

contracting officer or other official designated to receive protests.

(4) Interested parties may request an independent review at a level above the contracting officer, of any decision by the contracting officer that is alleged to have violated a statute or regulation and thereby caused prejudice to the offeror. This independent review need not be established within the contracting officer's supervisory chain.

(e) Protests based on alleged apparent improprieties in a solicitation shall be filed before bid opening or the closing date for receipt of proposals. In all other cases, protests shall be filed no later than 14 days after the basis of protest is known or should have been known, whichever is earlier. The agency, for good cause shown, or where it determines that a protest raises issues significant to the agency's acquisition system, may consider the merits of any protest which is not timely filed.

(f) *Action upon receipt of protest.* (1) Upon receipt of a protest before award, a contract may not be awarded, pending resolution of the protest, unless contract award is justified, in writing, for urgent and compelling reasons or is determined, in writing, to be in the best interest of the Government. Such justification or determination shall be approved at a level above the contracting officer, or by another official pursuant to agency procedures.

(2) If award is withheld pending resolution of the protest, the contracting officer will inform the offerors whose offers might become eligible for award of the contract. If appropriate, the offerors should be requested, before expiration of the time for acceptance of their offers, to extend the time for acceptance to avoid the need for resolicitation. In the event of failure to obtain such extension of offers, consideration should be given to proceeding with award pursuant to paragraph (f)(1) of this section.

(3) Upon receipt of a protest within 10 days after contract award or within 5 days after a debriefing date offered to the protester under a timely debriefing request in accordance with 15.1004, whichever is later, the contracting officer shall immediately suspend performance, pending resolution of the protest within the agency, including any review by an independent higher level official, unless continued performance is justified, in writing, for urgent and compelling reasons or is determined, in writing, to be in the best interest of the Government. Such justification or determination shall be approved at a level above the contracting officer, or by another official pursuant to agency procedures.

(g) Agencies shall make their best efforts to resolve agency protests within 35 days after the protest is filed.

(h) Agency protest decisions shall be well-reasoned, and shall provide sufficient factual detail explaining the agency position. A copy of the written protest decision shall be furnished to the protester. A method that provides evidence of receipt should be used.

[FR Doc. 96-18510 Filed 7-25-96; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 48

[FAC 90-40; FAR Case 96-315; Item XIV]

RIN 9000-AH12

Federal Acquisition Regulation; Value Engineering

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 revise the definition of value engineering and to require agencies to establish and maintain cost-effective value engineering procedures and processes. 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 26, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Peter O'Such (202) 501-1759 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 96-315.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule implements Section 4306 of the Federal Acquisition Reform Act of 1996 (Pub. L. 104-106). Section 4306 adds Section 36 to the Office of Federal Procurement Policy Act (41 U.S.C. 401, *et seq.*) to define value

engineering and to establish Federal procurement policy that each agency shall establish and maintain cost-effective value engineering procedures and processes.

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 90-40, FAR case 96-315), 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 48

Government procurement.

Dated: July 16, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 48 is amended as set forth below:

PART 48—VALUE ENGINEERING

1. The authority citation for 48 CFR Part 48 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 48.001 is amended by revising the definition "Value engineering" to read as follows:

48.001 Definitions.

* * * * *

Value engineering, as used in this part, means an analysis of the functions of a program, project, system, product, item of equipment, building, facility, service, or supply of an executive agency, performed by qualified agency or contractor personnel, directed at improving performance, reliability, quality, safety, and life-cycle costs (Section 36 of the Office of Federal Procurement Policy Act, 41 U.S.C. 401, *et seq.*).

* * * * *

3. Section 48.102 is amended in paragraph (a) by adding a new first sentence to read as follows:

48.102 Policies.

(a) As required by Section 36 of the Office of Federal Procurement Policy Act (41 U.S.C. 401, *et seq.*), agencies shall establish and maintain cost-effective value engineering procedures and processes. * * *

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[FR Doc. 96-18511 Filed 7-25-96; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 49 and 52**

[FAC 90-40; FAR Case 94-003; Item XV]

RIN 9000-AG13

**Federal Acquisition Regulation;
Termination Inventory Schedules**

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) concerning termination of contracts to preclude excessive delays in processing terminations for the convenience of the Government. The amendments will require contractors to prepare and submit termination inventory schedules within 120 days from the effective date of termination, unless otherwise extended by the Termination Contracting Officer (TCO). This will enable the TCO to initiate early inventory screening and final disposition, thereby substantially reducing the time required to achieve termination settlement. 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: September 24, 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 90-40, FAR case 94-003.

SUPPLEMENTARY INFORMATION:**A. Background**

When inventory schedules required for contracts terminated for the convenience of the Government are not submitted in a timely manner by the terminated contractor(s), unnecessary delays are experienced both in effecting redistribution and disposal of the termination inventory and in reaching final settlement of those contracts.

In an attempt to preclude excessive delays in processing terminations for the convenience of the Government, a proposed rule was published in the Federal Register at 59 FR 61734, December 1, 1994, with a request for comment. As a result of the comments received under the proposed rule, the following changes to the final rule have been made:

- The reference to “provisions” in the first sentence of both FAR 49.206-3 and 49.303-2 has been revised to read “terms”;
- The word “must” in the last sentence of FAR 49.206-3 and 49.303-2 is changed to read “shall”;
- The events described in the clauses at 52.249-2 (c) and (d), 52.249-3 (c) and (d), 52.249-6 (d) and (e), and 52.249-11 (c) and (d) have been reversed to reflect the order in which the events occur; and
- Several references have been updated.

B. Regulatory Flexibility Act

A Final Regulatory Flexibility Analysis (FRFA) has been prepared and will be provided to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subparts 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 90-40, FAR Case 94-003), 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.* Submission of termination inventory schedules is an existing requirement; this rule merely changes the timing for submission of those schedules.

List of Subjects in 48 CFR Parts 49 and 52

Government procurement.

Dated: July 16, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 49 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 49 and 52 continues to read as follows:

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

**PART 49—TERMINATION OF
CONTRACTS****49.105 [Amended]**

2. Section 49.105(c)(13) is amended by adding “(see 49.206-3 and 49.303-2)” to the end of the sentence.

3. Section 49.206-3 is added to read as follows:

**49.206-3 Submission of inventory
schedules.**

Subject to the terms of the termination clause and whenever termination inventory is involved, the contractor shall submit complete inventory schedules, to the TCO, reflecting inventory that is allocable to the terminated portion of the contract. The inventory schedules shall be submitted within 120 days from the effective date of termination unless otherwise extended by the TCO based on a written justification to support the extension. The inventory schedules shall be prepared on the forms prescribed in 49.602-2 and in accordance with 45.606-5.

**49.303-2, 49.303-3, 49.303-4
[Redesignated as 49.303-3 through 49.303-5].**

4. Sections 49.303-2, 49.303-3, and 49.303-4 are redesignated as 49.303-3, 49.303-4, and 49.303-5, respectively, and a new 49.303-2 is added to read as follows:

**49.303-2 Submission of inventory
schedules.**

Subject to the terms of the termination clause and whenever termination inventory is involved, the contractor shall submit complete inventory schedules, to the TCO, reflecting inventory that is allocable to the terminated portion of the contract. The inventory schedules shall be submitted within 120 days from the effective date of termination unless otherwise extended by the TCO based on a written justification to support the extension. The inventory schedules shall be prepared on the forms prescribed in