

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.

#### Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR Part 52, which was published at 59 FR 11386, March 10, 1994 (FAC 90-20, Item XIX), is adopted as a final rule without change.

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).

Dated: June 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

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#### 48 CFR Part 52

[FAC 90-39; FAR Case 92-001; Item XXXII]

RIN 9000-AG94

#### Federal Acquisition Regulation; Inspection Clauses—Fixed Price

**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 clarify certain Federal Acquisition Regulation (FAR) Inspection clauses pertaining to quality assurance by replacing the words “without additional charge” with the words “at no increase in contract price.” 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 4035, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-39, FAR case 92-001.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

An amendment to FAR 52.246-4 published in Federal Acquisition

Circular 90-09 as FAR case 90-58 (see 56 FR 67135, December 27, 1991), included the addition of the phrase “without additional charge” in paragraph (d). A comment was received questioning the phrase “without additional charge.” As a result, this final rule replaces the phrase “without additional charge” with the phrase “at no increase in contract price” in certain FAR Inspection clauses for clarity.

##### 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 92-001), in correspondence.

##### C. Paperwork Reduction Act

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

#### 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).

**§ 52.246-2, 52.246-4, 52.246-7, 52.246-12, and 52.246-13 [Amended]**

2. The clause dates in sections 52.246-2, 52.246-4, 52.246-7, 52.246-12, and 52.246-13 are revised to read “(AUG 1996)”; and sections 52.246-2(d), 52.246-4(d), 52.246-7(c), and 52.246-12(e) are amended by removing the words “without additional charge” and inserting “at no increase in contract price” in their place; and section 52.246-13(a) is amended by removing the words promptly and without additional charge” and inserting

“promptly, and at no increase in contract price” in its place.

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#### 48 CFR Part 52

[FAC 90-39; FAR Case 91-102; Item XXXIII]

RIN 9000-AF55

#### Federal Acquisition Regulation; Termination for Convenience

**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 clarify language in the “Termination for Convenience of the Government (Fixed-Price)” clause. 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 91-102.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

A proposed rule was published in the Federal Register at 58 FR 64826, December 9, 1993. The proposed rule amended the clause at FAR 52.249-2, Termination for Convenience of the Government (Fixed-Price), to clarify existing language. Changes were made to clarify that incremental payments may be involved in some instances, such as a partial termination action, and to clarify the two instances when the contractor forfeits its right of appeal. After evaluation of public comments, the Councils agreed to two changes in the proposal. The first change revises paragraph (e) of the clause by replacing the word “amended” with the word “modified.” The second change revises paragraph (i) by deleting the phrase “following a claim and final decision.”

##### 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 it simply clarifies existing language pertaining to settlement of contract termination costs. 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 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).

2. Section 52.249-2 is amended by revising the date in the clause heading; and revising paragraphs (e) and (i) of the clause to read as follows:

**§ 52.249-2 Termination for Convenience of the Government (Fixed-Price).**

\* \* \* \* \*

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (AUG 1996)

\* \* \* \* \*

(e) Subject to paragraph (d) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may

include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (e) or paragraph (f) of this clause, exclusive of costs shown in subparagraph (f)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph (f) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

\* \* \* \* \*

(i) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (d), (f), or (k) of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (d) or (k), respectively, and failed to request a time extension, there is no right of appeal.

\* \* \* \* \*

(End of clause)

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