

Implementation Act—Balance of Payments Program,” and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

\* \* \* \* \*

(iii) Offers will be evaluated by giving certain preferences to domestic end products or NAFTA country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (g)(1)(ii) of this provision, offerors must identify and certify below those excluded end products that are NAFTA country end products. Products that are not identified and certified below will not be deemed NAFTA country end products. The offeror certifies that the following supplies qualify as “NAFTA country end products” as that term is defined in the clause entitled “Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program”:

\_\_\_\_\_

(Insert line item numbers)

\* \* \* \* \*

(2) *Alternate I.* If Alternate I to the clause at 52.225–21 is included in this solicitation, substitute the following paragraph (g)(1)(iii) for paragraph (g)(1)(iii) of this provision:

(g)(1)(iii) Offers will be evaluated by giving certain preferences to domestic end products or Canadian end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (b) of this provision, offerors must identify and certify below those excluded end products that are Canadian end products. Products that are not identified and certified below will not be deemed Canadian end products.

The offeror certifies that the following supplies qualify as “Canadian end products” as that term is defined in the clause entitled “Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program”:

\_\_\_\_\_

(Insert line item numbers)

\* \* \* \* \*

(End of provision)

4. Section 52.225–20 is amended in the section heading and provision heading by removing the word “Provision” and inserting “Certificate”; revising the date of the provision and its Alternate I to read “(JAN 1997)”; revising paragraph (a) of the provision; revising the first paragraph of paragraph (c) of the provision and of Alternate I; and by inserting the words “offeror certifies that the” after the first word “The” in the first sentence of the second paragraph of paragraph (c) of the provision and of Alternate I to read as follows:

**52.225–20 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate.**

\* \* \* \* \*

BUY AMERICAN ACT—NORTH AMERICAN FREE TRADE AGREEMENT  
IMPLEMENTATION ACT—BALANCE OF  
PAYMENTS PROGRAM CERTIFICATE

(JAN 1997)

(a) The offeror certifies that each end product being offered, except those listed in paragraph (b) of this provision, is a domestic end product (as defined in the clause entitled “Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program”) and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

\* \* \* \* \*

(c) Offers will be evaluated by giving certain preferences to domestic end products or NAFTA country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (b) of this provision, offerors must identify and certify below those excluded end products that are NAFTA country end products. Products that are not identified and certified below will not be deemed NAFTA country end products.

\* \* \* \* \*

*Alternate I (JAN 1997). \* \* \**

(c) Offers will be evaluated by giving certain preferences to domestic end products or Canadian end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (b) of this provision, offerors must identify and certify below those excluded end products that are Canadian end products. Products that are not identified below will not be deemed Canadian end products.

\* \* \* \* \*

**52.225–21 [Amended]**

5. Section 52.225–21 is amended by revising the date of the clause to read “(JAN 1997)” and by removing the word “specifying” in the fourth sentence of paragraph (c) of the clause and of Alternate I and inserting “certifying”.

[FR Doc. 96–33210 Filed 12–31–96; 8:45 am]

BILLING CODE 6820–EP–P

**48 CFR Parts 5, 6, 11, 12 and 13**

[FAC 90–45; FAR Case 96–307; Item VII]

RIN 9000–AH20

**Federal Acquisition Regulation;  
Application of Special Simplified  
Procedures to Certain Commercial  
Items**

**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 implement Section 4202 of the Clinger-Cohen Act of 1996 (Public Law 104–106). Section 4202 requires revisions to the FAR to incorporate special simplified procedures for the acquisition of certain commercial items with a value greater than the simplified acquisition threshold (\$100,000) but not greater than \$5 million. The purpose of this revision is to vest contracting officers with additional procedural discretion, so that commercial item acquisitions in this dollar range may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both the Government and industry. 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.

**EFFECTIVE DATE:** January 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Ms. Victoria Moss at (202) 501–4764 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 90–45, FAR case 96–307.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This final rule amends the Federal Acquisition Regulation to implement section 4202 of the Clinger-Cohen Act of 1996 (Public Law 104–106). Section 4202 authorizes special simplified procedures for acquisitions of commercial items at amounts greater than the simplified acquisition threshold (\$100,000) but not greater than \$5 million, when the contracting officer reasonably expects, based on the nature of the commercial items sought and on market research, that offers will include only commercial items. The authority to use the special simplified procedures under this section expires on January 1, 2000. Section 4202 also amends 41 U.S.C. 416 to permit issuance of solicitations for commercial items in fewer than 15 days after the synopsis notice is published.

A proposed rule was published in the Federal Register on September 6, 1996 (61 FR 47384). Twenty-four sources

submitted comments in response to the proposed rule. All comments were considered in the development of the final rule. Among other changes adopted in this final rule, the proposed language at 13.604-2, Alternative negotiation techniques, which introduced into the FAR an auctioning-like concept, has been removed from this final rule for further study and analysis under new FAR case 96-024.

#### B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it is expected to increase the number of Federal contracts awarded using procedures that are familiar to small entities. 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. The analysis is summarized as follows: One public comment was received in response to the initial regulatory flexibility analysis. The respondent stated that the analysis did not indicate that regulatory alternatives were considered in the process of drafting the proposed rule, and that there was no estimated measure or quantification of small business impact or number and dollar value of Federal contracts likely to be affected. The final regulatory flexibility analysis contains a more complete description of the alternatives that were considered for the purpose of minimizing any adverse impact on small businesses and reflects data extrapolated from the Federal Procurement Data System which show that in fiscal year 1995, 73 percent of all purchases made under the procedures used in Part 13 were awarded to small businesses. As stated in the initial regulatory flexibility analysis, the Federal Procurement Data System is just beginning to track acquisitions of commercial items. Until more complete data are collected, it will be difficult to precisely estimate the number of small entities to which the rule will apply. The rule imposes no new reporting, recordkeeping, or other compliance requirements. We considered whether flexible compliance with this rule would be appropriate. Since the rule is expected to have a beneficial impact on industry, it was determined that flexible compliance would not be appropriate in this case. Instead, the rule is intended to apply to both small and large entities equally so that both may benefit. However, in developing the final rule,

alternatives were considered, and revisions were made, to minimize possible economic impact on small entities. The language on alternative negotiation techniques has been removed from the rule pending further study and analysis. At the present time, this rule does not extend authority to use the special test procedures for construction. The proposed language included on construction, in Part 13, was not intended to address the applicability of the test procedures to construction and the language in the final rule has been amended to eliminate this ambiguity. The broader issue of the applicability of the FAR's commercial item policies to construction contracting is under review.

#### 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 Parts 5, 6, 11, 12 and 13

Government procurement.

Dated: December 24, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 5, 6, 11, 12 and 13 are amended as set forth below:

1. The authority citation for 48 CFR Parts 5, 6, 11, 12 and 13 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. 2301 to 2331; and 42 U.S.C. 2473(c).

#### PART 5—PUBLICIZING CONTRACT ACTIONS

2. Section 5.203 is amended by revising paragraph (a) and adding paragraph (h) to read as follows:

##### 5.203 Publicizing and response time.

(a) A notice of contract action shall be published in the *Commerce Business Daily* at least 15 days before issuance of a solicitation except when that, for acquisitions of commercial items, the contracting officer may—

- (1) Establish a shorter period for issuance of the solicitation; or
- (2) Use the combined CBD synopsis/solicitation procedure (see 12.603).

(h) In addition to other requirements set forth in this section, for acquisitions

subject to NAFTA or the Trade Agreements Act (see subpart 25.4), the period of time between publication of the synopsis notice and receipt of offers shall be no less than 40 days. However, if the acquisition falls within a general category identified in an annual forecast, the availability of which is published in the CBD, the contracting officer may reduce this time period to as few as 10 days.

3. Section 5.207 is amended by revising paragraph (e)(3) to read as follows:

##### 5.207 Preparation and transmittal of synopses.

\* \* \* \* \*

(e) \* \* \*

(3) Except for contract actions equal to or less than the simplified acquisition threshold or acquisitions of commercial items, the synopsis shall refer to Numbered Note 22 for noncompetitive contract actions. If it is anticipated that award will be made via a delivery order to an existing basic ordering agreement, the synopsis shall so state.

\* \* \* \* \*

#### PART 6—COMPETITION REQUIREMENTS

4. Section 6.001(a) is revised to read as follows:

##### 6.001 Applicability.

\* \* \* \* \*

(a) Contracts awarded using the simplified acquisition procedures of part 13 (but see 13.602 for requirements pertaining to sole source acquisitions of commercial items under subpart 13.6);

\* \* \* \* \*

#### PART 11—SUBSCRIBING AGENCY NEEDS

5. Section 11.002 is amended by revising paragraph (a)(1)(ii) and adding paragraph (e) to read as follows:

##### 11.002 Policy.

(a) \* \* \*

(1) \* \* \*

(ii) Only include restrictive provisions or conditions to the extent necessary to satisfy the needs of the agency or as authorized by law.

\* \* \* \* \*

(e) Some or all of the performance levels or performance specifications in a solicitation may be identified as targets rather than as fixed or minimum requirements.

6. Section 11.104 is amended by revising paragraph (a) to read as follows:

##### 11.104 Items peculiar to one manufacturer.

\* \* \* \* \*

(a) The particular brand-name, product, or feature is essential to the Government's requirements, and market research indicates other companies' similar products, or products lacking the particular feature, do not meet, or cannot be modified to meet, the agency's minimum needs; and

\* \* \* \* \*

## PART 12—ACQUISITION OF COMMERCIAL ITEMS

7. Section 12.202 is amended by revising paragraph (b) to read as follows:

### 12.202 Market research and description of agency need.

\* \* \* \* \*

(b) The description of agency need must contain sufficient detail for potential offerors of commercial items to know which commercial products or services may be suitable. Generally, for acquisitions in excess of the simplified acquisition threshold, an agency's statement of need for a commercial item will describe the type of product or service to be acquired and explain how the agency intends to use the product or service in terms of function to be performed, performance requirement or essential physical characteristics. Describing the agency's needs in these terms allows offerors to propose methods that will best meet the needs of the Government.

\* \* \* \* \*

8. Section 12.203 is amended by adding a sentence to the end of the paragraph to read as follows:

### 12.203 Procedures for solicitation, evaluation, and award.

\* \* \* For acquisitions of commercial items exceeding the simplified acquisition threshold but not exceeding \$5,000,000, including options, contracting activities shall employ the simplified procedures authorized by subpart 13.6 to the maximum extent practicable.

9. Section 12.204 is revised to read as follows:

### 12.204 Solicitation/contract form.

(a) The contracting officer shall use the Standard Form 1449, Solicitation/Contract/Order for Commercial Items, if (1) the acquisition is expected to exceed the simplified acquisition threshold; (2) a paper solicitation or contract is being issued; and (3) procedures at 12.603 are not being used. Use of the SF 1449 is nonmandatory but encouraged for commercial acquisitions not exceeding the simplified acquisition threshold.

(b) Consistent with the requirements at 5.203 (a) and (h), the contracting

officer may allow fewer than 15 days before issuance of the solicitation.

10. Section 12.205 is amended by revising paragraph (c) to read as follows:

### 12.205 Offers.

\* \* \* \* \*

(c) Consistent with the requirements at 5.203 (b) and (h), the contracting officer may allow fewer than 30 days response time for receipt of offers for commercial items.

11. Section 12.213 is revised to read as follows:

### 12.213 Other commercial practices.

It is a common practice in the commercial marketplace for both the buyer and seller to propose terms and conditions written from their particular perspectives. The terms and conditions prescribed in this part seek to balance the interests of both the buyer and seller. These terms and conditions are generally appropriate for use in a wide range of acquisitions. However, market research may indicate other commercial practices that are appropriate for the acquisition of the particular item. These practices should be considered for incorporation into the solicitation and contract if the contracting officer determines them appropriate in concluding a business arrangement satisfactory to both parties and not otherwise precluded by law or Executive order.

12. Section 12.302(a) is revised to read as follows:

### 12.302 Tailoring of provisions and clauses for the acquisition of commercial items.

(a) *General.* The provisions and clauses established in this subpart are intended to address, to the maximum extent practicable, commercial market practices for a wide range of potential Government acquisitions of commercial items. However, because of the broad range of commercial items acquired by the Government, variations in commercial practices, and the relative volume of the Government's acquisitions in the specific market, contracting officers may, within the limitations of this subpart, and after conducting appropriate market research, tailor the provision at 52.212—1, Instructions to Offerors-Commercial Items, and the clause at 52.212—4, Contract Terms and Conditions-Commercial Items, to adapt to the market conditions for each acquisition.

\* \* \* \* \*

13. Section 12.602 is amended by revising paragraph (a) to read as follows:

### 12.602 Streamlined evaluation of offers.

(a) When evaluation factors are used, the contracting officer may insert a

provision substantially the same as the provision at 52.212—2, Evaluation—Commercial Items, in solicitations for commercial items or comply with the procedures in 13.106—2 if the acquisition is being made using simplified acquisition procedures. When the provision at 52.212—2 is used, paragraph (a) of the provision shall be tailored to the specific acquisition to describe the evaluation factors and relative importance of those factors. However, when using the simplified acquisition procedures in part 13, contracting officers are not required to describe the relative importance of evaluation factors.

\* \* \* \* \*

14. Section 12.603 is amended by revising paragraph (c)(3)(ii) to read as follows:

### 12.603 Streamlined solicitation for commercial items.

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(ii) When using the combined CBD synopsis/solicitation, contracting officers shall establish a response time in accordance with 5.203(b) (but see 5.203(h)).

\* \* \* \* \*

## PART 13—SIMPLIFIED ACQUISITION PROCEDURES

15. Section 13.000 is revised to read as follows:

### 13.000 Scope of part.

This part prescribes policies and procedures for the acquisition of supplies and services, including construction, research and development, and commercial items, the aggregate amount of which does not exceed the simplified acquisition threshold (see 2.101). Section 13.601 provides special authority for acquisitions of commercial items exceeding the simplified acquisition threshold but not greater than \$5,000,000, including options. 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.

16. Section 13.103 is amended by revising paragraphs (b), (c) and (j) to read as follows:

### 13.103 Policy.

\* \* \* \* \*

(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. This limitation does not apply to acquisitions of commercial items conducted using subpart 13.6.

(c) Simplified acquisition procedures shall not be used in the acquisition of supplies and services initially estimated to exceed the simplified acquisition threshold (or \$5,000,000, including options, for acquisitions of commercial items using subpart 13.6), even though resulting awards do not exceed the applicable threshold. Requirements aggregating more than the simplified acquisition threshold (or \$5,000,000, including options, if using subpart 13.6) 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.

\* \* \* \* \*

(j) Contracting officers are encouraged to use innovative approaches in awarding contracts using the simplified acquisition procedures under the authority of this part. For acquisitions of other than commercial items not expected to exceed the simplified acquisition threshold, contracting officers may use any appropriate combination of the procedures in part 13, 14, 15, 35, or 36, including the use of Standard Form (SF) 1442, Solicitation, Offer and Award (Construction, Alteration, or Repair), for construction contracts (see 36.701(b)). For acquisitions of commercial items not expected to exceed \$5 million, contracting officers may use any appropriate combination of the procedures in parts 12, 13, 14 and 15 (see 13.103(c)).

\* \* \* \* \*

17. Section 13.104 is amended by revising paragraph (b) to read as follows:

**13.104 Procedures.**

\* \* \* \* \*

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

\* \* \* \* \*

18. Section 13.106-2 is amended by revising paragraphs (a)(1) through (a)(3), (a)(4) introductory text, (a)(5), (a)(6), (b)(1), (b)(3), (c)(1), (c)(2), (d)(3) and (d)(4)(ii); redesignating (a)(6) through (8) as (a)(7) through (9), respectively; and

by adding new (a)(6), and (a)(10) to read as follows:

**13.106-2 Purchases exceeding the micro-purchase threshold.**

(a) *Soliciting competition.* (1) Contracting officers shall promote competition to the maximum extent practicable to obtain supplies and services from the source whose offer is the most 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. Contracting officers are encouraged to use best value. Solicitations shall notify suppliers of the basis upon which award is to be made.

(2) For acquisitions not exceeding the simplified acquisition threshold where FACNET is not available, or an exemption set forth in 4.506 applies, quotations may be solicited through other appropriate means (e.g., orally, or in writing). The contracting officer shall comply with the requirements of 5.101 when not soliciting via FACNET. When a synopsis is required, sufficient information to permit suppliers to develop quotations or offers may be incorporated into a combined synopsis/solicitation. In such cases, the contracting officer is not required to issue a separate solicitation. For commercial item acquisitions, also see 12.603.

(3) For acquisitions not exceeding \$25,000, 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. Paper solicitations for contract actions not expected to exceed \$25,000 should only be issued only 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 a synopsis is not required (e.g., the acquisition does not exceed \$25,000 or an exemption to the synopsis requirement applies) and FACNET is not being used, solicitation of at least three sources generally may be considered to promote competition to the maximum extent practicable. In such circumstances, maximum practicable competition ordinarily can be obtained without soliciting quotations or offers from sources outside the local trade area. If practicable, two sources not included in the previous solicitation should be requested to furnish quotations or offers. The following factors influence the

number of quotations or offers required in connection with any particular purchase:

\* \* \* \* \*

(5) For purchases not exceeding the simplified acquisition threshold, Contracting officers may solicit from one source if the contracting officer determines that the circumstances of the contract action deem only one source reasonably available.

(6) For sole source acquisitions of commercial items in excess of the simplified acquisition threshold conducted pursuant to subpart 13.6, the requirements at 13.602(a) apply.

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

\* \* \* \* \*

(10) Solicitations are not required to state the relative importance assigned to each evaluation factor and subfactor, nor are they required to include subfactors.

(b) *Evaluation of quotations or offers.*

(1) When evaluating quotations or offers, the evaluation must be made on the basis established in the solicitation. All quotations or offers must be considered. However, the contracting officer has broad discretion in fashioning suitable evaluation procedures. The procedures prescribed in parts 14 and 15 are not mandatory. At the contracting officer's discretion, one or more, but not necessarily all, of the evaluation procedures in part 14 or 15 may be used. Formal evaluation plans, establishment of a competitive range, conduct of discussions, and scoring of quotes or offers are not required. Contracting offices may conduct comparative evaluations of offers. Evaluation of other factors, such as past performance, does not require the creation or existence of a formal data base, but may be based on such information as the contracting officer's knowledge of and previous experience with the item or service being purchased, customer surveys, or other reasonable basis.

\* \* \* \* \*

(3) Contracting officers shall evaluate quotations or offers 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 that 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 or offer and ask it to confirm or alter its requirement. The file shall be documented to support the final action taken.

(2) For acquisitions not exceeding the simplified acquisition threshold, except for awards conducted through FACNET, notification to unsuccessful suppliers shall be given only if requested.

\* \* \* \* \*

(d) \* \* \*

(3) If only one source is solicited and the acquisition does not exceed the simplified acquisition threshold, an additional notation shall be made to explain the absence of competition, except for acquisition of utility services available only from one source.

(4) \* \* \*

(ii) *Written solicitations (see 2.101).*

For acquisitions not exceeding the simplified acquisition threshold, 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.

\* \* \* \* \*

19. Section 13.107 is amended by revising paragraph (a) to read as follows:

**13.107 Solicitation forms.**

(a) For use of the SF 1449, Solicitation/Contract/Order for Commercial Items, see 12.204.

\* \* \* \* \*

20. Section 13.202 is amended by revising paragraph (b)(2) to read as follows:

**13.202 Establishment of blanket purchase agreements (BPAs).**

\* \* \* \* \*

(b) \* \* \*

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

\* \* \* \* \*

21. Section 13.204 is amended by revising paragraphs (a) and (b) to read as follows:

**13.204 Purchases under blanket purchase agreements.**

(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, or \$5,000,000 for acquisitions of commercial items conducted under subpart 13.6.

(b) Unless otherwise specified in agency regulations, individual purchases under BPAs, except those under BPAs established in accordance with 13.202(c)(3), shall not exceed the simplified acquisition threshold, or \$5,000,000, for acquisitions of commercial items conducted under subpart 13.6.

\* \* \* \* \*

22. Subpart 13.6, consisting of sections 13.601 and 13.602, is added to read as follows:

**Subpart 13.6-Test Program for Certain Commercial Items**

Sec.

13.601 General.

13.602 Special documentation requirements.

**13.601 General.**

(a) This subpart authorizes, as a test program, use of simplified procedures for the acquisition of supplies and services in amounts greater than the simplified acquisition threshold but not exceeding \$5,000,000, including options, if the contracting officer reasonably expects, based on the nature of the supplies or services sought, and on market research, that offers will include only commercial items. Under this test program, contracting officers may use any simplified acquisition procedure in this part, subject to any specific dollar limitation applicable to the particular procedure. The purpose of this test program is to vest contracting officers with additional procedural discretion and flexibility, so that commercial item acquisitions in this dollar range may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both the Government and industry (10 U.S.C. 2304(g) and 2305 and 41 U.S.C. 253(g) and 253a and 253b).

(b) For the period of this test, contracting activities shall employ the simplified procedures authorized by the test to the maximum extent practicable.

(c) When acquiring commercial items using the procedures in this part, the requirements of part 12 apply subject to the order of precedence provided at 12.102(c). This includes use of the provisions and clauses at subpart 12.3.

(d) The authority to issue solicitations under this subpart shall expire on January 1, 2000. Contracts may be awarded after the expiration of this authority for solicitations issued before the expiration of the authority.

**13.602 Special documentation requirements.**

(a) *Sole source acquisitions.*

Acquisitions conducted under simplified acquisition procedures are exempt from the requirements in part 6. However, contracting officers shall not conduct sole source acquisitions, as defined in 6.003, under this subpart unless the need to do so is justified in writing and approved at the levels specified in paragraphs (a)(1) and (a)(2) of this section. Contracting officers shall prepare sole source justifications using the format at 6.303-2, modified to reflect an acquisition under the authority of the test program for commercial items (section 4202 of the Clinger-Cohen Act). Justifications and approvals are required under this subpart only for sole source acquisitions.

(1) For a proposed contract exceeding \$100,000 but not exceeding \$500,000, the contracting officer's certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief will serve as approval, unless a higher approval level is established in agency procedures.

(2) For a proposed contract exceeding \$500,000, the approval shall be by the competition advocate for the procuring activity, designated pursuant to 6.501; or an official described in 6.304 (a)(3) or (a)(4). This authority is not delegable.

(b) *Contract file documentation.* The contract file shall include—

(1) A brief written description of the procedures used in awarding the contract, including the fact that the test procedures in FAR 13.6 were used;

(2) The number of offers received;

(3) An explanation, tailored to the size and complexity of the acquisition, of the basis for the contract award decision; and

(4) Any justification approved under paragraph (a) of this section.

[FR Doc. 96-33211 Filed 12-31-96; 8:45 am]

BILLING CODE 6820-EP-P

**48 CFR Part 9**

[FAC 90-45; FAR Case 96-320; Item VIII]

RIN 9000-AH47

**Federal Acquisition Regulation; Compliance with Immigration and Nationality Act Provisions**

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

**ACTION:** Interim rule adopted as final rule.