

## Procurement & Property Division Policy Memorandum

Subject: <b>Elimination of Paid Cost Rule</b>			Number: 32-03
Distribution: ARS: PAOs FD PPD	Date: <b>December 7, 2000</b>	This Replaces: N/A	

### Background

The Federal Acquisition Circular (FAC) 97-16 published changes to the Federal Acquisition Regulation (FAR) Part 32 that required large businesses to pay suppliers prior to billing the Federal Government. As of May 26, 2000, this requirement was eliminated. This rule is commonly known as the "Paid Cost Rule." Additional information can be found in the Federal Register dated March 27, 2000, (Volume 65, Number 59, pages 16276-16285).

FAR now allows all contractors (large and small) to include, in their billings, subcontractor costs that have been incurred but not actually paid. These costs can be included provided the payment to the subcontractor will be made in accordance with the terms and conditions of a subcontract or invoice and ordinarily prior to submission of the contractor's next payment request to the Government.

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### Definition

Generally, the "Paid Cost Rule" stipulated that large businesses pay suppliers before those costs could be included in billings to the Federal Government.

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### Applicability

This regulation is mandatory for all solicitations issued on or after May 26, 2000, under which the Government will provide payments based on costs.

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Policy Guidance

In accordance with FAC 97-16, Contracting Officers (CO's) are required to amend solicitations issued **on or after May 26, 2000**, and to modify the resulting contracts to eliminate the "Paid Cost Rule." This action is required if FAR 52.216-7, Allowable Cost and Payment; FAR 52.232-7, Payments Under Time and Materials and Labor Hour Contracts; and FAR 52.232.-16, Progress Payments; were included in the solicitation or contract.

In addition, CO's may, at their discretion, include the clauses and provisions to eliminate the "Paid Cost Rule" in solicitations issued **before May 26, 2000**. The impact this would have on our contracting staff and also whether this would be cost-effective to issue amendments to incorporate this change is unknown at this time. Therefore, this decision will remain with the CO.

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Action Required by REE Contracting Officers

To ensure compliance with the FAR changes, CO's should:

- (1) Review FAC 97-16 and the Federal Register dated March 27, 2000, in its entirety to get a clear understanding of the FAR amendments. Copies of the FAC and the Federal Register can be obtained via the Internet at: <http://www.arnet.gov/far/farqueryframe.html>
- (2) Amend solicitations issued and modify the resulting contracts to eliminate the "Paid Cost Rule" if FAR 52.216-7, FAR 52.232-7, and FAR 52.232-16 were included in any solicitation issued on or after May 26, 2000.

The following clauses should be removed to reflect the elimination of the "Paid Cost Rule."

Remove

Replace

FAR 52.216-7 (APR 98)	FAR 52.216-7 (MAR 00)
FAR 52.232-16 (JUL 91)	FAR 52.232-16 (MAR 00)
FAR 52.232-7 (FEB 1997)	FAR 52.232-7 (MAR 00)

- (3) Determine if the "Paid Cost Rule" should be eliminated in contracts awarded prior to May 26, 2000, and provide a justification/statement in the contract file on the decision.
- (4) Ensure appropriate terms and conditions are included in the solicitation/contract to assure that payments are made on a timely basis to subcontractors. Following is suggested clause language, which may be tailored by the CO, to be included in Section G.

G.# Certification of Subcontractor Costs (Area/Office,  
Month/Year)

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The contractor shall certify in writing that subcontractor costs on any previous invoices have been paid prior to submission of the current invoice.

PPD Point of Contact

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Approved:

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