

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 4, 12, 13, 16, 41, 43, 49,
52, and 53****[FAR Case 94-772]****RIN: 9000-AH24****Federal Acquisition Regulation;
Reorganization of FAR Part 13,
Simplified Acquisition Procedures****AGENCIES:** Department of Defense (DoD),
General Services Administration (GSA),
and National Aeronautics and Space
Administration (NASA).**ACTION:** Proposed rule with request for
comments.

SUMMARY: The Federal Acquisition Regulatory Council is proposing to amend the Federal Acquisition Regulation (FAR) to reorganize Part 13 for clarity and make other changes to facilitate the use of electronic commerce in contracting. This effort was initiated as a result of public comments received during the comment period on FAR Case 94-770 published in the Federal Register as an interim rule on July 3, 1995 (60 FR 34741). This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Comments on the proposed rule should be submitted on or before November 12, 1996 to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRs), 18th and F Streets, NW, Room 4037, Washington, DC 20405. Please cite FAR Case 94-772 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: For further information, contact Paul Linfield at (202) 501-1757 or the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405; (202) 501-4755. Please cite FAR case 94-772.

SUPPLEMENTARY INFORMATION:**A. Background**

FAR Case 94-772 was initiated in November 1995 as a result of comments received on FAR Case 94-770 published as an interim rule in the Federal Register on July 3, 1995. Two commenters noted that the poor

organization of Part 13 and the significant increase in the number of quotes to be evaluated when using FACNET to conduct acquisitions under the simplified acquisition threshold could detract from the realization of the Administration's and the Congress' goals for acquisition reform.

In its comments, the General Services Administration observed that the deficiencies in the organization of Part 13 would become even more apparent as the dual objectives of the Administration and the Congress of reducing the number of contracting officers holding warrants and empowering program personnel to make purchasing decisions were realized. These individuals' reliance on their purchasing activities to support their program requirements would be reduced substantially. However, as a consequence, these individuals would be forced to rely on the FAR in making purchasing decisions, especially under the micro-purchase threshold (\$2,500). The GSA noted, for example, that the FAR was virtually silent on the use of the Governmentwide commercial purchase card, a special credit card that agencies could make available to individuals to make and/or to pay for purchases, especially ones that were valued at less than the micro-purchase threshold. Both the National Performance Review and the Congress anticipate expansion of the use of the Governmentwide commercial purchase card will compensate for or allow agencies to make further reductions in contracting personnel.

Micro-purchases and other contract actions under the simplified acquisition threshold comprise approximately 95 percent of the total Governmentwide contract actions made annually. Most of these are made using procedures authorized in Part 13. For this reason, the GSA stressed that this part of the FAR needs to be written in a clear and cohesive manner.

In its comments, the Office of Federal Procurement Policy described how the use of the Federal Acquisition Computer Network (FACNET) to conduct acquisitions under the simplified acquisition threshold was expected to result in a substantial increase in the number of quotes and products submitted by small businesses in response to agency solicitations. FACNET is authorized in the Federal Acquisition Streamlining Act (FASA) and is intended to promote the evolution of the Government's acquisition process from one that is primarily paper-oriented to one that is conducted primarily through electronic commerce. A logical consequence of

using FACNET to conduct acquisitions under the simplified acquisition threshold was that the traditional select vendor community that previously was the primary source for small dollar transactions would be replaced by a nationwide vendor community made up of many unknown suppliers offering unfamiliar products. This greatly increased supplier base offering many unfamiliar products would have to be evaluated by substantially reduced agency procurement workforces that had not been exempted from the downsizing experienced by Federal agencies over the last several years.

As a result of issues posed in these comments, a small interagency team was formed to review the interim rule, the disposition of public comments, and to reorganize FAR Part 13 in a more logical and process oriented manner. Included in the tasking to the team was that the reorganization should emphasize such goals of acquisition reform as maximizing the use of (1) FACNET versus paper contracts, (2) simplified acquisition procedures for all procurements under the simplified acquisition threshold, and (3) the Governmentwide commercial purchase card. The team was also asked to develop strategies that facilitated the use of FACNET for purchases made using simplified acquisition procedures and to eliminate inconsistencies between Part 12 and Part 13 (e.g., the use of Standard Form 1449, Solicitation/Contract/Order for Commercial Items).

Elements of this direction that could not be implemented in the final rule on FAR Case 94-770 published in the Federal Register on July 26, 1996 are the subject of this proposed rule. The most important organizational changes made in this proposed rule were the consolidation in Subpart 13.3 of all simplified acquisition procedures for conducting micro-purchases and other purchases under the simplified acquisition threshold and the consolidation of forms used in simplified acquisitions in a new section 13.309. Other changes of note to Part 13 were the placement of existing guidance in more appropriate sections, resulting in the removal of five existing sections and the development of a new Subpart 13.2 for micro-purchases; the addition of section 13.303 providing guidance on the use of the Governmentwide commercial purchase card, a subject on which the current Part 13 is virtually silent; the addition of section 13.306 providing a "streamlined" optional clause for use in simplified acquisitions for other than commercial items that parallels certain aspects of 52.212-4 for commercial items. Collateral changes

are proposed in other FAR parts to make necessary citation changes because of material relocated within Part 13.

To facilitate the use of FACNET and reduce the size of agency solicitations, revisions are proposed to Part 52 to permit any provision or clause prescribed in agency acquisition regulations to be incorporated by reference if it can be accessed by potential contractors on the Internet. Section 52.102 has been retitled and rewritten. Other changes proposed include revisions to sections 52.252-1, Solicitation Provisions Incorporated by Reference; 52.252-2, Clauses Incorporated by Reference; and the addition of a new section 52.252-xx, Agency and FAR Provisions and Clauses Accessible Electronically.

Comments on whether the proposed rule improves the utility to users of Part 13 are encouraged. Comments on new material added in Parts 13 and 52, especially with regard to the clauses, are also encouraged. Comments previously submitted on FAR Case 94-770 were considered in drafting the final rule.

This rule does not address changes called for by section 4203 of the Federal Acquisition Reform Act. That section requires that the FAR establish special simplified procedures for the acquisition of commercial items with a value greater than the simplified acquisition threshold but not greater than \$5 million. A separate rule is being published to implement section 4203. A reconciliation of these two rules will take place after receipt of public comments.

B. Regulatory Flexibility Act

Changes proposed to Part 13 are not expected to have a significant impact on small entities. However, revisions proposed in Part 52 may have an economic effect on a substantial number of small entities, since it will encourage those small entities that desire to do business with Federal agencies to have the ability to access electronically provisions and clauses used in Federal agency procurements. Accordingly, an initial regulatory flexibility analysis has been prepared and submitted to the Chief Counsel for Advocacy of the Small Business Administration.

This initial regulatory flexibility analysis explains how the current trend in both the private sector and the Government to reduce the use of paper transactions by conducting business electronically will accelerate in the future. FACNET, authorized by FASA, already requires entities desiring to do business with Federal agencies to possess a computer and modem and subscribe to a Value Added Network

(VAN). This same equipment would be used to access Internet. Consequently, the additional expense to small entities is anticipated to be the cost of acquiring Internet access if they do not currently subscribe.

While provisions and clauses are not required for micro-purchases, estimated to account for 40 percent of contract actions below \$25,000, the proposed rule still would apply to approximately 3.9 million contract actions awarded annually to small business concerns. Currently, the FAR requires that when provisions and clauses are incorporated by reference, the contracting officer, upon request, must make the full text available to the requester. The proposed rule retains this requirement.

Expanded usage of incorporation by reference can reduce the costs associated with participating in agency procurement opportunities for many small entities, since some VANs charge their subscribers by the number of characters sent or received. Incorporation by reference permits agencies to abbreviate the size of solicitations and award documents and also reduces the amount of data that potential contractors must submit back to the contracting officer.

A copy of the IRFA may be obtained from the FAR Secretariat (see ADDRESSES). Comments are invited. 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 should cite 5 U.S.C. 601, *et seq.*, FAR Case 94-772, in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule does not impose any additional reporting or information collection requirements which require Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 4, 12, 13, 16, 41, 43, 49, 52, and 53

Government procurement.

Dated: September 9, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

For the reasons set forth above it is proposed that 48 CFR Parts 4, 12, 13, 16, 41, 43, 49, 52, and 53 be amended as set forth below:

1. The authority citation for 48 CFR Parts 4, 12, 16, 41, 43, 49, 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).

PART 4—ADMINISTRATIVE MATTERS

4.800 [Amended]

2. Section 4.800 is amended to revise the reference in the parenthetical to read "13.302(d)".

PART 12—ACQUISITION OF COMMERCIAL ITEMS

3. Section 12.102 is amended to revise paragraph (d)(2) and (d)(3) to read as follows:

12.102 Applicability.

* * * * *

(d) * * *

(2) Using the Standard Form 44 (see 13.309(d));

(3) Using the imprest fund (see 13.307); or

* * * * *

12.206, 12.301, and 12.602 [Amended]

4. Sections 12.206, 12.301(c)(2), and 12.602 (a) and (b) are amended to replace the references to 13.106-2 with 13.302.

5. Part 13 is revised to read as follows:

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.000 Scope of part.

Subpart 13.1—General

13.101 Definitions.

13.102 Purpose.

13.103 Policy.

13.104 Procedures.

13.105 Small business set-asides.

13.106 Legal effect of quotations.

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

13.108 Inapplicable provisions and clauses.

Subpart 13.2—Micro-Purchases

13.201 General.

13.202 Purchase guidelines.

Subpart 13.3—Simplified Acquisition Procedures

13.301 Use of options.

13.302 Soliciting competition, evaluation of quotes or offers, award, and documentation.

13.303 Governmentwide commercial purchase card.

13.304 Purchase orders.

13.304-1 General.

13.304-2 Unpriced purchase orders.

13.304-3 Obtaining contractor acceptance and modifying purchase orders.

13.304-4 Termination or cancellation of purchase orders.

13.304-5 Clauses.

13.305 Blanket purchase agreements (BPAs).

13.305-1 General.

13.305-2 Establishment of BPAs.

13.305-3 Clauses.

13.305-4 Purchases under BPAs.

- 13.305-5 Review procedures.
- 13.305-6 Completion of BPAs.
- 13.306 Optional clause.
- 13.307 Imprest funds and third party drafts.
- 13.307-1 General.
- 13.307-2 Agency responsibilities.
- 13.307-3 Conditions for use.
- 13.307-4 Procedures.
- 13.308 Fast payment procedure.
- 13.308-1 General.
- 13.308-2 Conditions for use.
- 13.308-3 Preparation and execution of orders.
- 13.308-4 Contract clause.
- 13.309 Forms.

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

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-engineering services.

Subpart 13.1—General

13.101 Definitions.

“Bulk funding,” as used in this part, means a system whereby a contracting officer receives authorization from a fiscal and accounting officer to obligate funds on purchase documents against a specified lump sum of funds reserved for the purpose for a specified period of time rather than obtaining individual obligational authority on each purchase document.

“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.

“Imprest fund,” as used in this part, means a cash fund of a fixed amount established by an advance of funds, without charge to an appropriation, from an agency finance or disbursing officer to a duly appointed cashier, for disbursement as needed from time to time in making payment in cash for relatively small amounts.

“Purchase order,” as used in this part, means an offer by the Government to buy supplies or services, including construction and research and development, upon specified terms and conditions, using simplified acquisition procedures.

“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 Management Manual, Section 3040.70.)

13.102 Purpose.

The purpose of this part is to prescribe simplified acquisition procedures in order to—

- (a) Reduce administrative costs;
- (b) Improve opportunities for small, small disadvantaged, and women-owned small business concerns to obtain a fair proportion of Government contracts;
- (c) Promote efficiency and economy in contracting; and
- (d) Avoid unnecessary burdens for agencies and contractors.

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), existing indefinite delivery/indefinite quantity contracts, or from 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) In conducting simplified acquisitions the Governmentwide commercial purchase card and

electronic purchasing techniques shall be used to the maximum extent practicable.

(f) 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.

(g) Contracting officers shall establish deadlines for the submission of responses to solicitations which afford contractors a reasonable opportunity to respond in accordance with 5.203. Contracting officers shall consider all quotes/offers timely received. For acquisitions conducted through FACNET, the contracting officer may consider quotes/offers in accordance with 13.302(b)(2).

(h) 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 have the flexibility to use any combination of the procedures in Subpart 12.6 or Parts 13, 14, 15, 35, or 36 as applicable. 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, and 36 including the use of Standard Form (SF) 1442, Solicitation, Offer and Award (Construction, Alteration, or Repair), for construction contracts (see 36.701(b)).

13.104 Procedures.

(a) Purchases under this part should be made in the simplified manner that is most suitable, efficient, and economical based on the circumstances of each acquisition. Agencies and contracting offices are encouraged to seek out opportunities to cooperate in achieving efficiency and economy using the procedures authorized in this part. Simplified acquisition procedures may be used to reduce the costs, processing time, and/or documentation of acquisitions when using—

(1) Government supply sources (see Part 8), if their use is authorized by the basic contract or concurred in by the source.

(2) Indefinite delivery contracts (see Subpart 16.5) that permit task or delivery orders to be placed by several contracting or ordering offices in one or more executive agencies.

(3) Blanket purchase agreements (see 13.305) to fill repetitive needs for supplies or services.

(4) The Governmentwide commercial purchase card (see 13.303) as a method to acquire and/or to pay for supplies or services to the maximum extent permitted by regulation.

(5) Bulk funding to the maximum extent practicable. Bulk funding is particularly appropriate if numerous purchases using the same type of funds are to be made during a given period.

(b)(1) 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 Procurement Automated Source System (PASS) of the Small Business Administration and the Central Contractor Registration Data Base (CCR) (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:

- (i) Small business.
- (ii) Small disadvantaged business.
- (iii) Women-owned small business.

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

(c) In making purchases under this part, contracting officers should comply with the following procedures:

(1) Include related items (such as small hardware items or spare parts for vehicles) in one solicitation and make award on an "all-or-none" or "multiple award" basis provided suppliers are so advised when quotations are requested.

(2) Adhere to the policy in 7.202 relating to economic purchase quantities, when practicable.

(3) Adhere to the public display and synopsis requirements in 5.101 and 5.203.

(4) Make maximum effort to obtain trade and prompt payment discounts (see 14.408-3). Prompt payment discounts shall not be considered in the evaluation of quotations.

(5) Provide for the inspection of supplies or services as prescribed in 46.404.

(6) Incorporate provisions and clauses by reference in solicitations/awards under requests for quotations, provided the requirements in 52.102 are satisfied.

(7) Reject a quotation, oral or written, from a small business concern determined to be nonresponsive (see Subpart 9.1) only after satisfying the procedures described in Subpart 19.6 with respect to Certificates of Competency.

(8) 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).

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 (see 19.000 and 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.

13.106 Legal effect of quotations.

(a) A quotation is not an offer and, consequently, cannot be accepted by the Government to form a binding contract (see 15.402(e)). Therefore, issuance by the Government of an order for supplies or services in response to a supplier's quotation does not establish a contract. The order is an offer by the Government to the supplier to buy certain supplies or services upon specified terms and conditions. A contract is established when the supplier accepts the offer or begins performance.

(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. In other circumstances, the supplier may indicate acceptance by furnishing the supplies or services ordered or by proceeding with the work to the point where substantial performance has occurred.

(c) If the Government issues an order resulting from a quotation, the Government may (by written notice to the supplier, at any time before acceptance occurs) withdraw, amend, or cancel its offer. (See 13.304-4 for procedures on termination or cancellation of purchase orders.)

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

(a) The following laws are inapplicable to all contracts and subcontracts (if otherwise applicable to subcontracts) at or below the simplified acquisition threshold:

(1) 41 U.S.C. 57 (a) and (b) (Anti-Kickback Act of 1986) (Only the requirement for the incorporation of the contractor procedures for the prevention and detection of violations, and the contractual requirement for contractor

cooperation in investigations are inapplicable.)

(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. 327-333 (Contract Work Hours and Safety Standards Act—Overtime Compensation).

(4) 41 U.S.C. 701(a)(1) (Section 5152 of the Drug Free Workplace Act of 1988), except for individuals.

(5) 42 U.S.C. 6962 (Solid Waste Disposal Act) (Only the requirement for providing the estimate of recovered material utilized in the performance of the contract is inapplicable).

(6) 10 U.S.C. 2306(b) and 41 U.S.C. 254(a) (Contract Clause Regarding Contingent Fees).

(7) 10 U.S.C. 2313 and 41 U.S.C. 254(c) (Authority to Examine Books and Records of Contractors).

(8) 10 U.S.C. 2402 and 41 U.S.C. 253g (Prohibition on Limiting Subcontractor Direct Sales to the United States).

(b) The Federal Acquisition Regulatory Council will include any law enacted after October 13, 1994, that sets forth policies, procedures, requirements, or restrictions for the procurement of property or services, on the list set forth in paragraph (a) of this section, unless the FAR Council makes a written determination that it is in the best interests of the Government that the enactment should apply to contracts or subcontracts not greater than the simplified acquisition threshold.

(c) The provisions of paragraph (b) of this section do not apply to laws that—

(1) Provide for criminal or civil penalties; or

(2) Specifically state that notwithstanding the language of Section 4101, Pub. L. 103-355, the enactment will be applicable to contracts or subcontracts in amounts not greater than the simplified acquisition threshold.

(d) Any individual may petition the Administrator of the Office of Federal Procurement Policy to include any applicable provision of law not included on the list set forth in paragraph (a) of this section unless the FAR Council has already determined in writing that the law is applicable. The Administrator of OFPP will include the law on the list in paragraph (a) of this section unless the FAR Council makes a determination that it is applicable within sixty days of receiving the petition.

13.108 Inapplicable provisions and clauses.

While certain statutes still apply, pursuant to Pub. L. 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;
- (b) 52.203-5, Covenant Against Contingent Fees;
- (c) 52.203-6, Restrictions on Subcontractor Sales to the Government;
- (d) 52.203-7, Anti-Kickback Procedures;
- (e) 52.215-2, Audits and Records-Negotiation;
- (f) 52.222-4, Contract Work Hours and Safety Standards Act—Overtime Compensation;
- (g) 52.223-5, Certification Regarding a Drug-Free Workplace, except for individuals;
- (h) 52.223-6, Drug-Free Workplace, except for individuals; and
- (i) 52.223-8, Estimate of Percentage of Recovered Material for Designated Items to be Used in the Performance of the Contract.

Subpart 13.2—Micro-Purchases**13.201 General.**

- (a) Agency heads are encouraged to delegate micro-purchase authority (see 1.603-3).
- (b) The Governmentwide commercial purchase card shall be the preferred method to purchase and to pay for micro-purchases.
- (c) Purchases under the micro-purchase threshold may be conducted using any of the procedures described in Subpart 13.3.
- (d) Micro-purchases (see the definition in 2.101) conducted through the procedures authorized in Part 12 or Subpart 13.3 do not require provisions or clauses. This paragraph takes precedence over any other FAR requirement to the contrary, but does not prohibit the use of any clause prescribed elsewhere in the FAR when determined necessary by the contracting officer.
- (e) The requirements in Part 8, Required Sources of Supplies and Services, apply to purchases below the micro-purchase threshold.

13.202 Purchase guidelines.

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

(b) *Documentation.* If competitive quotations were solicited and award was made to other than the low quote, documentation to support purchases may be limited to identification of solicited concerns and explanation for the award decision.

Subpart 13.3—Simplified Acquisition Procedures**13.301 Use of options.**

Options may be included provided the requirements of Subpart 17.2 are met, and the aggregate value of the acquisition and all options does not exceed the dollar threshold for use of simplified acquisition procedures under this part.

13.302 Soliciting competition, evaluation of quotes or offers, award, and documentation.

(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. Sufficient information to permit suppliers to develop quotations may be incorporated into the combined synopsis/solicitation.

In such cases, the contracting officer is not required to issue a separate solicitation.

(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 when synopsisized in accordance with 5.101. 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 practicable. 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 (e.g., urgency, exclusive licensing agreements, or industrial mobilization).

(6) Contracting officers shall not solicit quotations based on personal preference. Except as provided in subparagraph (a)(7) of this section, solicitations shall not be restricted to suppliers of well known and widely distributed makes or brands.

(7) If the acquisition was conducted through FACNET, agencies need not

respond to inquiries that are made telephonically or by facsimile unless they are unable to receive inquiries through FACNET. In addition, an agency is not required to receive questions through any medium (including through FACNET) if doing so would interfere with its ability to conduct the procurement in an efficient manner.

(8) Agency requirements shall not be restricted to only one brand name, product, or feature of a product, peculiar to one manufacturer, thereby precluding consideration of a product manufactured by another company, unless the contracting officer determines that the particular brand name, product or feature is essential to the Government's requirements, and that other companies' similar products, or products lacking the particular feature, would not meet the Government's requirements. This limitation does not prohibit the identification of a requirement:

(i) By use of a brand name, provided the brand name is followed by words such as "or equal," or

(ii) Alternatively, if the requirement does not exceed \$25,000, by use of at least three different brand names.

(b) *Evaluation of quotes or offers.* (1) Contracting officers may evaluate quotations or offers based on price alone or price and other factors (see subparagraph (a)(1) of this section). If price and other factors are used, the contracting officer shall use the procedures that will ensure that the evaluation of quotations can be performed in an efficient and minimally burdensome fashion. Formal evaluation plans, conduct of discussions, and scoring of quotes or offers are not required. Evaluation of 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.

(2) For purchases conducted using FACNET, the contracting officer may—

(i) After preliminary consideration of all offers, identify from all quotes received one that is suitable to the user, such as the lowest-priced brand name product and quickly screen all lower-priced quotes based on readily discernible value indicators, such as past performance, warranty conditions, and maintenance availability; or

(ii) Where an evaluation is based only on price and past performance, make an award based on whether the lowest priced offer having the highest past

performance rating possible represents the best value when compared to any lower priced quotes.

(3) Standing price quotations may be used in lieu of obtaining individual quotations each time a purchase is contemplated, provided the contracting officer ensures that the pricing information is current and that the Government obtains the benefit of maximum discounts before award is made.

(4) Quotations shall be evaluated inclusive of transportation charges from the shipping point of the supplier to the delivery destination.

(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 alone, a brief explanation of the basis for the contract award decision shall be provided (see 15.1002(c)(2)).

(d) *Documentation.* (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 subparagraph(b)(1) of this section), 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 only from 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).

13.303 Governmentwide commercial purchase card.

(a) The Governmentwide commercial purchase card is authorized for use in making and/or paying for purchases. The Governmentwide commercial purchase card may be used by contracting officers and other individuals designated in 1.603-3.

(b) Agencies using the Governmentwide commercial purchase card shall establish procedures for the use and control of the card which comply with the Treasury Financial Manual for Guidance of Departments and Agencies (TFM 4-4500) and are consistent with the terms and conditions of the GSA Federal Supply Service Contract Guide for Governmentwide Commercial Purchase Card Service. Agency procedures should not limit the use of the Governmentwide commercial purchase card to micro-purchases. They should encourage use in greater amounts by contracting officers to place orders and pay for purchases against contracts established under Part 8 procedures, when authorized, and to make purchases and/or make payment, under other contracts, basic ordering agreements, or blanket purchase agreements when agreed to by the contractor.

(c) The Governmentwide commercial purchase card may be used to—

(1) Place a task or delivery order (if authorized in the basic contract, basic ordering agreement, or blanket purchase agreement);

(2) Purchase supplies, services, or construction; or

(3) Make payments, when the contractor agrees to accept payment by the card.

13.304 Purchase orders.

13.304-1 General.

(a) Except as provided under the unpriced purchase order method (see 13.304-2), purchase orders generally are issued on a fixed-price basis. See Part 12 for acquisition of commercial items.

(b) Purchase orders shall—

(1) Specify the quantity of supplies or scope of services ordered.

(2) Contain a determinable date by which delivery of the supplies or performance of the services is required.

(3) Provide for inspection as prescribed in Part 46. Generally, inspection and acceptance should be at destination. Source inspection should be specified only if required by Part 46. When inspection and acceptance will 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 supplies.

(4) Specify f.o.b. destination for supplies to be delivered within the United States, except Alaska or Hawaii, unless there are valid reasons to the contrary.

(5) Include any trade and prompt payment discounts that are offered, consistent with the applicable principles in 14.408-3.

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

(d) Distribution of copies of purchase orders and related forms shall be limited to those copies required for essential administration and transmission of contractual information.

13.304-2 Unpriced purchase orders.

(a) An unpriced purchase order is an order for supplies or services, the price of which is not established at the time of issuance of the order.

(b) An unpriced purchase order may be used only when—

(1) It is impractical to obtain pricing in advance of issuance of the purchase order; and

(2) The purchase is for

(i) Repairs to equipment requiring disassembly to determine the nature and extent of repairs;

(ii) Material available from only one source and for which cost cannot be readily established; or

(iii) Supplies or services for which prices are known to be competitive but exact prices are not known (e.g., miscellaneous repair parts, maintenance agreements).

(c) Unpriced purchase orders may be issued by using written purchase orders or electronically. A realistic monetary limitation, either for each line item or for the total order, shall be placed on each unpriced purchase order. The monetary limitation shall be an obligation subject to adjustment when the firm price is established. The contracting office shall follow-up each order to ensure timely pricing. The contracting officer or the contracting officer's designated representative shall review the invoice price and, if reasonable (see 13.302(d)), process the invoice for payment.

13.304-3 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.

(b) Each purchase order modification shall identify the order it modifies and shall contain an appropriate modification number.

(c) A contractor's acceptance of a purchase order modification may be required to be in writing only if—

(1) Determined by the contracting officer to be necessary to ensure the contractor's compliance with the purchase order as revised; or

(2) Required by agency regulations.

13.304-4 Termination or cancellation of purchase orders.

(a) If a purchase order that has been accepted in writing by the contractor is to be terminated, the contracting officer shall process the termination in accordance with—

(1) 12.403(d) and 52.212-4(l) for commercial items; or

(2) Part 49 or 13.306 and 52.213-XX for other than commercial items.

(b) If a purchase order that has not been accepted in writing by the contractor is to be canceled, the contracting officer shall notify the contractor in writing that the purchase order has been canceled, request the contractor's written (see 2.101) acceptance of the cancellation, and proceed as follows:

(1) If the contractor accepts the cancellation and does not claim that costs were incurred as a result of beginning performance under the purchase order, no further action is

required (i.e., the purchase order shall be considered canceled).

(2) If the contractor does not accept the cancellation or claims that costs were incurred as a result of beginning performance under the purchase order, the contracting officer shall process the termination action as prescribed in paragraph (a) of this subsection.

13.304-5 Clauses.

(a) Each purchase order (and each purchase order modification (see 13.304-3)) shall incorporate all clauses required for or applicable to the particular acquisition.

(b) The contracting officer shall insert the clause at 52.213-2, Invoices, in purchase orders that authorize advance payments (see 31 U.S.C. 3324(d)(2)) for subscriptions or other charges for newspapers, magazines, periodicals, or other publications (i.e., any publication printed, microfilmed, photocopied, or magnetically or otherwise recorded for auditory or visual usage).

(c) The contracting officer shall insert the clause at 52.213-3, Notice to Supplier, in unpriced purchase orders.

13.305 Blanket purchase agreements (BPAs).

13.305-1 General.

(a) A BPA is a simplified method of filling anticipated repetitive needs for supplies or services by establishing "charge accounts" with qualified sources of supply (see Subpart 16.7 for additional coverage of agreements).

(b) BPAs should be established for use by the level responsible for providing supplies for its own operations or for other offices, installations, projects, or functions. Such levels, for example, may be organized supply points, separate independent or detached field parties, or one-person posts or activities.

(c) The use of BPAs does not exempt the agency from the responsibility for keeping obligations and expenditures within available funds.

13.305-2 Establishment of 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) The 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 have 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, 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 13.309(b) and shall not cite accounting and appropriation data (see 13.305-4(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 13.305-4(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 under 13.308-3 shall be included.

13.305-3 Clauses.

(a) The contracting officer shall insert in each BPA the clauses prescribed elsewhere in this part that are required for or applicable to the particular BPA.

(b) Unless a clause prescription specifies otherwise (e.g., see 22.305(a), 22.605(a)(5), or 22.1006), if the prescription includes a dollar threshold, the amount to be compared to that threshold is that of any particular order under the BPA.

13.305-4 Purchases under BPAs.

(a) The use of a BPA does not authorize purchases that are not otherwise authorized by law or regulation. For example, the BPA, being a method of simplifying the making of individual purchases, shall not be used to avoid the simplified acquisition threshold.

(b) Unless otherwise specified in agency regulations, individual purchases, except under BPAs established in accordance with 13.305-2(c)(3), shall not exceed \$100,000.

(c) The existence of a BPA does not justify avoiding small business set-asides. The requirements of 13.105 and Subpart 19.5 also apply to each order under a BPA.

(d) The existence of a BPA does not justify purchasing from only one source. A synopsis shall be published if required by Subpart 5.2. If for a particular purchase under \$2,500 there is an insufficient number of BPAs to ensure maximum practicable competition (see 13.302(a)(4)), the contracting officer shall—

(1) Solicit quotations from other sources and make the purchase as appropriate; and

(2) Establish additional BPAs to facilitate future purchases if—

(i) Recurring requirements for the same or similar items or services seem likely;

(ii) Qualified sources are willing to accept BPAs; and

(iii) It is otherwise practical to do so.

(e) Documentation of purchases shall be limited to essential information and forms as follows:

(1) Purchases generally should be made electronically, or orally when it is not considered economical or practical to use electronic methods.

(2) A paper purchase document may be issued if written communications are necessary to ensure that the vendor and the purchaser agree concerning the transaction.

(3) If a paper document is not issued, the essential elements (e.g., date, vendor, items or services, price, delivery date) shall be recorded on the purchase requisition, in an informal memorandum, or on a form developed locally for the purpose.

(4) Documentation of purchases shall also cite the pertinent purchase requisitions and the accounting and appropriation data.

(5) When delivery is made or the services are performed, the vendor's sales document, delivery document, or invoice may (if it reflects the essential elements) be used for the purpose of recording receipt and acceptance of the items or services. However, if the purchase is assigned to another activity for administration, receipt and acceptance of supplies or services shall be documented by signature and date on the agency specified form by the authorized Government representative after verification and notation of any exceptions.

13.305-5 Review procedures.

(a) The contracting officer placing orders under a BPA, or the designated representative of the contracting officer, shall review a sufficient random sample of the BPA files at least annually to ensure that authorized procedures are being followed.

(b) The contracting officer that entered into the BPA shall—

(1) Ensure that each BPA is reviewed at least annually and, if necessary, updated at that time; and

(2) Maintain awareness of changes in market conditions, sources of supply, and other pertinent factors that may warrant making new arrangements with different suppliers or modifying existing arrangements.

(c) If an office other than the purchasing office that established a BPA is authorized to make purchases under that BPA, the agency that has jurisdiction over the office authorized to make the purchases shall ensure that the procedures in paragraph (a) of this subsection are being followed.

13.305-6 Completion of BPAs.

An individual BPA is considered complete when the purchases under it equal its total dollar limitation, if any, or when its stated time period expires.

13.306 Optional clause.

The clause at 52.213-XX, Terms and Conditions-Simplified Acquisitions (Other than Commercial Items), is prescribed for use in simplified acquisitions exceeding the micro-purchase threshold of supplies and services that are other than commercial items (see 12.301 for commercial items).

(a) The clause is a compilation of the required clauses and the most commonly used clauses that apply to simplified acquisitions and its structure parallels clauses prescribed at 12.301 for commercial items. The clause may be used in lieu of individual clauses prescribed in the FAR.

(b) Except for paragraphs (a) through (d), the clause may be modified to fit the individual acquisition (but see paragraph (c) of this section). Any modification, (i.e., addition, deletion, or substitution) must not create a void or internal contradiction in the clause. For example, do not add an inspection and acceptance or termination for convenience requirement unless the existing requirement is deleted. Also, do not delete a paragraph without providing for an appropriate substitute.

(c) The clause may be used in other simplified acquisitions of other than commercial items (e.g., architect-engineer and construction). If used in other simplified acquisitions of other than commercial items, paragraph (b) may also be modified.

13.307 Imprest funds and third party drafts.

13.307-1 General.

Imprest funds and third party drafts may be used to acquire and to pay for supplies or services. 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.

13.307-2 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.

13.307-3 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 13.307-1.

13.307-4 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 insuring adequate funds are available for the purchase.

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

(c) Since there is, for all practical purposes, simultaneous placement of the order and delivery of the items, clauses are not required for purchases using imprest funds or third party drafts.

(d) Forms prescribed at 13.309(e) 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).

(e) 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 paragraph (a) of this subsection 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

(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.

13.308 Fast payment procedure.

13.308-1 General.

(a) The fast payment procedure allows payment under limited conditions to a contractor prior to the Government's verification that supplies have been received and accepted. The procedure provides for payment for supplies based on the contractor's submission of an invoice that constitutes a representation that—

(1) The supplies have been delivered to a post office, common carrier, or point of first receipt by the Government; and

(2) The contractor agrees to replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase agreements.

(b) The contracting officer shall be primarily responsible for collecting debts resulting from failure of contractors to properly replace, repair, or correct supplies lost, damaged, or not conforming to purchase requirements (see 32.605(b) and 32.606).

13.308-2 Conditions for use.

If the conditions in paragraphs (a) through (f) of this subsection are present, the fast payment procedure may be used, provided that use of the procedure is consistent with the other conditions of the purchase. The conditions for use of the fast payment procedure are as follows:

(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.

(b) Deliveries of supplies are to occur at locations where there is both a

geographical separation and a lack of adequate communications facilities between Government receiving and disbursing activities that will make it impractical to make timely payment based on evidence of Government acceptance.

(c) Title to the supplies will vest in the Government—

(1) Upon delivery to a post office or common carrier for mailing or shipment to destination; or

(2) Upon receipt by the Government if the shipment is by means other than Postal Service or common carrier.

(d) The supplier agrees to replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase requirements.

(e) The purchasing instrument is a firm-fixed price contract, a purchase order, or a delivery order for supplies.

(f) A system is in place to ensure—

(1) Documenting evidence of contractor performance under fast payment acquisitions;

(2) Timely feedback to the contracting officer in case of contractor deficiencies; and

(3) Identification of suppliers who have a current history of abusing the fast payment procedure (also see Subpart 9.1).

13.308-3 Preparation and execution of orders.

Priced or unpriced contracts, purchase orders, or BPAs using the fast payment procedure shall include the following:

(a) A requirement that the supplies be shipped transportation or postage prepaid.

(b) A requirement that invoices be submitted directly to the finance or other office designated in the order, or in the case of unpriced purchase orders, to the contracting officer (see 13.304-2(c)).

(c) The following statement on consignee's copy:

Consignee's Notification to Purchasing Activity of Nonreceipt, Damage, or Nonconformance

The consignee shall notify the purchasing office promptly after the specified date of delivery of supplies not received, damaged in transit, or not conforming to specifications of the purchase order. Unless extenuating circumstances exist, the notification should be made not later than 60 days after the specified date of delivery.

13.308-4 Contract clause.

The contracting officer shall insert the clause at 52.213-1, Fast Payment Procedure, in solicitations and contracts when the conditions in 13.308-2 are applicable and it is intended that the

fast payment procedure be used in the contract (in the case of BPAs, the contracting officer may elect to insert the clause either in the BPA or in orders under the BPA).

13.309 Forms.

(a) *Commercial items.* 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).

(b) *Other than commercial items.* (1) SF 18, Request for Quotations; SF 1449; or an agency form/automated format may be used for written solicitations. Each agency request for quotations form/automated format should conform with SF 18 or SF 1449 to the maximum extent practicable.

(2) Both SF 1449 and OF 347, Order for Supplies or Services, are multipurpose forms used for negotiated purchases of supplies or services, delivery or task orders, inspection and receiving reports, and invoices. An agency form/automated format may also be used.

(c) *Forms used for both commercial and other than commercial items.* (1) OF 336, Continuation Sheet, may be used for written solicitations when additional space is needed.

(2) OF 348, Order for Supplies or Services Schedule—Continuation, or an agency form/automated format may be used for negotiated purchases when additional space is needed. Agencies may print on those forms the clauses considered to be generally suitable for purchases.

(3) SF 30, Amendment of Solicitation/Modification of Contract, or a purchase order form may be used to modify a purchase order, unless an agency form/automated format is prescribed in agency regulations.

(d) SF 44, Purchase Order-Invoice-Voucher, is a multipurpose 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 can also be used as a receiving report, invoice, and public voucher.

(1) This form 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 procedures.

(2) General procedural instructions governing the form's use 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 placement of the order and delivery of the items, clauses are not required for purchases using this form.

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

(e) SF 1165, Receipt for Cash-Subvoucher, or an agency purchase order form may be used for purchases using imprest funds or third party drafts.

PART 16—TYPES OF CONTRACTS

16.701 [Amended]

6. Section 16.701 is amended to delete the words "Subpart 13.2" in the parenthetical and insert "13.305."

16.703 [Amended]

7. Section 16.703 is amended in paragraph (c)(1)(vi) to replace the reference to 13.303 with 13.308–3.

PART 41—ACQUISITION OF UTILITY SERVICES

41.202 [Amended]

8. Section 41.202 is amended in paragraph (c)(1) to replace the reference to Subpart 13.5 with 13.304.

PART 43—CONTRACT MODIFICATIONS

43.301 [Amended]

9. Section 43.301 is amended in paragraph (a)(2)(iii) to replace the reference to 13.503 with 13.304–3.

PART 49—TERMINATION OF CONTRACTS

49.002 [Amended]

10. Section 49.002 is amended in paragraph (a) to delete the reference to 13.504(b) and substitute 13.304–4.

11. Section 49.501 is amended to add as the second sentence the following:

49.501 General.

* * * This subpart does not apply to contracts that use the clause at 52.213–XX, Terms and Conditions-Simplified Acquisitions (Other than Commercial Items). * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

12. Section 52.101 is amended to revise paragraph (e)(2)(i) to read as follows:

52.101 Using Part 52.

* * * * *

(e) *Matrix.* * * *

(2) * * *

(i) Whether incorporation by reference is or is not authorized (see 52.102);

* * * * *

13. Section 52.102 is revised to read as follows:

52.102 Incorporating provisions and clauses.

(a) Provisions and clauses should be incorporated by reference to the maximum practical extent, rather than being incorporated in full text, even if they—

(1) Are used with one or more alternates or on an optional basis;

(2) Are prescribed on a "substantially as follows" or "substantially the same as" basis; provided, that they are used verbatim;

(3) Require modification or the insertion by the Government of fill-in material (see 52.104); or

(4) Require completion by the offeror or prospective contractor. This instruction also applies to provisions completed as annual representations and certifications.

(b) Except for provisions and clauses prescribed in 52.107, any provision or clause that can be accessed electronically by the offeror or prospective contractor may be incorporated by reference in solicitations and/or contracts. However, the contracting officer, upon request, shall provide the full text of any provision or clause incorporated by reference.

(c) Agency approved provisions and clauses prescribed in agency acquisition regulations and provisions and clauses not authorized by Subpart 52.3 to be incorporated by reference need not be incorporated in full text, provided the contracting officer includes in the solicitation and/or contract a statement that—

(1) Identifies all provisions and/or clauses that require completion by the offeror or prospective contractor;

(2) Makes specific reference that the provisions/clauses must be completed by the offeror or prospective contractor and must be submitted with the quote or offer; and

(3) Identifies to the offeror or prospective contractor at least one electronic address where the full text may be accessed.

(d) An agency may develop a group listing of provisions and clauses that apply to a specific category of contracts. An agency group listing may be incorporated by reference in solicitations/contracts in lieu of citing the provisions and clauses individually, provided the group listing is made available electronically to offerors and prospective contractors.

(e) A provision or clause that is not available electronically to offerors and prospective contractors shall be incorporated in solicitations/contracts in full text if it is:

(1) A FAR provision or clause that otherwise is not authorized to be incorporated by reference (see Subpart 52.3); or

(2) A provision or clause prescribed for use in an agency acquisition regulation.

(f) Provisions or clauses may not be incorporated by reference by being listed in the:

(1) Provision at 52.252–3, Alterations in Solicitations, or

(2) Clause at 52.252–4, Alterations in Contract.

52.102–1 and 52.102–2 [Removed]

14. Sections 52.102–1 and 52.102–2 are removed.

52.103 [Amended]

15. Section 52.103 is amended in the last sentence of paragraph (a) to replace "52.107(e) and (f)" with "52.107(f) and (g)."

16. Section 52.107 is amended to redesignate paragraphs (c) through (f) as (d) through (g) and to add paragraph (c) to read as follows:

52.107 Provisions and clauses prescribed in Subpart 52.1.

* * * * *

(c) The contracting officer may use the clause at 52.252–7, Solicitation Provisions and Clauses Accessible Electronically, to satisfy the requirements in 52.102(c).

* * * * *

52.213–1 [Amended]

17. Section 52.213–1 is amended in the introductory text to replace "13.305" with "13.308–4."

52.213–2 [Amended]

18. Section 52.213–2 is amended in the introductory text to replace "13.507(b)" with "13.304–5(b)".

52.213–3 [Amended]

19. Section 52.213–3 is amended in the introductory text to replace "13.507(c)" with "13.304–5(c)".

20. Section 52.213–XX is added to read as follows:

52.213-XX Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

As prescribed in 13.306, insert the following clause:

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (XXX 1996)

(a) The Contractor shall comply with the following clauses that are incorporated by reference:

(1) The clauses listed below implement provisions of law or executive order:

(i) 52.222-3, Convict Labor (APR 1984) (E.O. 11755).

(ii) 52.233-3, Protest After Award (OCT 1995) (31 U.S.C. 3553 and 40 U.S.C. 759).

(2) Listed below are additional clauses that also apply:

(i) 52.225-11, Restrictions on Certain Foreign Purchases (MAY 1992).

(ii) 52.232-1, Payments (APR 1984).

(iii) 52.232-8, Discounts for Prompt Payment (APR 1989).

(iv) 52.232-11, Extras (APR 1984).

(v) 52.232-25, Prompt Payment (MAR 1984).

(vi) 52.232-28, Electronic Funds Transfer Payment Methods (APR 1989).

(vii) 52.233-1, Disputes (OCT 1995).

(viii) 52.253-1, Computer Generated Forms (JAN 1991).

(b) The Contractor shall comply with the following clauses, incorporated by reference, unless the circumstances do not apply:

(1) The clauses listed below implement provisions of law or executive orders:

(i) 52.222-20, Walsh-Healey Public Contracts Act (APR 1984) (41 U.S.C. 35-45) (Applies to supply contracts over \$10,000 in the U.S.).

(ii) 52.222-26, Equal Opportunity (APR 1984) (E.O. 11246) (Applies to contracts over \$10,000).

(iii) 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984) (38 U.S.C. 4212) (Applies to contracts over \$10,000).

(iv) 52.222-36, Affirmative Action for Handicapped Workers (APR 1984) (29 U.S.C. 793) (Applies to contracts over \$2,500).

(v) 52.222-37, Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (JAN 1988) (38 U.S.C. 4212) (Applies to contracts over \$10,000).

(vi) 52.222-41, Service Contract Act of 1965, as amended (MAY 1989) (41 U.S.C. 351 *et seq.*) (Applies to service contracts over \$2,500).

(vii) 52.222-47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreement (CBA) (MAY 1989) (41 U.S.C. 351 *et seq.*).

(viii) 52.225-3, Buy American Act—Supplies (JAN 1994) (41 U.S.C. 10) (Applies to supplies and services involving the furnishing of supplies unless one or more of the circumstances in 25.109(e) apply).

(ix) 52.225-21, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program (JAN 1996) (41 U.S.C. 10 and Pub. L. 103-187) (Applies to supplies if the contract was not set aside for small business

concerns and was subject to NAFTA (see 25.402(a)(3) (ii) and 25.403(b)).

(2) Listed below are additional clauses that may apply:

(i) 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (JULY 1995) (Applies to contracts over \$25,000).

(ii) 52.247-29, F.o.b. Origin (JUN 1988) (Applies to supplies if delivery is f.o.b. origin).

(iii) 52.247-34, F.o.b. Destination (NOV 1991) (Applies to supplies if delivery is f.o.b. destination).

(c) 52.252-2, *Clauses Incorporated by Reference (XXX 1996)*. This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

(Insert one or more Internet addresses)

(d) 52.244-6, Subcontracts for Commercial Items and Commercial Components (OCT 1995).

(1) *Definitions*.

"Commercial item", as used in this clause, has the meaning contained in the clause at 52.202-1, *Definitions*.

"Subcontract", as used in this clause, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(2) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(3) Notwithstanding any other clause of this contract, the Contractor is not required to include any FAR provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under Part 15, in a subcontract at any tier for commercial items or commercial components:

(a) 52.222-26, Equal Opportunity (E.O. 11246);

(b) 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 4212(a));

(c) 52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. 793); and

(d) 52.247-64, Preference for Privately-Owned U.S.-Flagged Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996).

(4) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

(e) *Inspection/Acceptance*. The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or

reperformance of nonconforming services at no increase in contract price. The Government must exercise its postacceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(f) *Termination for the Government's convenience*. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(g) *Termination for cause*. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(h) *Warranty*. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract. (End of clause)

21. Section 52.252-1 is revised to read as follows:

52.252-1 Solicitation Provisions Incorporated by Reference.

As prescribed in 52.107(a), insert the following provision:

Solicitation Provisions Incorporated by Reference (XXX 1996)

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es):

(Insert one or more Internet addresses)
(End of provision)

22. Section 52.252-2 is revised to read as follows:

52.252-2 Clauses Incorporated by Reference.

As prescribed in 52.107(b), insert the following clause:

Clauses Incorporated by Reference (XXX 1996)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

(Insert one or more Internet addresses)
(End of clause)

23. Section 52.252-XX is added to read as follows:

52.252-XX Agency and FAR Provisions and Clauses Accessible Electronically.

As prescribed in 52.107(c), insert the following clause:

Agency and FAR Provisions and Clauses Accessible Electronically (XXX 1996)

(a) This solicitation incorporates the provisions and clauses listed below by reference, with the same force and effect as if they were given in full text. The offeror is cautioned that the listed provisions and clauses may include blocks that must be completed by the offeror and submitted with the quote or offer. In lieu of submitting the full text of those provisions/clauses, the offeror may identify the provision/clause by paragraph identifier and provide the

appropriate information with its quote or offer.

(b) Upon request, the Contracting Officer will make their full text available. Also, the full text of a provision or clause may be accessed electronically at this/these address(es):

(Insert one or more Internet addresses)

(c) Provisions that must be completed by the offeror:

(d) Other provisions and clauses incorporated by reference:

(End of clause)

PART 53—FORMS

24. 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 below 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 13.309(b).

(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 13.309(c).

(c) *SF 44 (REV 10/83), Purchase Order Invoice Voucher.* SF 44 is prescribed for use in simplified acquisition procedures, as specified in 13.309(d).

(d) *SF 1165 (6/83 Ed.), Receipt for Cash-Subvoucher.* SF 1165 (GAO) may be used for imprest fund purchases, as specified in 13.309(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 13.309(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 13.309.

(2) To establish blanket purchase agreements (BPA's), as specified in 13.305-2(e), and to make purchases under BPA's, as specified in 13.305-4(e).

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

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

[FR Doc. 96-23419 Filed 9-12-96; 8:45 am]

BILLING CODE 6820-EP-U