

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 revision merely provides uniform definitions for existing FAR terms. No comments were received on the impact of this rule on small entities during the public comment period.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 46

Government procurement.

Dated: June 4, 1996.

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

Therefore, 48 CFR Part 46 is amended 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. Section 46.101 is amended by adding in alphabetical order the definitions “Latent defect” and “Patent defect” to read as follows:

46.101 Definitions.

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Latent defect means a defect which exists at the time of acceptance but cannot be discovered by a reasonable inspection.

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Patent defect means any defect which exists at the time of acceptance and is not a latent defect.

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48 CFR Part 46

[FAC 90-39; FAR Case 92-027; Item XXVIII]

RIN 9000-AF80

Federal Acquisition Regulation; Quality Assurance Nonconformances

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to provide standardized definitions of the terms “critical nonconformance,” “major nonconformance,” and “minor nonconformance,” and make other conforming amendments as a result of recommendations made by the Department of Defense Inspector General. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 19, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501-3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-39, FAR case 92-027.

SUPPLEMENTARY INFORMATION:**A. Background**

On September 27, 1990, the Department of Defense Inspector General (DoDIG) issued Audit Report 90-113, Nonconforming Products Procured by the Defense Industrial Supply Center. The report included recommendations that the DoD should use standardized terminology for a nonconformance, and that the DoD definition of a nonconformance should be in agreement with the FAR. On March 28, 1994 (59 FR 14466), the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council published a proposed rule implementing the DoDIG's recommendation.

As a result of evaluating the comments received, changes were made to the proposed rule. The changes included deleting the words “judgment and experience indicate” from the definition of “critical nonconformance,” and adding the words “of the supplies or services,” to the definition of “major

nonconformance” after the word “failure.”

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 provides standard terminology and definitions and guidance to contracting officers pertaining to nonconforming supplies and services. No comments were received on the impact of this rule on small entities during the public comment period.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 46

Government procurement.

Dated: June 4, 1996.

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

Therefore, 48 CFR Part 46 is amended 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. Section 46.101 is amended by adding in alphabetical order the definitions “Critical nonconformance”, “Major nonconformance”, and “Minor nonconformance” to read as follows:

46.101 Definitions.

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Critical nonconformance means a nonconformance that is likely to result in hazardous or unsafe conditions for individuals using, maintaining, or depending upon the supplies or services; or is likely to prevent performance of a vital agency mission.

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Major nonconformance means a nonconformance, other than critical, that is likely to result in failure of the supplies or services, or to materially reduce the usability of the supplies or services for their intended purpose.

Minor nonconformance means a nonconformance that is not likely to materially reduce the usability of the supplies or services for their intended purpose, or is a departure from established standards having little bearing on the effective use or operation of the supplies or services.

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3. Section 46.103 is amended at the end of paragraph (c) by removing “and”; in paragraph (d) by removing the period and inserting “; and”; and by adding paragraph (e) to read as follows:

46.103 Contracting office responsibilities.

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(e) Ensuring that nonconformances are identified, and establishing the significance of a nonconformance when considering the acceptability of supplies or services which do not meet contract requirements.

4. Section 46.407 is amended by revising the first sentence of paragraph (c)(1) introductory text, and in the third sentence by removing the comma after the word “determination”; revising paragraph (d); and revising the first sentence of paragraph (f) to read as follows:

46.407 Nonconforming supplies or services.

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(c)(1) In situations not covered by paragraph (b) of this section, the contracting officer shall ordinarily reject supplies or services when the nonconformance is critical or major.

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(d) If the nonconformance is minor, the cognizant contract administration office may make the determination to accept or reject, except where this authority is withheld by the contracting office of the contracting activity. To assist in making this determination, the contract administration office may establish a joint contractor-contract administrative office review group. Acceptance of supplies and services with critical or major nonconformances is outside the scope of the review group.

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(f) Each contract under which supplies or services with critical or major nonconformances are accepted as authorized in paragraph (c) of this section shall be modified to provide for an equitable price reduction or other consideration. * * *

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48 CFR Part 52

[FAC 90-39; FAR Case 95-603; Item XXIX]

RIN 9000-AG98

Federal Acquisition Regulation; Solicitation Provisions—Contract Clauses

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend a Federal Acquisition Regulation (FAR) provision to delete the statement advising offerors to obtain copies of specifications from General Services Administration Business Service Centers. The substance of the provision is not changed. Specifications are no longer available at the Business Service Centers. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 19, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501-3856 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 90-39, FAR case 95-603.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the provision at FAR 52.211-1 to delete the statement that copies of specifications may be obtained from the General Services Administration Business Service Centers in Boston, New York, Philadelphia, Atlanta, Kansas City, and Fort Worth. Copies of specifications are no longer available at the Business Service Centers.

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. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90-

39, FAR case 95-603), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: June 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 52 is amended 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).

52.211-1 [Amended]

2. Section 52.211-1 is amended in the introductory paragraph by revising “11.203(a)” to read “11.204(a)”; revising the date of the provision to read “(AUG 1996)”; and in the first sentence of paragraph (a) of the provision by removing “, or from any of the General Services Administration Business Service Centers which are located in Boston, MA; New York, NY; Philadelphia, PA; Atlanta, GA; Kansas City, MO; and Fort Worth, TX.” and replacing it with a period.

52.211-2 and 52.211-3 [Amended]

3. Section 52.211-2 is amended in the introductory paragraph by revising “11.203(b)” to read “11.204(b)”.

4. Section 52.211-3 is amended in the introductory paragraph by revising “11.203(c)” to read “11.204(c)”.

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48 CFR Part 52

[FAC 90-39; FAR Case 91-031; Item XXX]

RIN 9000-AE41

Federal Acquisition Regulation; Contract Award—Sealed Bidding—Construction

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