

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.205–38 [Amended]

9. Section 31.205–38 is amended at the end of paragraph (f) by removing the parenthetical “(see 3.408–2)”.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.203–4 [Reserved]

10. Section 52.203–4 is removed and reserved.

52.203–5 [Amended]

11. Section 52.203–5 is amended in the introductory paragraph by removing “3.404(c)” and inserting “3.404”.

PART 53—FORMS

53.203 [Amended]

12. Section 53.203 is amended by removing paragraph (a) and the designation of paragraph (b).

53.301–119 [Removed]

13. Section 53.301–119 is removed.

[FR Doc. 96–18498 Filed 7–25–96; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 3, 4, 5, 8, 11, 12, 13, 15, 16, 19, 22, 23, 25, 28, 29, 32, 36, 41, 42, 43, 44, 45, 46, 47, 52, and 53

[FAC 90–40; FAR Cases 94–770 and 94–771; Item II]

RIN 9000–AG18/9000–AG26

Federal Acquisition Regulation; Simplified Acquisition Threshold; Federal Acquisition Computer Network; and Micro-Purchase Procedures

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

ACTION: Interim rules adopted as final with changes.

SUMMARY: The Federal Acquisition Regulatory Council is amending the Federal Acquisition Regulation (FAR) to finalize the interim rules concerning simplified acquisition procedures and Federal Acquisition Computer Network (FACNET) requirements of the Federal Acquisition Streamlining Act of 1994.

This rule also implements section 4302 of the Federal Acquisition Reform Act which deleted the requirement for attaining interim FACNET certification before simplified acquisition procedures could be used between \$50,000 and \$100,000. This is a significant rule within the meaning of Executive Order 12866; however, it is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 26, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Linfield at (202) 501–1757 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–40, FAR cases 94–770 and 94–771.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994, Public Law 103–355 (FASA), provided a number of authorities that streamlined the acquisition process and made a number of substantial changes in the manner in which relatively low dollar procurements are conducted. FASA created a micro-purchase threshold of \$2,500, a simplified acquisition threshold of \$100,000, provided for the use of simplified acquisition procedures up to the \$100,000 threshold, and created the Federal Acquisition Computer Network (FACNET). FASA limited use of simplified acquisition procedures by procurement activities not having certified interim FACNET to procurements not exceeding \$50,000. The Federal Acquisition Reform Act of 1996 (Division D of the National Defense Authorization Act for Fiscal Year 1996), Public Law 104–106 (FARA), deleted the requirement for attaining interim FACNET certification before simplified acquisition procedures could be used between \$50,000 and \$100,000. This final rule implements that provision of FARA, as well as the aforementioned provisions of FASA.

The simplified acquisition procedures of FASA were implemented in the FAR at 60 FR 34741 on July 3, 1995, in FAC 90–29, FAR case 94–770. The micro-purchase provisions of FASA were implemented in the FAR at 59 FR 64786 on December 15, 1994, in FAC 90–24, FAR case 94–771. Also published in FAC 90–29 was an interim rule on FAR case 91–104, Electronic Contracting, which remains interim and is not being finalized at this time.

An interagency team is considering technical issues pertaining to Central Contractor Registration at FAR 4.503.

There may be additional changes to that section as part of FAR case 94–772.

Among the changes in this final rule are:

- Definitions contained in the rule have been moved to FAR 2.101.
- The requirement for interim FACNET to be accomplished before simplified acquisition procedures can be used for acquisitions between \$50,000 and \$100,000 has been deleted.
- The clause at 52.222–40, Service Contract Act of 1965, as amended, Contracts of \$2,500 or Less, has been deleted based upon a regulatory change by the Department of Labor.
- An information phone number for FACNET is provided in 4.503.
- The coverage in Part 13 on small business programs has been moved to Part 19 under FAR case 94–782 of this Federal Acquisition Circular.

Note that for non-FACNET acquisitions over \$25,000, a synopsis for 15 days is still required.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule, and a Final Regulatory Flexibility Analysis (FRFA) has been prepared and submitted to the Chief Counsel for Advocacy for the Small Business Administration. This rule implements the simplified acquisition procedures and Federal Acquisition Computer Network (FACNET) requirements of the Federal Acquisition Streamlining Act of 1994 (the Act) (Public Law 103–355). The rule applies to all businesses, large and small organizations, educational and nonprofit, who are interested in participating in Government acquisitions at or below the simplified acquisition threshold of \$100,000. The implementation of FACNET provides for the electronic exchange of acquisition information between the private sector and the Federal Government. It is estimated that the electronic exchange of acquisition information will improve business opportunities for more than 300,000 vendors currently doing business with the Government. A copy of the FRFA may be obtained from the FAR Secretariat at the General Services Administration, 18th and F Streets NW., Washington, DC 20405.

C. Paperwork Reduction Act

This final rule does impose an additional reporting or recordkeeping requirement on the public which requires the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.* Contractors are required to electronically register with

the Central Contractor Registration operated by the Defense Information Megacenter. The information to be provided is information currently reported under several existing forms including the SF 129, Solicitation Mailing List Application, the SF 3881, ACH Vendor/Miscellaneous Payment Enrollment Form, and the DD-1052, Request for Assignment of a Commercial and Government Entity (CAGE) Code. Contractors are required to provide information pertaining to their electronic data interchange (EDI) capabilities. Establishment of a central registration system should eliminate the need to submit multiple registrations with each contracting office the contractor wishes to do business with.

A request for approval of the information collection requirement concerning simplified acquisition procedures was submitted to OMB and approved through April 30, 1998, under OMB Control Number 9000-0137. Public comments concerning this request were invited through a Federal Register notice at 60 FR 11659, March 2, 1995. No comments were received in response to this notice.

D. Public Comments

Public comments were solicited at 59 FR 64786, December 15, 1994, and 60 FR 34741, July 3, 1995. In response to the Federal Register notice, 30 commenters responded with hundreds of specific comments. These comments were considered in the formulation of the final rule. A matrix of comments is available from the FAR Secretariat.

List of Subjects in 48 CFR Parts 1, 2, 3, 4, 5, 8, 11, 12, 13, 15, 16, 19, 22, 23, 25, 28, 29, 32, 36, 41, 42, 43, 44, 45, 46, 47, 52, and 53

Government procurement.

Dated: July 16, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, the interim rules for FAR case 94-770 (60 FR 34741, July 3, 1995) and FAR case 94-771 (59 FR 64786, December 15, 1994) are adopted as final with the following changes:

1. The authority citation for 48 CFR 1, 2, 3, 4, 5, 8, 11, 12, 13, 15, 16, 19, 22, 23, 25, 28, 29, 32, 36, 41, 42, 43, 44, 45, 46, 47, 52, and 53 continues to read as follows:

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

Chapter 1 [Amended]

2. The following sections are amended by removing the words "in Part 13":

2.201

3.502-3
3.503-2
4.603
4.805(b)(13) introductory text
5.303(b), introductory text
8.203-1(a)(1)
15.106-1(b)(1)
16.504(c)(1)(v)
19.702, introductory text
19.708(a)
28.310(a)
29.401-3
29.401-4
32.202-1(b)(2)
32.908(c)
41.201(b)
42.903
43.205 (d)(2) and (e)
44.201-2(b)(2)
44.204(e)
45.106(e)
46.805 (a) and (b) heading and introductory text;
47.104-4 (a)(2) and (b)
47.200(b)(4)
47.305-16(b)

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

3. Section 1.304 is amended by revising paragraph (a) to read as follows:

1.304 Agency control and compliance procedures.

(a) Under the authorities of 1.301(c), agencies shall control and limit issuance of agency acquisition regulations and, in particular, local agency directives that restrain the flexibilities found in the FAR, and shall establish formal procedures for the review of these documents to assure compliance with this part 1.

* * * * *

4. Section 1.603-3 is revised to read as follows:

1.603-3 Appointment.

(a) Contracting officers shall be appointed in writing on an SF 1402, Certificate of Appointment, which shall state any limitations on the scope of authority to be exercised, other than limitations contained in applicable law or regulation. Appointing officials shall maintain files containing copies of all appointments that have not been terminated.

(b) Agency heads are encouraged to delegate micro-purchase authority to individuals who are employees of an executive agency or members of the Armed Forces of the United States who will be using the supplies or services being purchased. Individuals delegated this authority are not required to be appointed on an SF 1402, but shall be appointed in writing in accordance with agency procedures.

PART 2—DEFINITIONS OF WORDS AND TERMS

5. Section 2.101 is amended to add, in alphabetical order, the definitions of "delivery order," "Federal Acquisition Computer Network (FACNET) Architecture," "full FACNET," "Governmentwide FACNET," "interim FACNET," "micro-purchase," "micro-purchase threshold," "simplified acquisition procedures," "simplified acquisition threshold," and "task order" to read as follows:

2.101 Definitions.

* * * * *

Delivery order means an order for supplies placed against an established contract or with Government sources.

* * * * *

Federal Acquisition Computer Network (FACNET) Architecture means the Governmentwide Electronic Commerce/Electronic Data Interchange (EC/EDI) operational capability for the acquisition of supplies and services that provides for electronic data interchange of acquisition information between the Government and the private sector, employs nationally and internationally recognized data formats, and provides universal user access.

* * * * *

Full FACNET means an agency has certified that it has implemented all of the FACNET functions outlined in 4.504, and more than 75 percent of eligible contracts (not otherwise exempted from FACNET) in amounts exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold, were entered into by the agency during the preceding fiscal year using an interim FACNET certified electronic automated information system.

Governmentwide FACNET means that the Federal Government has certified its FACNET capability, and more than 75 percent of eligible contracts (not otherwise exempted from FACNET) in amounts exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold, entered into by the executive agencies during the preceding fiscal year were made through electronic automated information systems with full FACNET certification.

* * * * *

Interim FACNET means a contracting office has been certified as having implemented the electronic automated information systems capability to provide widespread public notice of contracting opportunities, issue solicitations, and receive responses to solicitations and associated requests for

information. Such capability must allow the private sector to access notices of solicitations, access and review solicitations, and respond to solicitations.

* * * * *

Micro-purchase means an acquisition of supplies or services (except construction), the aggregate amount of which does not exceed \$2,500, except that in the case of construction, the limit is \$2,000.

Micro-purchase threshold means \$2,500.

* * * * *

Simplified acquisition procedures means the methods prescribed in part 13 for making purchases of supplies or services.

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

* * * * *

Task order means an order for services placed against an established contract or with Government sources.

* * * * *

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

6. Section 3.104-4 is amended by revising paragraph (h)(5) to read as follows:

3.104-4 Definitions.

* * * * *

(h) * * *

(5) For purposes of 3.104-4(h), the term *procurement official* does not include contracting officers or other individuals whose authority is limited to the micro-purchase threshold if the head of the contracting activity determines that it is unlikely that the individual will make purchases in a total amount greater than \$20,000 in any 12-month period.

3.104-10 [Amended]

7. Section 3.104-10 is amended in paragraph (c) by removing the parenthetical "(see Part 13)."

8. Section 3.502-2 is amended to revise the heading and the introductory text of paragraph (i) and to add paragraph (j) to read as follows:

3.502-2 Subcontractor kickbacks.

* * * * *

(i) Requires each contracting agency to include in each prime contract exceeding \$100,000 for other than

commercial items (see part 12), a requirement that the prime contractor shall—

* * * * *

(j) Notwithstanding paragraph (i) of this subsection, a prime contractor shall cooperate fully with any Federal government agency investigating a violation of Section 3 of the Anti-Kickback Act of 1986 (41 U.S.C. 51-58).

PART 4—ADMINISTRATIVE MATTERS

9. Section 4.501 is amended—

a. By removing the definitions of "Federal Acquisition Computer Network (FACNET)," "Full FACNET," "Governmentwide FACNET," "Interim FACNET," "Value-Added Network (VAN)," and "Value-Added Service (VAS)";

b. By revising the heading of the definition of "ANSI X.12" to read "ANSI X12, as used in this subpart,";

c. By inserting, following the end of the definition headings for "electronic commerce (EC)," "electronic data interchange (EDI)," and "transaction set", the phrase "as used in this subpart,"; and

d. By adding, in alphabetical order, the definitions of "Implementation convention" and "Trading partner". The revised text reads as follows:

4.501 Definitions.

* * * * *

Implementation convention (IC), as used in this subpart, means the common practices and/or interpretations of the use of ANSI X12 standards. Conventions define how trading partners will use the standards for their mutual needs. The Federal IC will be used by organizational elements of the Federal community and by government organizations and by Trading Partners to exchange data with the Federal community.

Trading Partner, as used in this subpart, means a business that has agreed to exchange business information electronically.

* * * * *

10. Section 4.502 is amended by revising paragraph (a); by removing paragraphs (b) and (c), and redesignating paragraph (d) as (b) to read as follows:

4.502 Policy.

(a) The Federal Government shall use FACNET whenever practicable or cost-effective. Contracting officers may supplement FACNET transactions by using other media to meet the requirements of any contract action governed by the FAR (e.g., transmit hard copy of drawings).

* * * * *

11. Section 4.503 is revised to read as follows:

4.503 Contractor registration.

(a) In order for a contractor to conduct electronic commerce with the Federal Government, the contractor must provide registration information to the Central Contractor Registration (CCR). Phone (800) EDI-3414 for information regarding FACNET.

(b) The contractor will be required to submit trading partner profile information, including a Data Universal Numbering System (DUNS) number, in accordance with the Federal implementation conventions of the appropriate ANSI X12 transaction set for contractor registration.

12. Section 4.504 is amended by revising the introductory text for paragraphs (a) and (b) to read as follows:

4.504 FACNET functions.

(a) For agencies—

* * * * *

(b) For the private sector—

* * * * *

4.507 [Removed]

13. Section 4.507 is removed.

4.800 [Amended]

14. Section 4.800 is amended in the parenthetical by removing the reference "12.106-2" and inserting "13.106-2(d)" in its place.

PART 5—PUBLICIZING CONTRACT ACTIONS

15. Section 5.101 is amended by revising the first sentence of paragraph (a)(2) and by revising paragraph (a)(2)(ii) to read as follows:

5.101 Methods of disseminating information.

* * * * *

(a) * * *

* * * * *

(2) For proposed contract actions expected to exceed \$10,000, but not expected to exceed \$25,000, by displaying in a public place, including on an electronic bulletin board, or any other appropriate electronic means located at the contracting office issuing the solicitation, an unclassified notice of the solicitation or a copy of the solicitation satisfying the requirements of 5.207 (c) and (f). * * *

* * * * *

(ii) The contracting officer need not comply with the display requirements of this section when the exemptions at 5.202 (a)(1), (a)(4) through (a)(9), or (a)(11) apply, or when oral or FACNET solicitations are used.

* * * * *

16. Section 5.202 is amended to revise paragraphs (a)(2) and (a)(14) to read as follows:

5.202 Exceptions.

* * * * *

(a) * * *

(2) The contract action is made under the conditions described in 6.302-2 (or, for purchases conducted using simplified acquisition procedures, if unusual and compelling urgency precludes competition to the maximum extent practicable) and the Government would be seriously injured if the agency complies with the time periods specified in 5.203;

* * * * *

(14) The contract action is for an amount at or below \$250,000 and is made through FACNET after Governmentwide FACNET has been certified pursuant to 4.505-3; or

* * * * *

5.203 [Amended]

17. Section 5.203 is amended in the first sentence of paragraph (b) by removing "respond for" and inserting "respond to".

18. Section 5.205 is amended in paragraph (d)(2) by revising the first sentence to read as follows:

5.205 Special situations.

* * * * *

(d) * * *

(2) When the total fee is expected to exceed \$10,000 but not exceed \$25,000, the contracting officer shall comply with 5.101(a)(2). * * *

* * * * *

19. Section 5.207 is amended by revising paragraph (c)(2)(xiv) and the first sentence of (e)(3) to read as follows:

5.207 Preparation and transmittal of synopses.

* * * * *

(c) * * *

(2) * * *

(xiv) In the case of noncompetitive contract actions (including those that do not exceed the simplified acquisition threshold), identify the intended source (see 5.207(e)(3)) and insert a statement of the reason justifying the lack of competition.

* * * * *

(e) * * *

(3) In the case of a noncompetitive contract action expected to exceed the simplified acquisition threshold, the synopsis shall refer to Numbered Note 22. * * *

20. Section 5.503 is amended in paragraph (a) by designating the existing text as (a)(1) and adding paragraph (a)(2); by removing paragraph (c) and

redesignating paragraphs (d) and (e), as (c) and (d), respectively. The revised text reads as follows:

5.503 Procedures.

(a) *General.* (1) * * *

(2) The contracting officer shall use the SF 1449 for paper solicitations. The SF 1449 shall be used to make awards or place orders unless the award/order is made via FACNET or by using the Governmentwide commercial purchase card for micro-purchases.

* * * * *

PART 11—DESCRIBING AGENCY NEEDS

21. Section 11.002 is amended to revise paragraph (a)(1)(i) to read as follows:

11.002 Policy.

(a) * * *

(1) * * *

(i) Promote full and open competition (see part 6), or maximum practicable competition when using simplified acquisition procedures, with due regard to the nature of the supplies or services to be acquired; and

* * * * *

22. Section 11.104 is amended to add paragraph (c) to read as follows:

11.104 Items peculiar to one manufacturer.

* * * * *

(c) The basis for not providing for maximum practicable competition is documented in the file when the acquisition is awarded using simplified acquisition procedures.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.102 [Amended]

23. Section 12.102 is amended in paragraphs (d)(1) and (d)(4) by removing the parenthetical "(see Subpart 13.6)" and by revising the parenthetical in paragraph (d)(2) to read "(see 13.505)".

12.206 [Amended]

24. Section 12.206 is amended in the last sentence by revising "13.106-1" to read "13.106-2".

12.301 [Amended]

25. Section 12.301 is amended in paragraph (c)(2) by revising "13.106-1" to read "13.106-2".

12.602 [Amended]

26. Section 12.602 is amended in the first sentence of paragraph (a) and the sixth sentence of paragraph (b) by revising "13.106-1" to read "13.106-2".

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

27. Section 13.000 is revised to read as follows:

13.000 Scope of part.

This part prescribes policies and procedures for the acquisition of supplies and services, including construction, research and development, and commercial items, the aggregate amount of which does not exceed the simplified acquisition threshold (see 2.101). See part 12, Acquisition of Commercial Items, for policies applicable to the acquisition of commercial items exceeding the micro-purchase threshold. See 36.602-5 for simplified procedures to be used when acquiring architect-engineer services.

28. Section 13.101 is amended by removing the definitions of "delivery order," "micro-purchase," "micro-purchase threshold," "simplified acquisition procedures," and "simplified acquisition threshold"; by inserting, following the end of the definition heading "bulk funding", ", as used in this part,"; by revising the definition of "Governmentwide commercial purchase card"; by inserting following the end of the definition headings "imprest fund," and "purchase order", ", as used in this part,"; and by adding, in alphabetical order, the definition for "third party draft" to read as follows:

13.101 Definitions.

* * * * *

Governmentwide commercial purchase card, as used in this part, means a purchase card, similar in nature to a commercial credit card, issued to authorized agency personnel to use to acquire and to pay for supplies and services.

* * * * *

Third party draft, as used in this part, means an agency bank draft, similar to a check, which is used to acquire and to pay for supplies and services. (See Treasury Financial Manual Section 3040.70.)

29. Section 13.102 is amended by revising paragraph (b) and by removing the comma at the end of paragraph (c) to read as follows:

13.102 Purpose.

* * * * *

(b) Improve opportunities for small business, small disadvantaged business, and women-owned small business concerns to obtain a fair proportion of Government contracts;

* * * * *

30. Section 13.103 is revised to read as follows:

13.103 Policy.

(a) Simplified acquisition procedures shall be used to the maximum extent practicable for all purchases of supplies or services not exceeding the simplified acquisition threshold (including purchases below the micro-purchase threshold), unless requirements can be met by using required sources of supply under part 8 (e.g., Federal Prison Industries, Committee for Purchase from People Who Are Blind or Severely Disabled, and Federal Supply Schedule contracts), GSA Nonmandatory Schedule Contracts for FIP Resources, existing indefinite delivery/indefinite quantity contracts, or other established contracts.

(b) The contracting office shall not use simplified acquisition procedures for contract actions exceeding \$50,000 after December 31, 1999, unless the office's cognizant agency has certified full FACNET capability in accordance with 4.505-2.

(c) Simplified acquisition procedures shall not be used in the acquisition of supplies and services initially estimated to exceed the simplified acquisition threshold even though resulting awards do not exceed that threshold. Requirements aggregating more than the simplified acquisition threshold or the micro-purchase threshold shall not be broken down into several purchases that are less than the applicable threshold merely to permit use of simplified acquisition procedures, or to avoid any requirements that apply to purchases exceeding the micro-purchase threshold.

(d) Simplified acquisition procedures may be used to acquire personal services if the agency has specific statutory authority to acquire personal services (see 37.104).

(e) The Governmentwide commercial purchase card is the preferred means to purchase and pay for micro-purchases. This is not intended to limit use of the purchase card to micro-purchases, if otherwise authorized under agency procedures, nor is it intended to preclude use of electronic purchasing techniques.

(f) Agencies are encouraged to use the Governmentwide commercial purchase card and electronic purchasing techniques to the maximum extent practicable. The Governmentwide commercial purchase card may be used to purchase and pay for purchases under part 8 procedures when authorized, under existing indefinite delivery/indefinite quantity contracts,

or from other established contracts in accordance with agency procedures.

(g) FACNET shall be used to acquire supplies and services (including construction, research and development, and architect-engineer) for contract actions exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold when practicable and cost-effective (see 4.506). Drawings and lengthy specifications can be provided off-line in hard copy or through other appropriate means.

(h) Contracting officers shall establish deadlines for the submission of responses to solicitations which afford suppliers a reasonable opportunity to respond in accordance with 5.203, Publicizing and response time.

(i) Contracting officers shall consider all quotes/offers that are timely received.

(j) Contracting officers are encouraged to use innovative approaches in awarding contracts using the simplified acquisition procedures under the authority of this part. For commercial items, contracting officers may use either the streamlined solicitation procedure in subpart 12.6 or the existing procedures in parts 13, 14, 15, 35, or 36 as applicable, if they are more streamlined and beneficial, thereby allowing maximum flexibility. For other than commercial items, the procedures in other FAR parts may be appropriate. Other FAR parts that may be used include, but are not limited to parts 14, 15, 35, or 36.

(k) Micro-purchases may be awarded using any of the purchasing methods covered in this part, provided the purchaser is authorized and trained, pursuant to agency regulations, to use those methods.

31. Section 13.104 is amended by revising paragraphs (b), (e), and (f) to read as follows:

13.104 Procedures.

* * * * *

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

* * * * *

(e) Agencies shall use United States-owned excess or near-excess foreign currency, if appropriate, in making payments under simplified acquisition procedures (see subpart 25.3).

(f) For proposed purchases covered by this part, see 5.101 and 5.203 to

determine if public display and synopsis requirements apply.

* * * * *

32. Section 13.105 is revised to read as follows:

13.105 Small business set-asides.

(a) Each acquisition (non-FACNET and FACNET) of supplies or services that has an anticipated dollar value exceeding \$2,500 and not exceeding \$100,000, is reserved exclusively for small business concerns and shall be set aside in accordance with subpart 19.5.

(b) Each written solicitation under a set-aside shall contain the appropriate provisions prescribed by part 19. If the solicitation is oral, however, information substantially identical to that which is in the provision shall be given to potential quoters.

33. Sections 13.106, 13.106-1 and 13.106-2 are revised to read as follows:

13.106 Soliciting competition, evaluation of quotes, and award.

13.106-1 Purchases at or below the micro-purchase threshold.

(a) *Soliciting competition, evaluation of quotes, and award.* (1) To the extent practicable, micro-purchases shall be distributed equitably among qualified suppliers.

(2) Micro-purchases (as defined in 2.101) may be awarded without soliciting competitive quotations if the contracting officer or individual appointed in accordance with 1.603-3(b) considers the price reasonable.

(3) The administrative cost of verifying the reasonableness of the price for purchases at or below the micro-purchase threshold may more than offset potential savings from detecting instances of overpricing. Therefore, action to verify price reasonableness need only be taken if—

(i) The contracting officer or individual appointed in accordance with 1.603-3(b) suspects or has information to indicate that the price may not be reasonable (e.g., comparison to the previous price paid or personal knowledge of the supply or service); or

(ii) Purchasing a supply or service for which no comparable pricing information is readily available (e.g., a supply or service that is not the same as, or is not similar to, other supplies or services that have recently been purchased on a competitive basis).

(4) Prompt payment discounts should be solicited.

(5) Clauses are not required for micro-purchases using any method in part 12 or 13. However, this does not prohibit the use of any clause prescribed elsewhere in this chapter when

determined necessary by the contracting officer.

(b) *Documentation.* Minimize the documentation to support micro-purchases.

13.106-2 Purchases exceeding the micro-purchase threshold.

(a) *Soliciting competition.* (1) Contracting officers shall promote competition to the maximum extent practicable to ensure that the purchase is advantageous to the Government, based, as appropriate, on either price alone or price and other factors (e.g., past performance and quality) including the administrative cost of the purchase. Solicitations shall notify suppliers of the basis upon which award is to be made.

(2) If FACNET is not available, or an exemption set forth in 4.506 applies, quotations may be solicited through other appropriate means. The contracting officer shall comply with the requirements of 5.101 when not soliciting via FACNET.

(3) Requests for quotations should be solicited orally to the maximum extent practicable when FACNET is not available or a written determination has been made that it is not practicable or cost-effective to purchase via FACNET. However, oral solicitations may not be practicable for contract actions exceeding \$25,000 because of the synopsis requirement in 5.101. Sufficient information to permit suppliers to develop quotations may be incorporated into a combined synopsis/solicitation. In such cases, the contracting officer is not required to issue a separate solicitation. Paper solicitations for contract actions not expected to exceed \$25,000 should only be issued when obtaining electronic or oral quotations is not considered economical or practical. Written solicitations shall be issued for construction contracts over \$2,000.

(4) If using simplified acquisition procedures and not using FACNET, maximum practicable competition ordinarily can be obtained without soliciting quotations or offers from sources outside the local trade area. Generally, solicitation of at least three sources may be considered to promote competition to the maximum extent practicable if the contract action does not require synopsis pursuant to 5.101 and 5.202. If practicable, two sources not included in the previous solicitation should be requested to furnish quotations. The following factors influence the number of quotations required in connection with any particular purchase:

(i) The nature of the article or service to be purchased and whether it is highly competitive and readily available in several makes or brands, or is relatively noncompetitive.

(ii) Information obtained in making recent purchases of the same or similar item.

(iii) The urgency of the proposed purchase.

(iv) The dollar value of the proposed purchase.

(v) Past experience concerning specific dealers' prices.

(5) Contracting officers may solicit from one source if the contracting officer determines that the circumstances of the contract action deem only one source reasonably available.

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

(7) In accordance with 14.408-3, contracting officers shall make every effort to obtain trade and prompt payment discounts. However, prompt payment discounts shall not be considered in the evaluation of quotations.

(8)(i) Each contracting office should maintain a source list (or lists, if more convenient). New supply sources for the list may be obtained from a variety of sources, including the Central Contractor Registration (CCR) data base (see 4.503). The list should identify the status of each source (when the status is made known to the contracting office) in the following categories:

(A) Small business.

(B) Small disadvantaged business.

(C) Women-owned small business.

(ii) The status information may be used as the basis to ensure that small business concerns are given opportunities to respond to solicitations issued using simplified acquisition procedures.

(b) *Evaluation of quotes or offers.*

(1) Contracting officers may evaluate quotes or offers based on price alone or price and other factors (see 13.106-2(a)(1)). Contracting officers are encouraged to use best value. Formal evaluation plans, conduct of discussions, and scoring of quotes or offers are not required. Evaluation of other factors, such as past performance, does not require the creation or existence of a formal data base, but may be based on such information as the contracting officer's knowledge of and previous experience with the item or service being purchased, customer surveys, or other reasonable basis. When evaluating quotes or offers on price and

other factors, the evaluation must be performed based on the criteria established in the solicitation.

(2) Standing price quotations may be used in lieu of obtaining individual quotations each time a purchase is contemplated. In such cases, contracting officers shall ensure that the pricing information is current and that the Government obtains the benefit of maximum discounts before award is made.

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

(4) Contracting officers shall comply with the policy in 7.202 relating to economic purchase quantities, when practicable.

(c) *Award.* (1) Occasionally an item can be obtained only from a supplier who quotes a minimum order price or quantity that either unreasonably exceeds stated quantity requirements or results in an unreasonable price for the quantities required. In these instances, the contracting officer should inform the requiring activity of all facts regarding the quotation and ask it to confirm or alter its requirement. The file shall be documented to support the final action taken.

(2) Except for awards conducted through FACNET, notification to unsuccessful suppliers shall be given only if requested.

(3) If a supplier requests information on an award which was based on factors other than price, a brief explanation of the basis for the contract award decision shall be provided (see 15.1002(c)(2)).

(d) *Data to support purchases.* (1) The determination that a proposed price is reasonable should be based on competitive quotations/offers. If only one response is received, a statement shall be included in the contract file giving the basis of the determination of fair and reasonable price. The determination may be based on market research, a comparison of the proposed price with prices found reasonable on previous purchases, current price lists, catalogs, advertisements, similar items in a related industry, value analysis, the contracting officer's personal knowledge of the item being purchased, comparison to an independent government estimate, or any other reasonable basis.

(2) When other than price-related factors are considered in selecting the supplier (see 13.106-2(b)(1)), the contracting officer shall document the file to support the final award decision.

(3) If only one source is solicited, an additional notation shall be made to explain the absence of competition,

except for acquisition of utility services available from only one source.

(4) Documentation should be kept to a minimum. The following illustrate the extent to which quotation/offer information should be recorded:

(i) *Oral solicitations.* The contracting office should establish and maintain informal records of oral price quotations in order to reflect clearly the propriety of placing the order at the price paid with the supplier concerned. In most cases, this will consist merely of showing the names of the suppliers contacted and the prices and other terms and conditions quoted by each.

(ii) *Written solicitations (see 2.101).* Written records of solicitations/offers may be limited to notes or abstracts to show prices, delivery, references to printed price lists used, the supplier or suppliers contacted, and other pertinent data.

(5) Purchasing offices shall retain data supporting purchases (paper or electronic) to the minimum extent and duration necessary for management review purposes (see subpart 4.8) when using simplified acquisition procedures.

34. Section 13.107 is revised to read as follows:

13.107 Solicitation forms.

(a) The SF 1449, Solicitation/Contract/Order for Commercial Items, shall be used by the contracting officer when issuing a paper solicitation for commercial items, except when using a combined synopsis/solicitation (see subpart 12.6). This form may be used for other than commercial items.

(b) Except when quotations are solicited via FACNET, other electronic means, or orally, the SF 1449; SF 18, Request for Quotations; or other agency authorized form/automated format may be used for other than commercial items.

(c) OF 336, Continuation Sheet, may be used when additional space is needed.

35. Section 13.108 is amended by revising the first sentence of paragraph (b) to read as follows:

13.108 Legal effect of quotations.

* * * * *

(b) When appropriate, the contracting officer may ask the supplier to indicate acceptance of an order by notification to the Government, preferably in writing, as defined at 2.101. * * *

* * * * *

13.109 [Amended]

36. Section 13.109 is amended in the first sentence by inserting "task or" before "delivery orders", and in the beginning of the second sentence by removing "Therefore,".

37. Section 13.110 is amended by revising paragraphs (a)(2) and (a)(3); by removing paragraphs (a)(8), (a)(9), (a)(11), (a)(12), and (a)(13), and redesignating (a)(10) as (a)(8) to read as follows:

13.110 Federal Acquisition Streamlining Act of 1994 (FASA) list of inapplicable laws.

(a) * * *

(2) 40 U.S.C. 270a (Miller Act). (Although the Miller Act no longer applies to contracts at or below the simplified acquisition threshold, alternative forms of payment protection for suppliers of labor and material are still required if the contract exceeds \$25,000.)

(3) 40 U.S.C. 327 to 333 (Contract Work Hours and Safety Standards Act).

* * * * *

38. Section 13.111 is amended by revising the introductory text and paragraph (a); removing paragraph (b) and redesignating the existing paragraphs (c) through (i) as paragraphs (b) through (h); revising the newly designated paragraph (e); in the newly designated paragraph (g) by removing "and"; in the newly designated paragraph (h) by removing the "period" and inserting "; and"; and by adding a new paragraph (i) to read as follows:

13.111 Inapplicable provisions and clauses.

While certain statutes still apply, pursuant to Public Law 103-355, the following provisions and clauses are inapplicable to contracts and subcontracts at or below the simplified acquisition threshold—

(a) Clauses implementing Miller Act requirements in 28.102-3;

* * * * *

(e) 52.215-2, Audit and Records—Negotiation;

* * * * *

(i) 52.223-8, Estimate of Percentage of Recovered Material for Designated Items to be Used in the Performance of the Contract.

39. Section 13.202 is revised to read as follows:

13.202 Establishment of blanket purchase agreements (BPAs).

(a) The following are circumstances under which contracting officers may establish BPAs:

(1) There is a wide variety of items in a broad class of supplies or services that are generally purchased, but the exact items, quantities, and delivery requirements are not known in advance and may vary considerably.

(2) There is a need to provide commercial sources of supply for one or more offices or projects in a given area

that do not have or need authority to purchase otherwise.

(3) Use of this procedure would avoid the writing of numerous purchase orders.

(b) After determining a BPA would be advantageous, contracting officers shall—

(1) Establish the parameters to limit purchases to individual items or commodity groups or classes, or permit the supplier to furnish unlimited supplies or services; and

(2) Consider suppliers whose past performance has shown them to be dependable, who offer good quality at consistently lower prices, and who have provided numerous purchases at or below the simplified acquisition threshold.

(c) BPAs may be established with—

(1) More than one supplier for supplies or services of the same type to provide maximum practicable competition;

(2) A single firm from which numerous individual purchases at or below the simplified acquisition threshold will likely be made in a given period; or

(3) Federal Supply Schedule contractors and Federal Information Processing Multiple Award Schedule contractors (see part 39), if not inconsistent with the terms of the applicable schedule contract.

(d) BPAs should be prepared without a purchase requisition and only after contacting suppliers to make the necessary arrangements for—

(1) Securing maximum discounts;

(2) Documenting individual purchase transactions;

(3) Periodic billings; and

(4) Incorporating other necessary details.

(e) BPAs shall be prepared on the forms specified in 13.505(a) and shall not cite accounting and appropriation data (see 13.204(e)(4)).

(1) The following terms and conditions are mandatory:

(i) *Description of agreement.* A statement that the supplier shall furnish supplies or services, described in general terms, if and when requested by the contracting officer (or the authorized representative of the contracting officer) during a specified period and within a stipulated aggregate amount, if any.

(ii) *Extent of obligation.* A statement that the Government is obligated only to the extent of authorized purchases actually made under the BPA.

(iii) *Pricing.* A statement that the prices to the Government shall be as low or lower than those charged the supplier's most favored customer for comparable quantities under similar

terms and conditions, in addition to any discounts for prompt payment.

(iv) *Purchase limitation.* A statement that specifies the dollar limitation for each individual purchase under the BPA (see 13.204(b)).

(v) *Individuals authorized to purchase under the BPA.* A statement that a list of individuals authorized to purchase under the BPA, identified either by title of position or by name of individual, organizational component, and the dollar limitation per purchase for each position title or individual shall be furnished to the supplier by the contracting officer.

(vi) *Delivery tickets.* A requirement that all shipments under the agreement, except subscriptions and other charges for newspapers, magazines, or other periodicals, shall be accompanied by delivery tickets or sales slips which shall contain the following minimum information:

- (A) Name of supplier.
- (B) BPA number.
- (C) Date of purchase.
- (D) Purchase number.
- (E) Itemized list of supplies or services furnished.
- (F) Quantity, unit price, and extension of each item, less applicable discounts (unit prices and extensions need not be shown when incompatible with the use of automated systems; provided, that the invoice is itemized to show this information).

(G) Date of delivery or shipment.

(vii) *Invoices.* One of the following statements shall be included (except that the statement in paragraph (e)(1)(vii)(C) of this section should not be used if the accumulation of the individual invoices by the Government materially increases the administrative costs of this purchase method):

(A) A summary invoice shall be submitted at least monthly or upon expiration of this BPA, whichever occurs first, for all deliveries made during a billing period, identifying the delivery tickets covered therein, stating their total dollar value, and supported by receipt copies of the delivery tickets.

(B) An itemized invoice shall be submitted at least monthly or upon expiration of this BPA, whichever occurs first, for all deliveries made during a billing period and for which payment has not been received. These invoices need not be supported by copies of delivery tickets.

(C) When billing procedures provide for an individual invoice for each delivery, these invoices shall be accumulated; provided, that—

(1) A consolidated payment will be made for each specified period; and

(2) The period of any discounts will commence on the final date of the

billing period or on the date of receipt of invoices for all deliveries accepted during the billing period, whichever is later.

(D) An invoice for subscriptions or other charges for newspapers, magazines, or other periodicals shall show the starting and ending dates and shall state either that ordered subscriptions have been placed in effect or will be placed in effect upon receipt of payment.

(2) If the fast payment procedure is used, the requirements stated in 13.303 shall be included.

13.203 and 13.203–1 [Removed]

13.203–2 [Redesignated as 13.203]

40. Sections 13.203 and 13.203–1 are removed, and section 13.203–2 is redesignated as 13.203 and amended in paragraph (b) by revising the citation “22.305(a)(1)” to read “22.305(a)”.

41. Section 13.204 is amended by revising paragraph (b) and the second sentence of paragraph (c); and in paragraphs (e) introductory text, (e)(1), and (e)(4) by removing the words “under BPAs”. The revised text reads as follows:

13.204 Purchases under Blanket Purchase Agreements.

* * * * *

(b) Unless otherwise specified in agency regulations, individual purchases under BPAs, except those BPAs established in accordance with 13.202(c)(3), shall not exceed \$100,000.

(c) * * * The requirements of 13.105, 13.106–2, and subpart 19.5 also apply to each order.

* * * * *

42. Section 13.302 is amended by revising paragraph (a); and in paragraph (b) by removing the second sentence to read as follows:

13.302 Conditions for use.

* * * * *

(a) Individual purchasing instruments do not exceed \$25,000, except that executive agencies may permit higher dollar limitations for specified activities or items on a case-by-case basis.

* * * * *

13.303 [Amended]

43. Section 13.303 is amended by removing paragraphs (a) and (b)(4); by removing the designation of paragraph (b), and redesignating paragraphs (b)(1), (b)(2), and (b)(3) as paragraphs (a), (b), and (c).

44. Subpart 13.4, consisting of sections 13.401, 13.402, 13.403, and 13.404, is revised to read as follows:

Subpart 13.4—Imprest Fund

13.401 General.

This subpart prescribes policies and procedures for using imprest funds and third party drafts to acquire and pay for supplies or services. Related policies and regulations concerning the establishment of and accounting for imprest funds and third party drafts, including the responsibilities of designated cashiers and alternates, are contained in Part IV of the Treasury Financial Manual for Guidance of Departments and Agencies, Title 7 of the General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies, and the agency implementing regulations. Agencies shall also be guided by the Manual of Procedures and Instructions for Cashiers, issued by the Financial Management Service, Department of the Treasury.

13.402 Agency responsibilities.

Each agency using imprest funds and third party drafts shall—

(a) Periodically review and determine whether there is a continuing need for each fund or third party draft account established, and that amounts of those funds or accounts are not in excess of actual needs;

(b) Take prompt action to have imprest funds or third party draft accounts adjusted to a level commensurate with demonstrated needs whenever circumstances warrant such action; and

(c) Develop and issue appropriate implementing regulations. These regulations shall include (but are not limited to) procedures covering—

(1) Designation of personnel authorized to make purchases using imprest funds or third party drafts; and

(2) Documentation of purchases using imprest funds or third party drafts, including documentation of—

(i) Receipt and acceptance of supplies and services by the Government;

(ii) Receipt of cash or third party draft payments by the suppliers; and

(iii) Cash advances and reimbursements.

13.403 Conditions for use.

Imprest funds or third party drafts may be used for purchases when—

(a) The imprest fund transaction does not exceed \$500 or such other limits as have been approved by the agency head;

(b) The third party draft transaction does not exceed \$2,500, unless authorized at a higher level in accordance with Treasury restrictions;

(c) The use of imprest funds or third party drafts is considered to be advantageous to the Government; and

(d) The use of imprest funds or third party drafts for the transaction otherwise complies with any additional conditions established by agencies and with the policies and regulations referenced in 13.401.

13.404 Procedures.

(a) Each purchase using imprest funds or third party drafts shall be based upon an authorized purchase requisition, contracting officer verification statement, or other agency approved method of ensuring adequate funds are available for the purchase.

(b) Normally, purchases should be placed orally and without soliciting competition if prices are considered reasonable.

(c) Purchases shall be distributed equitably among qualified suppliers.

(d) Prompt payment discounts shall be solicited.

(e) Any agency-authorized purchase order form or Standard Form 1165, Receipt for Cash-Subvoucher, may be used if a written order is considered necessary (e.g., if required by the supplier for discount, tax exemption, or other reasons). If a purchase order is used for this purpose, it shall be endorsed "Payment to be made from Imprest Fund" (or "payment to be made from third-party draft," as appropriate).

(f) The individual authorized to make purchases using imprest funds or third party drafts shall—

(1) Furnish to the imprest fund or third party draft cashier a copy of the document required under 13.404(a) annotated to reflect—

(i) That an imprest fund or third party draft purchase has been made;

(ii) The unit prices and extensions;

(iii) The supplier's name and address; and

(iv) The date of anticipated delivery.

(2) Require the supplier to include with delivery of the supplies an invoice, packing slip, or other sales instrument giving—

(i) The supplier's name and address;

(ii) List and quantity of items;

(iii) Unit prices and extensions; and

(iv) Cash discount, if any.

45. Section 13.501 is amended by revising paragraphs (a), (c), (d), and (g) to read as follows:

13.501 General.

(a) Except as provided under the unpriced purchase order method (see 13.502), purchase orders generally are issued on a fixed-price basis. See part 12 for acquisition of commercial items.

* * * * *

(c) Purchase orders shall specify the quantity of supplies or scope of services ordered.

(d) Inspections under simplified acquisition procedures shall be as prescribed in part 46. Orders generally will provide that inspection and acceptance will be at destination, and source inspection should be specified only if required by part 46. If inspection and acceptance are to be performed at destination, advance copies of the purchase order, or equivalent notice, shall be furnished to consignee(s) for material receipt purposes. Receiving reports shall be accomplished immediately upon receipt and acceptance of material.

* * * * *

(g) The contracting officer's signature (see 2.101) on purchase orders shall be in accordance with 4.101. Facsimile and electronic signature may be used in the production of purchase orders by automated methods.

* * * * *

13.502 [Amended]

46. Section 13.502 is amended by removing paragraph (b)(1) and redesignating paragraphs (b)(2) and (b)(3) as (b)(1) and (b)(2), respectively; in paragraph (c) by removing the parenthetical at the end of the first sentence; and at the end of the last sentence of paragraph (c) by removing the parenthetical "(see 13.106-2(a))" and inserting "(see 13.106-2(d))."

47. Section 13.503 is amended by revising paragraph (a) to read as follows:

13.503 Obtaining contractor acceptance and modifying purchase orders.

(a) When it is desired to consummate a binding contract between the parties before the contractor undertakes performance, the contracting officer shall require written (see 2.101) acceptance of the purchase order by the contractor.

* * * * *

48. Section 13.505 is revised to read as follows:

13.505 Purchase order and related forms.

(a) The following are multipurpose forms used for negotiated purchases of supplies or services, delivery or task orders, inspection and receiving reports, and invoices:

(1) SF 1449 shall be used for commercial items.

(2) For other than commercial items, SF 1449, OF 347, or an agency form/automated format may be used. Agencies may print on the latter forms the clauses considered to be generally suitable for purchases.

(3) OF 348 or an agency form/automated format may be used when additional space is needed.

(b) SF 44 is a pocket-size purchase order form designed primarily for on-the-spot, over-the-counter purchases of supplies and nonpersonal services while away from the purchasing office or at isolated activities. It is a multipurpose form that can be used as a purchase order, receiving report, invoice, and public voucher.

(1) SF 44 may be used if all of the following conditions are satisfied:

(i) The amount of the purchase is at or below the micro-purchase threshold, except for purchases made under unusual and compelling urgency or in support of contingency operations. Agencies may establish higher dollar limitations for specific activities or items.

(ii) The supplies or services are immediately available.

(iii) One delivery and one payment will be made.

(iv) Its use is determined to be more economical and efficient than use of other simplified acquisition methods.

(2) General procedural instructions governing the use of SF 44 are printed on the form and on the inside front cover of each book of forms.

(3) Since there is, for all practical purposes, simultaneous placing of purchase orders on SF 44 and delivery of the items ordered, clauses are not required for purchases using this form.

(4) Agencies shall provide adequate safeguards regarding the control of forms and accounting for purchases.

13.505-1 through 13.505-3, and 13.506 [Removed]

49. Sections 13.505-1, 13.505-2, 13.505-3, and 13.506 are removed.

13.507 [Redesignated as 13.506]

50. Section 13.507 is redesignated as 13.506.

Subpart 13.6—[Removed]

51. Subpart 13.6, Micro-Purchase, consisting of 13.601, 13.602, and 13.603, is removed.

PART 15—CONTRACTING BY NEGOTIATION

15.401 [Amended]

52. Section 15.401 is amended in paragraph (a) by deleting the parenthetical "(see Part 13)".

15.602 [Amended]

53. Section 15.602 is amended in paragraph (b) by removing the parenthetical "(see Part 13)".

PART 16—TYPES OF CONTRACTS

54. Section 16.000 is amended by revising the first sentence to read as follows:

16.000 Scope of part.

This part describes types of contracts that may be used in acquisitions. * * *

55. Section 16.103 is amended by revising paragraph (d)(1) to read as follows:

16.103 Negotiating contract type.

* * * * *

(d) * * * (1) fixed-price acquisitions made under simplified acquisition procedures, * * *

16.105 [Amended]

56. Section 16.105 is amended in paragraph (a) by removing the parenthetical "(see Part 13)".

16.703 [Amended]

57. Section 16.703 is amended at the end of paragraph (c)(1)(vi) by removing "(b)" from the reference "13.303(b)".

PART 19—SMALL BUSINESS PROGRAMS**19.303 [Amended]**

58. Section 19.303 is amended in paragraph (a) by removing "in 13.101".

19.501 [Amended]

59. Section 19.501 is amended in paragraph (d) by removing "in 13.101".

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT AGENCIES**22.1003-4 [Amended]**

60. Section 22.1003-4 is amended in paragraph (b)(4)(iii)(B) by removing "22.1005 and" in the first parenthetical.

22.1005 [Removed]

61. Section 22.1005 is removed and reserved.

22.1022 [Amended]

62. Section 22.1022 is amended in the first sentence by removing the words "52.222-40, Service Contract Act of 1965, as amended—Contracts of \$2,500 or Less, or the clause at".

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

63. Section 23.405 is amended to revise paragraph (b)(1), and to amend paragraphs (b)(2) and (b)(3) by adding "exceeding the simplified acquisition threshold" following the word "solicitations". The revised text reads as follows:

23.405 Solicitation provisions and contract clause.

* * * * *

(b)(1) The contracting officer shall insert the provision at 52.223-8,

Estimate of Percentage of Recovered Material for Designated Items to be Used in the Performance of the Contract, in solicitations exceeding the simplified acquisition threshold that contain a requirement for an EPA designated item.

* * * * *

PART 25—FOREIGN ACQUISITION

64. Section 25.302 is amended by revising paragraph (b)(1) to read as follows:

§ 25.302 Policy.

* * * * *

(b) * * *

(1) The estimated cost of the product or service is at or below the simplified acquisition threshold.

* * * * *

PART 29—TAXES**§ 29.402-1 [Amended]**

65. Section 29.402-1 is amended in paragraphs (a) and (b) by removing the phrase "dollar amount in 13.000" and inserting in their place "simplified acquisition threshold".

PART 32—CONTRACT FINANCING**§ 32.901 [Amended]**

66. Section 32.901 is amended by removing from the first parenthetical "as defined in Subpart 13.1".

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEERING CONTRACTS**§ 36.701 [Amended]**

67. Section 36.701 is amended in paragraph (c) by removing the phrase "small purchases documents (see Part 13, Small Purchases and Other Simplified Purchase Procedures)" and inserting in its place "simplified acquisitions (see part 13)".

PART 47—TRANSPORTATION**§ 47.205 [Amended]**

68. Section 47.205 is amended in paragraph (b) by removing the words "at 13.101".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**§ 52.203-6 [Amended]**

69. Section 52.203-6 is amended by revising the clause date to read "[JUL 1995]".

§ 52.213-2 [Amended]

70. Section 52.213-2 is amended in the introductory text by revising the citation "13.507(b)" to read "13.506(b)".

§ 52.213-3 [Amended]

71. Section 52.213-3 is amended in the introductory text by revising the citation "13.507(c)" to read "13.506(c)".

§ 52.215-2 [Amended]

72. Section 52.215-2 is amended in the clause heading by removing "(OCT 1995)" and inserting "(AUG 1996)"; and in the introductory text of paragraph (g) by removing the words "in FAR Part 13."

§ 52.222-40 [Removed]

73. Section 52.222-40 is removed and reserved.

§ 52.227-2 [Amended]

74. Section 52.227-2 is amended by revising the date of the clause to read "(AUG 1996)"; and in paragraph (c) by removing the phrase "dollar amount set forth in 13.000 of the Federal Acquisition Regulation (FAR)." and inserting in its place "simplified acquisition threshold at FAR 2.101."

§ 52.244-2 [Amended]

75. Section 52.244-2 is amended in Alternate I of the clause by removing "(JUL 1995)" and inserting "(AUG 1996)"; and in paragraph (a)(2) of Alternate I by removing the words "in Part 13 of the Federal Acquisition Regulation."

§ 52.247-64 [Amended]

76. Section 52.247-64 is amended in the clause heading by removing "(JUL 1995)" and inserting "(AUG 1996)"; in paragraph (d) by removing the words "as described in FAR Part 13"; and in paragraph (e)(1) by removing the words "as defined in FAR Part 13."

PART 53—FORMS

77. Section 53.205-1 is revised to read as follows:

§ 53.205-1 Paid advertisements.

SF 1449, prescribed in 53.212, shall be used to place orders for paid advertisements as specified in 5.503.

78. Section 53.213 is revised to read as follows:

§ 53.213 Simplified acquisition procedures (SF's 18, 30, 44, 1165, 1449, OF's 336, 347, 348).

The following forms are prescribed as stated in this section for use in simplified acquisition procedures, orders under existing contracts or agreements, and orders from required sources of supplies and services:

(a) *SF 18 (REV. 6/95), Request for Quotations*, or *SF 1449, (10/95 Ed.) Solicitation/Contract/Order for Commercial Items*. SF 18 prescribed in 53.215-1(a) or SF 1449 prescribed in 53.212 (or approved agency forms/

automated formats) shall be used in obtaining price, cost, delivery, and related information from suppliers as specified in 13.107.

(b) *SF 30 (REV. 10/83), Amendment of Solicitation/Modification of Contract*. SF 30, prescribed in 53.243, may be used for modifying purchase orders, as specified in 13.503(b).

(c) *SF 44 (REV. 10/83), Purchase Order Invoice Voucher*. SF 44 is prescribed for use in simplified acquisition procedures, as specified in 13.505(b).

(d) *SF 1165 (6/83 Ed.), Receipt for Cash-Subvoucher*. SF 1165 (GAO) may be used for imprest fund purchases, as specified in 13.404(e).

(e) *OF 336 (4/86 Ed.), Continuation Sheet*. OF 336, prescribed in 53.214(h), may be used as a continuation sheet in solicitations, as specified in 13.107(c).

(f) *SF 1449, (10/95 Ed.) Solicitation/Contract/Order for Commercial Items* prescribed in 53.212, *OF 347 (REV. 6/95), Order for Supplies or Services*, and *OF 348 (10/83 Ed.), Order for Supplies or Services-Schedule Continuation*. SF 1449, OF's 347 and 348 (or approved agency forms/automated formats) may be used as follows:

(1) To accomplish acquisitions under simplified acquisition procedures, as specified in 13.505.

(2) To establish blanket purchase agreements (BPA's), as specified in 13.202, and to make purchases under BPA's, as specified in 13.204(e).

(3) To issue orders under basic ordering agreements, as specified in 16.703(d)(2)(i).

(4) As otherwise specified in this chapter (e.g., see 5.503(a)(2), 8.405-2, 36.701(c), and 51.102(e)(3)(ii)).

§ 53.216-1, 53.236-1, and 53.251
[Amended]

79. The following sections are amended by removing the reference "53.213(e)" and inserting "53.213(f)":

- a. 53.216-1;
- b. 53.236-1(f); and
- c. 53.251.

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DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Parts 3 and 52

[FAC 90-40; FAR Case 96-300; Item III]

RIN 9000-AH11

**Federal Acquisition Regulation;
Gratuities**

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

ACTION: Interim rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 801 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104-106), which amended 10 U.S.C. 2207, generally referred to as the Gratuities Act, to make it applicable only to contracts exceeding the simplified acquisition threshold. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

DATES: *Effective Date:* July 26, 1996.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before September 24, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 18th & F Streets, NW., Room 4037, Washington, DC 20405.

Please cite FAC 90-40, FAR case 96-300, in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph DeStefano at (202) 501-1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-40, FAR case 96-300.

SUPPLEMENTARY INFORMATION:

A. Background

Section 801 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104-106), added a

subsection (b) to 10 U.S.C. 2207, Expenditure of appropriations: limitation. Prior to its amendment, 10 U.S.C. 2207 prohibited the spending of DoD appropriated money (other than under a contract for personal services) unless the Government had an express right to terminate the contract if the contractor offered or gave a gratuity to a Government employee to obtain the contract or to receive favorable treatment under the contract. Subsection (b) of 10 U.S.C. 2207 exempts contracts which do not exceed the simplified acquisition threshold from this prohibition.

FAR Subpart 3.2, Contractor Gratuities to Government Personnel, implements 10 U.S.C. 2207 and applies to all executive agencies except for that portion concerning exemplary damages, which applies only to DOD. FAR Subpart 3.2 prescribed the use of FAR clause 52.203-3, Gratuities, in solicitations and contracts, except those for personal services and those between military departments or defense agencies and foreign governments that do not obligate DOD appropriated funds. This interim rule amends FAR Subpart 3.2 to exempt solicitations and contracts which do not exceed the simplified acquisition threshold from the prescribed use of the clause.

B. Regulatory Flexibility Act

This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because only a small number of Federal contractors have been subject to action under the Gratuities clause. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601 *et seq.* (FAC 90-40, FAR case 96-300), 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.*