requiring information other than cost or pricing data.

(a) *General.* (1) The contracting officer is responsible for obtaining information that is adequate for evaluating the reasonableness of the price or determining cost realism, but the contracting officer should not obtain more information than is necessary (see 15.402(a)). If the contracting officer cannot obtain adequate information from sources other than the offeror, the contracting officer must require submission of information other than cost or pricing data from the offeror that is adequate to determine a fair and reasonable price (10 U.S.C. 2306a(d)(1) and 41 U.S.C. 254b(d)(1)). Unless an exception under 15.403-1(b) (1) or (2) applies, the contracting officer must require that the information submitted by the offeror include, at a minimum, appropriate information on the prices at which the same item or similar items have previously been sold, adequate for determining the reasonableness of the price. To determine the information an offeror should be required to submit, the contracting officer should consider the guidance in Section 3.3, Chapter 3, Volume I, of the Contract Pricing Reference Guide cited at 15.404-1(a)(7).

(2) The contractor's format for submitting the information should be used (see 15.403-5(b)(2)).

(3) The contracting officer must 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.

(4) As specified in Section 808 of Public Law 105-261, an offeror who

does not comply with a requirement to submit information for a contract or subcontract in accordance with paragraph (a)(1) of this subsection is ineligible for award unless the HCA determines that it is in the best interest of the Government to make the award to that offeror, based on consideration of the following:

- (i) The effort made to obtain the data.
- (ii) The need for the item or service.
- (iii) Increased cost or significant harm to the Government if award is not made.

* * * * *

(c) *Commercial items.* (1) At a minimum, the contracting officer must use price analysis to determine whether the price is fair and reasonable whenever the contracting officer acquires a commercial item (see 15.404-1(b)). The fact that a price is included in a catalog does not, in and of itself, make it fair and reasonable. If the contracting officer cannot determine whether an offered price is fair and reasonable, even after obtaining additional information from sources other than the offeror, then the contracting officer must require the offeror to submit information other than cost or pricing data to support further analysis (see 15.403-3(a)(1)).

(2) *Limitations relating to commercial items (10 U.S.C. 2306a(d)(2) and 41 U.S.C. 254b(d)).* (i) The contracting officer must limit requests for sales data relating to commercial items to data for the same or similar items during a relevant time period.

(ii) The contracting officer must, 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 as part of its commercial operations.

(iii) The Government must not disclose outside the Government information obtained relating to commercial items that is exempt from disclosure under 24.202(a) or the Freedom of Information Act (5 U.S.C. 552(b)).

6. Amend section 15.404-1 to revise paragraph (b)(2) introductory text, (b)(2)(i) and (b)(2)(ii); and to add (b)(2)(vii), (b)(3) and (b)(4) to read as follows:

15.404-1 Proposal analysis techniques.

* * * * *

(b) * * *
 (2) The Government may use various price analysis techniques and procedures to ensure a fair and reasonable price. Examples of such techniques include, but are not limited to, the following:

(i) Comparison of proposed prices received in response to the solicitation. Normally, adequate price competition establishes price reasonableness (see 15.403-1(c)(1)).

(ii) Comparison of previously proposed prices and previous Government and commercial contract prices with current proposed prices for the same or similar items, if both the validity of the comparison and the reasonableness of the previous price(s) can be established.

* * * * *

(vii) Analysis of pricing information provided by the offeror.

(3) The first two techniques at 15.404-1(b)(2) are the preferred techniques. However, if the contracting officer determines that information on competitive proposed prices or previous contract prices is not available or is insufficient to determine that the price is fair and reasonable, the contracting officer may use any of the remaining techniques as appropriate to the circumstances applicable to the acquisition.

(4) Value analysis can give insight into the relative worth of a product and the Government may use it in conjunction with the price analysis techniques listed in paragraph (b)(2) of this section.

* * * * *

7. Amend section 15.404-2 to revise paragraphs (a)(1) and (a)(2) to read as follows:

15.404-2 Information to support proposal analysis.

(a) *Field pricing assistance.* (1) The contracting officer should request field pricing assistance when the information available at the buying activity is inadequate to determine a fair and reasonable price. The contracting officer must tailor requests to reflect the minimum essential supplementary information needed to conduct a technical or cost or pricing analysis.

(2) The contracting officer must tailor the type of information and level of detail requested in accordance with the specialized resources available at the buying activity and the magnitude and complexity of the required analysis. Field pricing assistance is generally available to provide—

- (i) Technical, audit, and special reports associated with the cost elements of a proposal, including subcontracts;
- (ii) Information on related pricing practices and history;
- (iii) Information to help contracting officers determine commerciality and price reasonableness, including—

(A) Verifying sales history to source documents;

(B) Identifying special terms and conditions;

(C) Identifying customarily granted or offered discounts for the item;

(D) Verifying the item to an existing catalog or price list;

(E) Verifying historical data for an item previously not determined commercial that the offeror is now trying to qualify as a commercial item; and

(F) Identifying general market conditions affecting determinations of commerciality and price reasonableness.

(iv) Information relative to the business, technical, production, or other capabilities and practices of an offeror.

* * * * *

[FR Doc. 99-24415 Filed 9-23-99; 8:45 am]
 BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 14, 15, 22, and 52

[FAC 97-14; FAR Case 97-030; Item VII]
 RIN 9000-AI25

Federal Acquisition Regulation; Conforming Late Offer Treatment

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to provide uniform guidance regarding receipt of late offers for commercial, sealed bid, and negotiated acquisitions.

EFFECTIVE DATE: November 23, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501-1758. Please cite FAC 97-14, FAR case 97-030.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils published a proposed rule in the **Federal Register** on January

27, 1999 (64 FR 4248), amending the FAR to provide a single standard for receipt of late offers under commercial, sealed bid, and negotiated acquisitions. The final rule makes additional revisions to the proposed rule.

The rule amends paragraph (f) of the clause at FAR 52.212-1, Instructions to Offerors—Commercial Items, to permit consideration of late offers if the Government mishandled the offer. This rule also amends guidance on receipt of late offers in FAR 14.304 and 15.208 and associated FAR solicitation provisions at 52.214-7, Late Submissions, Modifications, and Withdrawals of Bids; 52.214-23, Late Submissions, Modifications, and Withdrawals of Technical Proposals under Two-Step Bidding; and paragraph (c)(3) at 52.215-1, Instruction to Offerors—Competitive Acquisitions, to provide uniform guidance for sealed bids and negotiated acquisitions. The rule also deletes the solicitation provisions at 52.214-32, Late Submissions, Modifications, and Withdrawals of Bids (Overseas), and 52.214-33, Late Submissions, Modifications, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding (Overseas), since the revisions to 52.214-7 and 52.214-23 eliminate the need for separate provisions, respectively.

Six respondents provided comments on the proposed rule. The Government considered the comments in finalizing the rule.

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

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule will affect when an offer is considered late; and, although no statistics regarding the number of late proposals exist, we expect that less than 1 percent of the offers will be received late. Under the rule, the Government will consider late offers, including late offers under commercial acquisitions that are late because of Government mishandling.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 14, 15, 22, and 52

Government procurement.

Dated: September 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR Parts 14, 15, 22, and 52 as set forth below:

1. The authority citation for 48 CFR Parts 14, 15, 22, and 52 continues to read as follows:

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

PART 14—SEALED BIDDING

2. Amend section 14.201-6 to revise paragraph (c)(3), remove paragraph (c)(4), revise paragraphs (g)(2), (o)(2)(i), (o)(2)(ii), and (r), remove paragraph (v), redesignate paragraphs (w) through (y) as (v) through (x), respectively, and revise newly designated paragraphs (w) and (x) to read as follows:

14.201-6 Solicitation provisions.

* * * * *

(c) * * *

(3) 52.214-7, Late Submissions, Modifications, and Withdrawals of Bids.

* * * * *

(g) * * *

(2) Use the provision with its Alternate I in invitations for bids that are for perishable subsistence, and when the contracting officer considers that offerors will be unwilling to provide acceptance periods long enough to allow written confirmation.

* * * * *

(o) * * *

(2) * * *

(i) If the nature of the required product does not necessitate limiting the grant of a waiver to a product produced at the same plant in which the product previously acquired or tested was produced, use the provision with its Alternate I; or

(ii) If the nature of the required product necessitates limiting the grant of a waiver to a product produced at the same plant in which the product previously acquired or tested was produced, use the provision with its Alternate II.

* * * * *

(r) Insert the provision at 52.214-23, Late Submissions, Modifications, and

Withdrawals of Technical Proposals under Two-Step Sealed Bidding, in solicitations for technical proposals in step one of two-step sealed bidding.

* * * * *

(w) Insert the provision at 52.214-34, Submission of Offers in the English Language, in solicitations subject to the Trade Agreements Act or the North American Free Trade Agreement Implementation Act (see 25.408(d)). It may be included in other solicitations when the contracting officer decides that it is necessary.

(x) Insert the provision at 52.214-35, Submission of Offers in U.S. Currency, in solicitations subject to the Trade Agreements Act or the North American Free Trade Agreement Implementation Act (see 25.408(d)). It may be included in other solicitations when the contracting officer decides that it is necessary.

2a. In addition to the amendments set forth above, in section 14.201-6, remove the words “The contracting officer shall insert” and add, in their place, the word “Insert” in the following places:

- a. The introductory text of paragraphs 14.201-6(b), (c), and (e);
- b. Paragraphs (f), (g)(1), and (h);
- c. Paragraph (i);
- d. Paragraphs (j), (l), (m), and (o)(1);
- e. Paragraph (p)(1); and
- f. Paragraphs (q), (s), (t), (u), and newly redesignated paragraph (v).

14.202-7 [Amended]

3. Amend section 14.202-7 in the introductory text of paragraph (a) by removing “(see 14.201-6(w))” and adding “(see 14.201-6(v))” in its place.

14.303 [Amended]

4. Amend section 14.303 in the fourth sentence of paragraph (a) by removing “14.201-6(w)” and adding “14.201-6(v)” in its place.

5. Section 14.304, consisting of sections 14.304-1 through 14.304-4, is revised to read as follows:

14.304 Submission, modification, and withdrawal of bids.

(a) Bidders are responsible for submitting bids, and any modifications or withdrawals, so as to reach the Government office designated in the invitation for bid (IFB) by the time specified in the IFB. They may use any transmission method authorized by the IFB (*i.e.*, regular mail, electronic commerce, or facsimile). If no time is specified in the IFB, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that bids are due.

(b)(1) Any bid, modification, or withdrawal of a bid received at the

Government office designated in the IFB after the exact time specified for receipt of bids is "late" and will not be considered unless it is received before award is made, the contracting officer determines that accepting the late bid would not unduly delay the acquisition; and—

(i) If it was transmitted through an electronic commerce method authorized by the IFB, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of bids; or

(ii) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of bids and was under the Government's control prior to the time set for receipt of bids.

(2) However, a late modification of an otherwise successful bid, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(c) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the bid wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(d) If an emergency or unanticipated event interrupts normal Government processes so that bids cannot be received at the Government office designated for receipt of bids by the exact time specified in the IFB, and urgent Government requirements preclude amendment of the bid opening date, the time specified for receipt of bids will be deemed to be extended to the same time of day specified in the IFB on the first work day on which normal Government processes resume.

(e) Bids may be withdrawn by written notice received at any time before the exact time set for receipt of bids. If the IFB authorizes facsimile bids, bids may be withdrawn via facsimile received at any time before the exact time set for receipt of bids, subject to the conditions specified in the provision at 52.214-31, Facsimile Bids. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid. Upon withdrawal of an electronically transmitted bid, the data received must not be viewed and, where practicable, must be purged from primary and backup data storage systems.

(f) The contracting officer must promptly notify any bidder if its bid,

modification, or withdrawal was received late, and must inform the bidder whether its bid will be considered, unless contract award is imminent and the notices prescribed in 14.409 would suffice.

(g) Late bids and modifications that are not considered must be held unopened, unless opened for identification, until after award and then retained with other unsuccessful bids. However, any bid bond or guarantee must be returned.

(h) If available, the following must be included in the contract files for each late bid, modification, or withdrawal:

(1) The date and hour of receipt.

(2) A statement, with supporting rationale, regarding whether the bid was considered for award.

(3) The envelope, wrapper, or other evidence of the date of receipt.

6. Amend section 14.503-1 by revising paragraph (h) to read as follows:

114.503-1 Step one.

* * * * *

(h) Late technical proposals are governed by 15.208 (b), (c), and (f).

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

7. Revise section 15.208 to read as follows:

15.208 Submission, modification, revision, and withdrawal of proposals.

(a) Offerors are responsible for submitting proposals, and any revisions, and modifications, or withdrawals, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. Offerors may use any transmission method authorized by the solicitation (*i.e.*, regular mail, electronic commerce, or facsimile). If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposals are due.

(b)(1) Any proposal, modification, revision, or withdrawal that is received at the designated Government office after the exact time specified for receipt of proposals is "late" and will not be considered unless it is received before award is made, the contracting officer determines that accepting the late proposal would not unduly delay the acquisition; and—

(i) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m.

one working day prior to the date specified for receipt of proposals; or

(ii) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of proposals and was under the Government's control prior to the time set for receipt of proposals; or

(iii) It was the only proposal received.

(2) However, a late modification of an otherwise successful proposal, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(c) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(d) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the Government office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation closing date, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(e) Proposals may be withdrawn by written notice at any time before award. Oral proposals in response to oral solicitations may be withdrawn orally. The contracting officer must document the contract file when oral withdrawals are made. One copy of withdrawn proposals should be retained in the contract file (see 4.803(a)(10)). Extra copies of the withdrawn proposals may be destroyed or returned to the offeror at the offerors request. Where practicable, electronically transmitted proposals that are withdrawn must be purged from primary and backup data storage systems after a copy is made for the file. Extremely bulky proposals must only be returned at the offeror's request and expense.

(f) The contracting officer must promptly notify any offeror if its proposal, modification, or revision was received late, and must inform the offeror whether its proposal will be considered, unless contract award is imminent and the notice prescribed in 15.503(b) would suffice.

(g) Late proposals and modifications that are not considered must be held unopened, unless opened for identification, until after award and then retained with other unsuccessful proposals.

(h) If available, the following must be included in the contracting office files for each late proposal, modification, revision, or withdrawal:

- (1) The date and hour of receipt.
- (2) A statement regarding whether the proposal was considered for award, with supporting rationale.
- (3) The envelope, wrapper, or other evidence of date of receipt.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1009-4 [Amended]

8. Amend section 22.1009-4 in the first sentence of paragraph (d) by removing "14.304-1" and adding "14.304" in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

9. Amend section 52.212-1 to revise the date of the provision and paragraph (f) to read as follows:

52.212-1 Instructions to Offerors—Commercial Items.

* * * * *

Instructions to Offerors—Commercial Items (Nov 1999)

* * * * *

(f) *Late submissions, modifications, revisions, and withdrawals of offers.* (1) Offerors are responsible for submitting offers, and any modifications, revisions, or withdrawals, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that offers or revisions are due.

(2)(i) Any offer, modification, revision, or withdrawal of an offer received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and—

(A) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of offers; or

(B) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or

(C) If this solicitation is a request for proposals, it was the only proposal received.

(ii) However, a late modification of an otherwise successful offer, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(3) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the offer wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(4) If an emergency or unanticipated event interrupts normal Government processes so that offers cannot be received at the Government office designated for receipt of offers by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(5) Offers may be withdrawn by written notice received at any time before the exact time set for receipt of offers. Oral offers in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for receipt of offers, subject to the conditions specified in the solicitation concerning facsimile offers. An offer may be withdrawn in person by an offeror or its authorized representative if, before the exact time set for receipt of offers, the identity of the person requesting withdrawal is established and the person signs a receipt for the offer.

* * * * *

10. Revise section 52.214-7 to read as follows:

52.214-7 Late submissions, modifications, and withdrawals of bids.

As prescribed in 14.201-6(c)(3), insert the following provision:

Late Submissions, Modifications, and Withdrawals of Bids (Nov 1999)

(a) Bidders are responsible for submitting bids, and any modifications or withdrawals, so as to reach the Government office designated in the invitation for bids (IFB) by the time specified in the IFB. If no time is specified in the IFB, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that bids are due.

(b)(1) Any bid, modification, or withdrawal received at the Government office designated in the IFB after the exact time specified for receipt of bids is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late bid would not unduly delay the acquisition; and—

(i) If it was transmitted through an electronic commerce method authorized by the IFB, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of bids; or

(ii) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of bids and was under the Government's control prior to the time set for receipt of bids.

(2) However, a late modification of an otherwise successful bid that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(c) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the bid wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(d) If an emergency or unanticipated event interrupts normal Government processes so that bids cannot be received at the Government office designated for receipt of bids by the exact time specified in the IFB and urgent Government requirements preclude amendment of the IFB, the time specified for receipt of bids will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(e) Bids may be withdrawn by written notice received at any time before the exact time set for receipt of bids. If the IFB authorizes facsimile bids, bids may be withdrawn via facsimile received at any time before the exact time set for receipt of bids, subject to the conditions specified in the provision at 52.214-31, Facsimile Bids. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

(End of provision)

11. Revise section 52.214-23 to read as follows:

52.214-23 Late submissions, modifications, revisions, and withdrawals of technical proposals under two-step sealed bidding.

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

Late Submissions, Modifications, Revisions, and Withdrawals of Technical Proposals Under Two-Step Sealed Bidding (Nov 1999)

(a) Bidders are responsible for submitting technical proposals, and any modifications or revisions, so as to reach the Government office designated in the request for technical proposals by the time specified in the invitation for bids (IFB). If no time is specified in the IFB, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that bids or revisions are due.

(b)(1) Any technical proposal under step one of two-step sealed bidding or modification, revision, or withdrawal of such proposal received at the Government office designated in the request for technical proposals after the exact time specified for receipt will not be considered unless the Contracting Officer determines that accepting the late technical proposal would not unduly delay the acquisition; and—

(i) If it was transmitted through an electronic commerce method authorized by the request for technical proposals, it was

received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

(ii) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt; or

(iii) It is the only proposal received and it is negotiated under part 15 of the Federal Acquisition Regulation.

(2) However, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(c) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the technical proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(d) If an emergency or unanticipated event interrupts normal Government processes so that technical proposals cannot be received at the Government office designated for receipt of technical proposals by the exact time specified in the request for technical proposals, and urgent Government requirements preclude amendment of the request for technical proposals, the time specified for receipt of technical proposals will be deemed to be extended to the same time of day specified in the request for technical proposals on the first work day on which normal Government processes resume.

(e) Technical proposals may be withdrawn by written notice received at any time before the exact time set for receipt of technical proposals. If the request for technical proposals authorizes facsimile technical proposals, they may be withdrawn via facsimile received at any time before the exact time set for receipt of proposals, subject to the conditions specified in the provision at 52.214-31, Facsimile Bids. A technical proposal may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of technical proposals, the identity of the person requesting withdrawal is established and the person signs a receipt for the technical proposal.

(End of provision)

52.214-31 [Amended]

12. Amend section 52.214-31 in the introductory text of the provision by removing "14.201-6(w)" and adding "14.201-6(v)" in its place.

52.214-32 and 52.214-33 [Removed and Reserved]

13. Remove and reserve sections 52.214-32 and 52.214-33.

52.214-34 [Amended]

14. Amend section 52.214-34 in the introductory paragraph of the provision by removing "14.201-6(x)" and adding "14.201-6(w)" in its place.

52.214-35 [Amended]

15. Amend section 52.214-35 in the introductory paragraph of the provision by removing "14.201-6(y)" and adding "14.201-6(x)" in its place.

16. Amend section 52.215-1 to revise the date of the provision and paragraph (c)(3) to read as follows:

52.215-1 Instructions to Offerors—Competitive Acquisition.

* * * * *

Instructions to Offerors—Competitive Acquisition (Nov 1999)

* * * * *

(c) * * *

(3) *Submission, modification, revision, and withdrawal of proposals.* (i) Offerors are responsible for submitting proposals, and any modifications, revisions, or withdrawals, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposal or revision is due.

(ii)(A) Any proposal, modification, revision, or withdrawal received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and—

(1) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

(2) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or

(3) It is the only proposal received.

(B) However, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(iii) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(iv) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(v) Proposals may be withdrawn by written notice received at any time before award.

Oral proposals in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the provision at 52.215-5, Facsimile Proposals. Proposals may be withdrawn in person by an offeror or an authorized representative, if the identity of the person requesting withdrawal is established and the person signs a receipt for the proposal before award.

* * * * *

[FR Doc. 99-24416 Filed 9-23-99; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 15 and 37

[FAC 97-14; FAR Case 97-038; Item VIII]

RIN 9000-A107

Federal Acquisition Regulation; Evaluation of Proposals for Professional Services

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to provide guidance on the evaluation of proposals that include uncompensated overtime hours.

EFFECTIVE DATE: November 23, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy F. Olson, Procurement Analyst, at (202) 501-3221. Please cite FAC 97-14, FAR case 97-038.

SUPPLEMENTARY INFORMATION:

A. Background

A final rule published as Item VII of Federal Acquisition Circular (FAC) 97-01 in the **Federal Register** on August 22, 1997 (62 FR 44813) elevated guidance regarding uncompensated overtime from the Defense Federal Acquisition Regulation Supplement (DFARS) Part

237 to FAR Part 37, and elevated a DFARS solicitation provision to FAR 52.237-10, Identification of Uncompensated Overtime. However, the FAR rule in FAC 97-01 did not address the evaluation of proposals that include uncompensated overtime.

Therefore, a proposed FAR rule was published in the **Federal Register** on August 24, 1998 (63 FR 45112), to add guidance at FAR 15.305(a)(1) and FAR 37.115-2(c) on the evaluation of proposed uncompensated overtime hours. One respondent submitted comments in response to the proposed rule. The Councils considered the respondent's comments in the development of the final rule and converted the proposed rule to a final rule without change.

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

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the guidance added to FAR Parts 15 and 37 is consistent with the existing policy pertaining to uncompensated overtime at FAR 37.115 and 52.237-10.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 15 and 37

Government procurement.

Dated: September 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR Parts 15 and 37 as set forth below:

1. The authority citation for 48 CFR Parts 15 and 37 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 15—CONTRACTING BY NEGOTIATION

2. In section 15.305, amend paragraph (a)(1) by adding a parenthetical as the penultimate sentence to read as follows:

15.305 Proposal evaluation.

(a) * * *
(1) * * * (See 37.115 for uncompensated overtime evaluation.)
* * *
* * * * *

PART 37—SERVICE CONTRACTING

3. In section 37.115-2, add paragraph (c) to read as follows:

37.115-2 General policy.

* * * * *
(c) Contracting officers must ensure that the use of uncompensated overtime in contracts to acquire services on the basis of the number of hours provided will not degrade the level of technical expertise required to fulfill the Government's requirements (see 15.305 for competitive negotiations and 15.404-1(d) for cost realism analysis). When acquiring these services, contracting officers must conduct a risk assessment and evaluate, for award on that basis, any proposals received that reflect factors such as:

(1) Unrealistically low labor rates or other costs that may result in quality or service shortfalls; and

(2) Unbalanced distribution of uncompensated overtime among skill levels and its use in key technical positions.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 17 and 52

[FAC 97-14; FAR Case 98-606; Item IX]

RIN 9000-AI26

Federal Acquisition Regulation; Option Clause Consistency

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense

Acquisition Regulations Council (Councils) have agreed to adopt the amendments of the proposed rule without change into the CFR. The rule amends the Federal Acquisition Regulation (FAR) to make the format of all option clauses consistent and to clarify that contracting officers may tailor the time period for providing a preliminary notice of the Government's intent to exercise an option.

EFFECTIVE DATE: November 23, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph DeStefano, Procurement Analyst, at (202) 501-1758. Please cite FAC 97-14, FAR case 98-606.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils published a proposed rule in the **Federal Register** at 64 FR 3618, January 22, 1999, to amend FAR 17.208(g) to clarify that the time period for providing a preliminary notice of the Government's intent to exercise a contract option in the clause at FAR 52.217-9, Option to Extend the Term of the Contract, may be tailored, and amend the clause at FAR 52.217-8 to make the format of the Option to Extend Services clause consistent with the format of other option clauses in the FAR.

Two respondents submitted public comments. The Councils considered the comments in finalizing the rule.

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

B. Regulatory Flexibility Act

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

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 17 and 52:

Government procurement.

Dated: September 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR Parts 17 and 52 as set forth below:

1. The authority citation for 48 CFR Parts 17 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 17—SPECIAL CONTRACTING METHODS

2. In section 17.208, amend paragraphs (a), (b), (c) introductory text, (d), (e), and (f) by removing "The contracting officer shall insert" and add "Insert" in its place; and revise paragraph (g) to read as follows:

17.208 Solicitation provisions and contract clauses.

* * * * *

(g) Insert a clause substantially the same as the clause at 52.217-9, Option to Extend the Term of the Contract, in solicitations and contracts when the inclusion of an option is appropriate (see 17.200 and 17.202) and it is necessary to include in the contract any or all of the following:

- (1) A requirement that the Government must give the contractor a preliminary written notice of its intent to extend the contract.
- (2) A statement that an extension of the contract includes an extension of the option.
- (3) A specified limitation on the total duration of the contract.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. In section 52.217-8, revise the date of the clause and the last sentence to read as follows:

52.217-8 Option to Extend Services.

* * * * *

Option to Extend Services (Nov 1999)

* * * The Contracting Officer may exercise the option by written notice to the Contractor within __ [insert the period of time within which the Contracting Officer may exercise the option].

(End of clause)

3. In section 52.217-9, revise the date of the clause and paragraph (a) to read as follows:

52.217-9 Option to Extend the Term of the Contract.

* * * * *

Option to Extend the Term of the Contract (Nov 1999)

(a) The Government may extend the term of this contract by written notice to the Contractor within __ [insert the period of time within which the Contracting Officer may exercise the option]; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least __ days [60 days unless a different number of days is inserted] before the contract expires. The preliminary notice does not commit the Government to an extension.

* * * * *

(End of clause)

[FR Doc. 99-24418 Filed 9-23-99; 8:45 am]

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

[FAC 97-14; FAR Case 98-301; Item X]

RIN 9000-AI32

Federal Acquisition Regulation; Compensation for Senior Executives

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

ACTION: Final rule.

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

EFFECTIVE DATE: September 24, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 97-14, FAR case 98-301.

SUPPLEMENTARY INFORMATION:**A. Background**

The Councils published an interim rule in the **Federal Register** on March 4, 1999 (64 FR 10547). The rule revised

FAR 31.205-6(p) to implement Section 804 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261). Section 804 revises the definition of "senior executive" at 10 U.S.C. 2324(l)(5) and at 41 U.S.C. 256(m)(2) to be "the five most highly compensated employees in management positions at each home office and each segment of the contractor" even though the home office or segment might not report directly to the contractor's headquarters.

There were no public comments submitted in response to the interim rule. Therefore, the Councils have agreed to convert the interim rule to a final rule without change.

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

B. Regulatory Flexibility Act

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

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 31:

Government procurement.

Dated: September 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final Without Change

Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR Part 31, which was published in the **Federal Register** on March 4, 1999 (64 FR 10547), as a final rule without change.

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).
[FR Doc. 99-24419 Filed 9-23-99; 8:45 am]
BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 97-14; FAR Case 98-006; Item XI]

RIN 9000-AI24

Federal Acquisition Regulation; Interest and Other Financial Costs

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to make minor changes to the cost principle concerning "interest and other financial costs."

EFFECTIVE DATE: November 23, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 97-14, FAR case 98-006.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils published a proposed rule in the *Federal Register* on January 29, 1999 (64 FR 4760). The rule proposed amending FAR 31.205-20, Interest and Other Financial Costs, to add "interest charges and other amounts paid as a consequence of late contractor payments" to the list of unallowable costs. In addition, the rule proposed several minor revisions, including the deletion of "and directly associated costs." This phrase is unnecessary since FAR 31.201-6(a) indicates that when "an unallowable cost is incurred, its directly associated costs are also unallowable."

Fifteen respondents submitted public comments to the proposed rule. Many of the respondents expressed the following concerns:

- The ruling by the Court of Appeals for the Federal Circuit (*Lockheed Corporation v. Secretary of the Air Force*, 113 F.3d 1225 (Fed. Cir. 1997)) did not involve interest charges paid "as a consequence of late contractor payments," but rather as a consequence of an inadvertent tax deficiency.

- The term "late contractor payments" is overly broad and may result in confusion regarding interest allowability.

The rule is inequitable since it proposes to disallow Government reimbursement of interest costs incurred by a contractor for the underpayment of State taxes while FAR 31.201-5, Credits, requires the contractor to credit the Government the applicable portion of any State tax refunds it receives, together with interest.

- The rule incentivizes contractors to be overly conservative in computing State tax liability.

- The rule substantially increases administrative burdens on the Government and contractors.

While the Councils do not agree with all of the concerns expressed by the respondents, the Councils have decided not to add "interest charges and other amounts paid as a consequence of late contractor payments" to the list of unallowable costs in FAR 31.205-20, pending further study on the issue of interest allowability. Therefore, this final rule only makes minor changes to the interest cost principle.

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

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule only makes nonsubstantive changes to the cost principle concerning "interest and other financial costs." In addition, 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.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management

and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: September 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR Part 31 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. Revise section 31.205-20 to read as follows:

31.205-20 Interest and other financial costs.

Interest on borrowings (however represented), bond discounts, costs of financing and refinancing capital (net worth plus long-term liabilities), legal and professional fees paid in connection with preparing prospectuses, and costs of preparing and issuing stock rights are unallowable (but see 31.205-28). However, interest assessed by State or local taxing authorities under the conditions specified in 31.205-41(a)(3) is allowable.

[FR Doc. 99-24420 Filed 9-23-99; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 36, 44, 49, and 52

[FAC 97-14; FAR Case 97-043; Item XII]

RIN 9000-AI22

Federal Acquisition Regulation; Cost-Reimbursement Architect-Engineer Contracts

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to provide guidance

on the applicability of certain clauses to cost-reimbursement architect-engineer (A-E) contracts.

EFFECTIVE DATE: November 23, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jack O'Neill, Procurement Analyst, at (202) 501-3856. Please cite FAC 97-14, FAR case 97-043.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils published a proposed rule in the **Federal Register** at 63 FR 71710, December 29, 1998, with comments requested by March 1, 1999. Only one respondent submitted comments, and those comments were not substantive. This final rule is unchanged from the proposed rule. The rule amends the prescriptions for use of the following FAR clauses to include cost-reimbursement architect-engineer services contracts:

- 52.236-24 Work Oversight in Architect-Engineer Contracts
- 52.236-25 Requirements for Registration of Designers
- 52.244-4 Subcontractors and Outside Associates and Consultants (Architect-Engineer Services)
- 52.249-6 Termination (Cost-Reimbursement)

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

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only corrects certain clause prescriptions, and this correction will not bring about any increased costs to be borne by the contractor.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104-13) applies because the final rule requires use of the clause at FAR 52.249-6, Termination (Cost-Reimbursement), in cost-reimbursement contracts for architect-engineer services. The information collection requirements relating to termination clauses are

approved and covered by OMB Control No. 9000-0028.

List of Subjects in 48 CFR Parts 36, 44, 49, and 52

Government procurement.

Dated: September 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR Parts 36, 44, 49, and 52 as set forth below:

1. The authority citation for 48 CFR Parts 36, 44, 49, 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 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.609-3 [Amended]

2. In section 36.609-3, remove "fixed-price" and add "all" in its place.

36.609-4 [Amended]

3. In section 36.609-4, remove "fixed-price".

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

44.204 [Amended]

4. In section 44.204, amend paragraph (b) by removing the words "fixed-price".

PART 49—TERMINATION OF CONTRACTS

5. In section 49.503, revise paragraphs (a)(1) and (b) to read as follows:

49.503 Termination for convenience of the Government and default.

(a) *Cost-reimbursement contracts*—(1) *General use.* Insert the clause at 52.249-6, Termination (Cost-Reimbursement), in solicitations and contracts when a cost-reimbursement contract is contemplated, except contracts for research and development with an educational or nonprofit institution on a no-fee basis.

* * * * *

(b) Insert the clause at 52.249-7, Termination (Fixed-Price Architect-Engineer), in solicitations and contracts for architect-engineer services, when a fixed-price contract is contemplated.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. In section 52.236-25, revise the introductory text of the clause to read as follows:

52.236-25 Requirements for Registration of Designers.

As prescribed in 36.609-4, insert the following clause:

* * * * *

[FR Doc. 99-24421 Filed 9-23-99; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 46

[FAC 97-14; FAR Case 98-002; Item XIII]

RIN 9000-A117

Federal Acquisition Regulation; Conditionally Accepted Items

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to require that, when conditionally accepting nonconforming items, amounts withheld from payments should be at least sufficient to cover the cost and related profit to correct deficiencies and complete unfinished work; and that the contracting officer must document the basis for the amounts withheld in the contract file.

EFFECTIVE DATE: November 23, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501-3775. Please cite FAC 97-14, FAR case 98-002.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils published a proposed rule in the **Federal Register** on October 28, 1998, (63 FR 57878). This final rule implements the recommendation of General Accounting Office Report GAO/NSIAD-98-20 Defense Acquisition, Guidance Is Needed On Payments For Conditionally Accepted Items, dated December 12, 1997. The rule amends FAR 46.101 to add a definition of "conditional acceptance," and amends

FAR 46.407 to provide procedures for the conditional acceptance of supplies and services.

The Councils received public comments from two respondents and considered them in finalizing the rule.

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

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the use of conditional acceptance is not widespread. No additional requirements are imposed on small businesses.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 46

Government procurement.
Dated: September 14, 1999.

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

Therefore, DoD, GSA, and NASA amend 48 CFR Part 46 as set forth below:

PART 46—QUALITY ASSURANCE

1. The authority citation for 48 CFR Part 46 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. Amend section 46.101 by adding, in alphabetical order, the definition "Conditional acceptance" to read as follows:

46.101 Definitions.

* * * * *

Conditional acceptance, as used in this part, means acceptance of supplies or services that do not conform to contract quality requirements, or are otherwise incomplete, that the contractor is required to correct or otherwise complete by a specified date.

* * * * *

3. Amend section 46.407 as follows:

a. Remove from paragraph (a) "Contracting officers" and insert "The contracting officer", in its place;

b. Remove from the first sentence of paragraph (b) "Contractors ordinarily shall be given" and from the second sentence "shall" and insert "The contracting officer ordinarily must give the contractor", and "must", respectively;

c. Revise paragraph (c)(1);

d. Remove from the first and second sentences of paragraph (c)(2) "shall" and insert "must," in their places;

e. Remove from paragraph (e) "Contracting officers shall" and insert "The contracting officer must";

f. Revise paragraph (f); and

g. Remove from the first and last sentences of the introductory text of paragraph (g) "shall" and insert "must," in their places;

Revised text read as follows:

46.407 Nonconforming supplies or services.

* * * * *

(c)(1) In situations not covered by paragraph (b) of this section, the contracting officer ordinarily must reject supplies or services when the nonconformance is critical or major or the supplies or services are otherwise incomplete. However, there may be circumstances (e.g., reasons of economy or urgency) when the contracting officer determines acceptance or conditional acceptance of supplies or services is in the best interest of the Government. The contracting officer must make this determination based upon—

(i) Advice of the technical activity that the item is safe to use and will perform its intended purpose;

(ii) Information regarding the nature and extent of the nonconformance or otherwise incomplete supplies or services;

(iii) A request from the contractor for acceptance of the nonconforming or otherwise incomplete supplies or services (if feasible);

(iv) A recommendation for acceptance, conditional acceptance, or rejection, with supporting rationale; and

(v) The contract adjustment considered appropriate, including any adjustment offered by the contractor.

* * * * *

(f) When supplies or services are accepted with critical or major nonconformances as authorized in paragraph (c) of this section, the contracting officer must modify the contract to provide for an equitable price reduction or other consideration. In the case of conditional acceptance, amounts withheld from payments generally should be at least sufficient to

cover the estimated cost and related profit to correct deficiencies and complete unfinished work. The contracting officer must document in the contract file the basis for the amounts withheld. For services, the contracting officer can consider identifying the value of the individual work requirements or tasks (subdivisions) that may be subject to price or fee reduction. This value may be used to determine an equitable adjustment for nonconforming services. However, when supplies or services involving minor nonconformances are accepted, the contract need not be modified unless it appears that the savings to the contractor in fabricating the nonconforming supplies or performing the nonconforming services will exceed the cost to the Government of processing the modification.

* * * * *

[FR Doc. 99-24422 Filed 9-23-99; 8:45 am]
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DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Parts 48 and 52

[FAC 97-14; FAR Case 97-031; Item XIV]
RIN 9000-AH84

**Federal Acquisition Regulation; Value
Engineering Change Proposals/PAT**

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to change the sharing periods and rates that contracting officers may establish for individual value engineering change proposals.

EFFECTIVE DATE: November 23, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501-3775. Please cite FAC 97-14, FAR case 97-031.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the value engineering change proposal (VECP) guidance in FAR Parts 48 and 52 to allow the contracting officer to increase the sharing period from 36 to a range of 36 to 60 months; increase the contractor's share of instant, concurrent and future savings under the incentive/voluntary sharing arrangement from 50 to a range of 50 to 75 percent; and increase the contractor's share of collateral savings from 20 to a range of 20 to 100 percent on a case-by-case basis for each VECP. The contracting officer's unilateral decision on each of these aspects is final. This revision is intended to incentivize contractors to submit more value engineering change proposals, by allowing contracting officers to unilaterally increase both the share percentage and the sharing period, so that contractors with meritorious proposals may be adequately compensated for the effort required to prepare and negotiate individual change proposals.

The Councils published a proposed rule in the **Federal Register** at 63 FR 43236, August 12, 1998. Nine respondents submitted comments on the proposed rule. The Councils considered all comments in the development of the final rule.

The Councils are addressing the changes concerning the Contract Disputes Act under FAR Case 98-017, Review of Award Fee Determinations (Burnside-Ott). The Councils published this case in the **Federal Register** at 64 FR 24472, May 6, 1999 as a proposed rule with a request for comments.

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

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* applies to this final rule. Interested parties may obtain a copy of the FRFA from the FAR Secretariat.

The Councils prepared a Final Regulatory Flexibility Analysis (FRFA) and it is summarized as follows:

The objective of the rule is to change the sharing periods and rates that contracting officers may establish for individual VECPs. By allowing longer sharing periods and allowing increased contractor sharing rates for collateral and concurrent savings, more contractors may find it feasible to submit VECPs. The rule may increase the number of VECP settlements negotiated between the Government and private entities, as the additional flexibility in sharing periods and

contractor sharing rates it provides should incentivize contractors to submit more VECPs. The rule will apply to all entities, large and small, that propose VECPs under Government contracts.

The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 48 and 52

Government procurement.

Dated: September 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

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

1. The authority citation for 48 CFR Parts 48 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 48—VALUE ENGINEERING

2. In section 48.001, revise paragraph (c) of the definition "Acquisition savings" and revise the definition "Sharing period" to read as follows:

48.001 Definitions.

Acquisition savings, * * *

(c) Future contract savings, which are the product of the future unit cost reduction multiplied by the number of future contract units in the sharing base. On an instant contract, future contract savings include savings on increases in quantities after VECP acceptance that are due to contract modifications, exercise of options, additional orders, and funding of subsequent year requirements on a multiyear contract.

* * * * *

Sharing period, as used in this part, means the period beginning with acceptance of the first unit incorporating the VECP and ending at a calendar date or event determined by the contracting officer for each VECP.

* * * * *

3. In section 48.102, revise paragraphs (g) and (h) to read as follows:

48.102 Policies.

* * * * *

(g) The contracting officer determines the sharing periods and sharing rates on

a case-by-case basis using the guidelines in 48.104-1 and 48.104-2, respectively. In establishing a sharing period and sharing rate, the contracting officer must consider the following, as appropriate, and must insert supporting rationale in the contract file:

- (1) Extent of the change.
- (2) Complexity of the change.
- (3) Development risk (*e.g.*, contractor's financial risk).
- (4) Development cost.
- (5) Performance and/or reliability impact.
- (6) Production period remaining at the time of VECP acceptance.
- (7) Number of units affected.

(h) Contracts for architect-engineer services must require a mandatory value engineering program to reduce total ownership cost in accordance with 48.101(b)(2). However, there must be no sharing of value engineering savings in contracts for architect-engineer services.

* * * * *

48.104-1 through 104-3 [Redesignated as 48.104-2 through 48.104-4]

4. Redesignate sections 48.104-1 through 48.104-3 as 48.104-2 through 48.104-4, respectively;

5. Add new section 48.104-1 to read as follows:

48.104-1 Determining sharing period.

(a) Contracting officers must determine discrete sharing periods for each VECP. If more than one VECP is incorporated into a contract, the sharing period for each VECP need not be identical.

(b) The sharing period begins with acceptance of the first unit incorporating the VECP. Except as provided in paragraph (c) of this section, the end of the sharing period is a specific calendar date that is the later of—

- (1) 36 to 60 consecutive months (set at the discretion of the contracting officer for each VECP) after the first unit affected by the VECP is accepted; or
- (2) The last scheduled delivery date of an item affected by the VECP under the instant contract delivery schedule in effect at the time the VECP is accepted.

(c) For engineering-development contracts and contracts containing low-rate-initial-production or early production units, the end of the sharing period is based not on a calendar date, but on acceptance of a specified quantity of future contract units. This quantity is the number of units affected by the VECP that are scheduled to be delivered over a period of between 36 and 60 consecutive months (set at the discretion of the contracting officer for each VECP) that spans the highest

planned production, based on planning and programming or production documentation at the time the VECP is accepted. The specified quantity begins with the first future contract unit affected by the VECP and continues over consecutive deliveries until the sharing period ends at acceptance of the last of the specified quantity of units.

(d) For contracts (other than those in paragraph (c) of this subsection) for items requiring a prolonged production schedule (e.g., ship construction, major system acquisition), the end of the

sharing period is determined according to paragraph (b) of this subsection. Agencies may prescribe sharing of future contract savings on all future contract units to be delivered under contracts awarded within the sharing period for essentially the same item, even if the scheduled delivery date is outside the sharing period.

6. In the newly designated section 48.104-2—

a. Remove from the first sentence of paragraph (a)(1) “normally”;

b. Revise the table in paragraph (a)(1);

c. Remove from the second sentence in paragraph (a)(2) “subparagraph (1) above” and insert “paragraph (a)(1) of this section”, in its place;

d. Remove from the first sentence of paragraph (a)(3) “(but see 48.102(g))”; and

e. Remove paragraph (c).

The revised text reads as follows:

48.104-2 Sharing acquisition savings.

(a) * * *

(1) * * *

GOVERNMENT/CONTRACTOR SHARES OF NET ACQUISITION SAVINGS

[Figures in percent]

Contract type	Sharing arrangement			
	Incentive (voluntary)		Program requirement (mandatory)	
	Instant contract rate	Concurrent and future contract rate	Instant contract rate	Concurrent and future contract rate
Fixed-price (includes fixed-price-award-fee; excludes other fixed-price incentive contracts)	1 50/50	1 50/50	75/25	75/25
Incentive (fixed-price or cost) (other than award fee)	(2)	1 50/50	(2)	75/25
Cost-reimbursement (includes cost-plus-award-fee; excludes other cost-type incentive contracts)	3 75/25	3 75/25	85/15	85/15

¹ The contracting officer may increase the contractor's sharing rate to as high as 75 percent for each VECP. (See 48.102(g) (1) through (7).)

² Same sharing arrangement as the contract's profit or fee adjustment formula.

³ The contracting officer may increase the contractor's sharing rate to as high as 50 percent for each VECP. (See 48.102(g) (1) through (7).)

* * * * *

7. Revise designated section 48.104-3 to read as follows:

§ 48.104-3 Sharing collateral savings.

(a) The Government shares collateral savings with the contractor, unless the head of the contracting activity has determined that the cost of calculating and tracking collateral savings will exceed the benefits to be derived (see 48.201(e)).

(b) The contractor's share of collateral savings may range from 20 to 100 percent of the estimated savings to be realized during a typical year of use but must not exceed the greater of—

(1) The contract's firm-fixed-price, target price, target cost, or estimated cost, at the time the VECP is accepted; or

(2) \$100,000.

(c) The contracting officer must determine the sharing rate for each VECP.

(d) In determining collateral savings, the contracting officer must consider any degradation of performance, service life, or capability.

8. In section 48.201, add paragraphs (g) and (h) to read as follows:

§ 48.201 Clauses for supply or service contracts.

* * * * *

(g) *Engineering-development solicitations and contracts.* For engineering-development solicitations and contracts, and solicitations and contracts containing low-rate-initial-production or early production units, the contracting officer must modify the clause at 52.248-1, Value Engineering, by—

(1) Revising paragraph (i)(3)(i) of the clause by substituting “a number equal to the quantity required to be delivered over a period of between 36 and 60 consecutive months (set at the discretion of the Contracting Officer for each VECP) that spans the highest planned production, based on planning and programming or production documentation at the time the VECP is accepted;” for “the number of future contract units scheduled for delivery during the sharing period;” and

(2) Revising the first sentence under paragraph (3) of the definition of “acquisition savings” by substituting “a number equal to the quantity to be delivered over a period of between 36 and 60 consecutive months (set at the discretion of the Contracting Officer for each VECP) that spans the highest planned production, based on planning and programming or production documentation at the time the VECP is

accepted.” for “the number of future contract units in the sharing base.”

(h) *Extended production period solicitations and contracts.* In solicitations and contracts for items requiring an extended period for production (e.g., ship construction, major system acquisition), if agency procedures prescribe sharing of future contract savings on all units to be delivered under contracts awarded during the sharing period (see 48.104-1(c)), the contracting officer must modify the clause at 52.248-1, Value Engineering, by revising paragraph (i)(3)(i) of the clause and the first sentence under paragraph (3) of the definition of “acquisition savings” by substituting “under contracts awarded during the sharing period” for “during the sharing period.”

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

9. In section 52.248-1, revise the introductory text, the date of the clause, in paragraph (b) paragraph (3) of the definition “Acquisition savings”, and the definition “Sharing period”, revise the table in (f); amend paragraph (i)(5) introductory text by removing “48.104-3” and adding “48.104-4”, and revise

the first sentence in paragraph (j). The revised text reads as follows:

52.248-1 Value Engineering.

As prescribed in 48.201, insert the following clause:

Value Engineering (Nov 1999)

* * * * *

(b) *Definitions.*

Acquisition savings. * * *

(3) Future contract savings, which are the product of the future unit cost reduction multiplied by the number of future contract units in the sharing base. On an instant contract, future contract savings include savings on increases in quantities after VECP acceptance that are due to contract modifications, exercise of options, additional orders, and funding of subsequent year requirements on a multiyear contract.

* * * * *

Sharing period, as used in this clause, means the period beginning with acceptance of the first unit incorporating the VECP and ending at a calendar date or event determined by the contracting officer for each VECP.

* * * * *

(f) * * *

CONTRACTOR'S SHARE OF NET ACQUISITION SAVINGS

[Figures in Percent]

Contract type	Sharing arrangement			
	Incentive (voluntary)		Program requirement (mandatory)	
	Instant contract rate	Con-current and future contract rate	Instant contract rate	Con-current and future contract rate
Fixed-price (includes fixed-price-award-fee; excludes other fixed-price incentive contracts)	1 50	1 50	25	25
Incentive (fixed-price or cost) (other than award fee)	(2)	1 50	(2)	25
Cost-reimbursement (includes cost-plus-award-fee; excludes other cost-type incentive contracts)	³ 25	³ 25	15	15

¹ The Contracting Officer may increase the Contractor's sharing rate to as high as 75 percent for each VECP.

² Same sharing arrangement as the contract's profit or fee adjustment formula.

³ The Contracting Officer may increase the Contractor's sharing rate to as high as 50 percent for each VECP.

* * * * *

(j) *Collateral savings.* If a VECP is accepted, the instant contract amount must be increased, as specified in paragraph (h)(5) of this clause, by a rate from 20 to 100 percent, as determined by the Contracting Officer, of any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset. * * *

* * * * *

[FR Doc. 99-24423 Filed 9-23-99; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 97-14; FAR Case 98-003; Item XV]

RIN 9000-AI23

Federal Acquisition Regulation; Cost Accounting Standards Post-Award Notification

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense

Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to reduce the subcontractor information that the FAR requires a contractor to provide to its cognizant contract administration office (CAO) when requesting the CAO to perform administration for Cost Accounting Standards (CAS) matters.

EFFECTIVE DATE: November 23, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 97-14, FAR case 98-003.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils published a proposed rule in the **Federal Register** on January 25, 1999 (64 FR 3786). The proposed rule revised the clause at FAR 52.230-6(e)(2) to reduce the subcontractor information that a contractor is required to provide to its cognizant contract administration office (CAO) when requesting the CAO to perform administration for CAS matters.

Two respondents submitted public comments to the proposed rule. The Councils considered all comments and

converted the proposed rule to a final rule without change.

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

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because contracts and subcontracts with small businesses are exempt from all CAS requirements in accordance with 48 CFR 9903.201-1(b)(3).

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104-13) applies because the final rule contains information collection requirements. Accordingly, the FAR Secretariat will forward a request for a revised paperwork burden under OMB Control Number 9000-0129 reflecting a slight decrease to the hours to the Office of Management and Budget under 44

U.S.C. 3501, *et seq.* The **Federal Register** notice published on January 25, 1999, invited public comment concerning this decrease. The FAR Secretariat received no comments.

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: September 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

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

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR Part 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. Amend section 52.230-6 to revise the date of the clause and paragraph (e) of the clause to read as follows:

52.230-6 Administration of Cost Accounting Standards.

* * * * *

Administration of Cost Accounting Standards (Nov 1999)

* * * * *

(e) For all subcontracts subject to the clauses at FAR 52.230-2, 52.230-3, or 52.230-5—

(1) So state in the body of the subcontract, in the letter of award, or in both (self-deleting clauses shall not be used);

(2) Include the substance of this clause in all negotiated subcontracts; and

(3) Within 30 days after award of the subcontract, submit the following information to the Contractor's cognizant contract administration office for transmittal to the contract administration office cognizant of the subcontractor's facility:

(i) Subcontractor's name and subcontract number.

(ii) Dollar amount and date of award.

(iii) Name of Contractor making the award.

* * * * *

[FR Doc. 99-24424 Filed 9-23-99; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 15, 19, and 52

[FAC 97-14; Item XVI]

Federal Acquisition Regulation; Technical Amendments

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

ACTION: Technical amendments.

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

EFFECTIVE DATE: September 24, 1999, except for sections 19.102 and 52.219-18 which are effective November 23, 1999.

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

List of Subjects in 48 CFR Parts 1, 15, 19, and 52

Government procurement.

Dated: September 14, 1999

Edward C. Loeb

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR Parts 1, 15, 19, and 52 as set forth below:

1. The authority citation for 48 CFR Parts 1, 15, 19, and 52 continues to read as follows:

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

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Amend section 1.106 in the table following the introductory paragraph by adding entries to read as follows:

1.106 OMB approval under the Paperwork Reduction Act.

* * * * *

FAR segment	OMB control number
* * * * *	
52.232-1	9000-0070
52.232-2	9000-0070
52.232-3	9000-0070
52.232-4	9000-0070

FAR segment	OMB control number
* * * * *	
52.232-6	9000-0070
* * * * *	
52.232-8	9000-0070
52.232-9	9000-0070
* * * * *	
52.232-11	9000-0070
* * * * *	

PART 15—CONTRACTING BY NEGOTIATION

15.305 [Amended]

3. Amend section 15.305 in paragraph (a)(2)(i) by removing "(41 U.S.C. 401)".

PART 19—SMALL BUSINESS PROGRAMS

4. Amend section 19.102 by revising the first sentence of paragraph (h); and by removing the size standards table that follows, which consists of Division A through Division K, and Footnotes 1 through 13, to read as follows:

19.102 Size standards.

* * * * *

(h) The industry size standards are published by the Small Business Administration on the Internet at <http://www.sba.gov/regulations/siccodes>.

* * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.211-6 [Amended]

5. Remove from the introductory text "11.107" and insert "11.107(a).

52.219-18 [Amended]

6. In section 52.219-18 in paragraph (d)(2) of the clause, remove the last sentence in parentheses.

[FR Doc. 99-24425 Filed 9-23-99; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

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

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 97-14 which amend the FAR. The rules marked with an asterisk (*) indicate that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain

further information regarding these rules by referring to FAC 97-14 which precedes this document. These documents are also available via the Internet at <http://www.arnet.gov/far>.

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

LIST OF RULES IN FAC 97-14

Item and Subject	FAR case	Analyst
I—Very Small Business Concerns	98-013	Moss
II—* Historically Underutilized Business Zone (HUBZone) Empowerment Contracting Program	97-307	Moss
III—Use of Competitive Proposals	99-001	DeStefano
IV—Javits-Wagner-O'Day Proposed Revisions	98-602	DeStefano
V—OMB Circular A-119	98-004	Moss
VI—* Determination of Price Reasonableness and Commerciality (Interim)	98-300	Olson
VII—Conforming Late Offer Treatment	97-030	DeStefano
VIII—Evaluation of Proposals for Professional Services	97-038	Olson
IX—Option Clause Consistency	98-606	DeStefano
X—Compensation for Senior Executives	98-301	Nelson
XI—Interest and Other Financial Costs	98-006	Nelson
XII—Cost-Reimbursement Architect-Engineer Contracts	97-043	O'Neill
XIII Conditionally Accepted Items	98-002	Klein
XIV—* Value Engineering Change Proposals/PAT	97-031	Klein
XV—Cost Accounting Standards Post-Award Notification	98-003	Nelson

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

This final rule converts the interim rule published as Item II of FAC 97-11 to a final rule with changes. The interim rule amended FAR 5.207, 8.404, 12.303, 19.000, 19.001, 19.102, 19.502-2, 19.901 through 19.904, 52.212-5, and 52.219-5, to implement the Small Business Administration's Very Small Business Pilot Program (13 CFR Parts 121 and 125). This program became effective on January 4, 1999.

Item II—Historically Underutilized Business Zone (HUBZone) Empowerment Contracting Program (FAR Case 97-307)

This final rule converts the interim rule published as Item I of FAC 97-10 to a final rule with amendments at FAR 6.201, 19.306, 19.307, 19.800, 19.1303, and the provision at 52.219-1. This final rule amends the FAR to implement the Small Business Administration's Historically Underutilized Business (HUBZone) Program. The purpose of the program is to provide Federal contracting assistance for qualified small business concerns located in historically underutilized business zones in an effort to increase employment opportunities, investment, and economic development in these areas. The program provides for set-asides, sole source awards, and price evaluation preferences for HUBZone

small business concerns and establishes goals for awards to such concerns.

Item III—Use of Competitive Proposals (FAR Case 99-001)

This final rule amends FAR 6.401 to delete the requirement for contracting officers to explain in writing their rationale for choosing to use competitive proposals rather than sealed bidding.

Item IV—Javits-Wagner-O'Day Proposed Revisions (FAR Case 98-602)

This final rule adds a new section, FAR 8.716, and amends paragraph (a) of FAR 42.1203 to provide procedures for recognizing a name change or a successor in interest for a Javits-Wagner-O'Day Act participating nonprofit agency providing supplies or services on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled.

Item V—OMB Circular A-119 (FAR Case 98-004)

This final rule amends FAR 11.101, 11.107, 11.201, and adds a provision at 52.211-7 to address the use of voluntary consensus standards in accordance with the requirements of Office of Management and Budget (OMB) Circular A-119.

Item VI—Determination of Price Reasonableness and Commerciality (FAR Case 98-300)

This interim rule revises FAR 12.209, 13.106-3(a)(2), and amends Subpart 15.4 to implement Section 803 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261). Section 803 requires amending the FAR to provide specific guidance concerning—

- The appropriate application and precedence of various price analysis tools;
- The circumstances under which contracting officers should require offerors of exempt commercial items to provide information other than cost or pricing data; and
- The role and responsibility of support organizations in determining price reasonableness.

This interim rule also revises FAR 15.403-3(a) to implement Section 808 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261). Section 808 requires amending the FAR to—

- Clarify procedures associated with obtaining information other than cost or pricing data when acquiring commercial items;
- Establish that offerors who fail to comply with requirements to provide the information shall be ineligible for award; and
- Establish exceptions, as appropriate.

Item VII—Conforming Late Offer Treatment (FAR Case 97-030)

This final rule amends FAR 14.201-6, 14.304, and 15.208, the provisions at 52.212-1, 52.214-7, 52.214-23, and 52.215-1, and removes 52.214-32 and 52.214-33 to provide uniform guidance regarding receipt of late offers for commercial, sealed bid, and negotiated acquisitions.

Item VIII—Evaluation of Proposals for Professional Services (FAR Case 97-038)

This final rule amends FAR 15.305(a)(1) and 37.115-2(c) to provide guidance on the evaluation of proposals that include uncompensated overtime hours.

Item IX—Option Clause Consistency (FAR Case 98-606)

This final rule amends FAR 17.208(g) to clarify that the time period for providing a preliminary notice of the Government's intent to exercise a contract option in the clause at FAR 52.217-9 may be tailored and amends the clause at FAR 52.217-8 to make the format of the Option to Extend Services clause consistent with the format of other option clauses in the FAR.

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

This final rule covers the interim rule published as Item VIII of FAC 97-11 to a final rule without change. The rule amends FAR Part 31 to implement Section 804 of the Strom Thurmond National Defense Authorization Act for

Fiscal Year 1999 (Pub. L. 105-261). Section 804 revises the definition of "senior executive" at 10 U.S.C. 2324(1)(5) and at 41 U.S.C. 256(m)(2) to be "the five most highly compensated employees in management positions at each home office and each segment of the contractor" even though the home office or segment might not report directly to the contractor's headquarters.

Item XI—Interest and Other Financial Costs (FAR Case 98-006)

This final rule amends FAR 31.205-20 to make minor changes to the cost principle concerning "interest and other financial costs."

Item XII—Cost-Reimbursement Architect-Engineer Contracts (FAR Case 97-043)

This final rule amends the clause prescriptions at FAR 36.609, 44.204, 49.503, and the clause preface at 52.236-25, Requirements for Registration of Designers, to include application of certain clauses to cost-reimbursement architect-engineer contracts.

Item XIII—Conditionally Accepted Items (FAR Case 98-002)

This final rule amends FAR 46.101 to add a definition of conditional acceptance; and FAR 46.407 to require that, when conditionally accepting nonconforming items, amounts withheld from payments should be at least sufficient to cover the cost and related profit to correct deficiencies and complete unfinished work. FAR 46.407

has also been revised to require that the basis for the amounts withheld be documented in the contract file.

Item XIV—Value Engineering Change Proposals/PAT (FAR Case 97-031)

This final rule amends the value engineering change proposal (VECP) guidance in FAR 48.001, 48.102, 48.104, 48.201, and the FAR clause at 52.248-1 to allow the contracting officer to increase the sharing period from 36 to a range of 36 to 60 months; increase the contractor's share of instant, concurrent and future savings under the incentive/voluntary sharing arrangement from 50 to a range of 50 to 75 percent; and increase the contractor's share of collateral savings from 20 to a range of 20 to 100 percent on a case-by-case basis for each VECP.

Item XV—Cost Accounting Standards Post-Award Notification (FAR Case 98-003)

This final rule revises paragraph (e) of the clause at FAR 52.230-6, Administration of Cost Accounting Standards, to reduce the subcontractor information that a contractor is required to provide to its cognizant contract administration office (CAO) when requesting the CAO to perform administration for Cost Accounting Standards matters.

Dated: September 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

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