

14.205-1 Establishment of lists.

(a) * * * This rule need not be followed, however, when the requirements of the contracting office can be obtained through use of simplified acquisition procedures (see part 13); the requirements are nonrecurring; or electronic commerce methods are used that transmit solicitations or notices of procurement opportunities automatically to all interested sources. * * *

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14.400 [Amended]

20. Section 14.400 is amended by removing "contract" and inserting "contracts".

PART 32—CONTRACT FINANCING**32.1103 [Amended]**

21. Section 32.1103 is amended in paragraph (a) by removing "13.003(f)" and inserting "13.003(e)".

[FR Doc. 98-28956 Filed 10-29-98; 8:45 am]

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DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 6, 24, 33, and 52**

[FAC 97-09; FAR Case 97-015; Item III]

RIN 9000-AH72

**Federal Acquisition Regulation;
Alternative Dispute Resolution—1996**

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement the Administrative Dispute Resolution Act of 1996 (Pub. L. 104-320) and Section 4321(a)(7) of the Clinger-Cohen Act of 1996 (Pub. L. 104-106). This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: December 29, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202)

501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jack O'Neill, Procurement Analyst, at (202) 501-3856. Please cite FAC 97-09, FAR case 97-015.

SUPPLEMENTARY INFORMATION:**A. Background**

This final rule amends FAR Parts 6, 24, 33, and 52 to implement the Administrative Dispute Resolution Act of 1996 (Pub. L. 104-320) and Section 4321(a)(7) of the Clinger-Cohen Act of 1996 (Pub. L. 104-106). The rule makes clear the authority to contract with a neutral person as an exception to requirements for full and open competition, revises requirements for certification of a claim under the Administrative Dispute Resolution Act to conform to the requirements under the Contract Disputes Act, and specifies that certain dispute resolution communications are exempt from disclosure under the Freedom of Information Act.

A proposed rule was published in the **Federal Register** at 62 FR 55678, October 27, 1997. Comments were received from eight sources. All comments were considered in the development of the final rule.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule adds guidance pertaining to, but does not significantly alter the procedures for, alternative dispute resolution. Alternative dispute resolution procedures allow voluntary resolution of issues in controversy.

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.* However, it does reduce the information collection requirements relating to Certification of Claims, OMB Control No. 9000-0035. Accordingly, a request to reduce the total burden hours has been submitted to OMB.

List of Subjects in 48 CFR Parts 6, 24, 33, and 52

Government procurement.

Dated: October 22, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 6, 24, 33, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 6, 24, 33, and 52 continues to read as follows:

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

**PART 6—COMPETITION
REQUIREMENTS**

2. Section 6.302-3 is amended by revising paragraph (a)(2)(iii) to read as follows:

6.302-3 Industrial mobilization; engineering, developmental, or research capability; or expert services.

(a) * * *

(2) * * *

(iii) To acquire the services of an expert or neutral person (see 33.201) for any current or anticipated litigation or dispute.

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**PART 24—PROTECTION OF PRIVACY
AND FREEDOM OF INFORMATION**

3. Section 24.202 is amended by adding paragraph (c) read as follows:

24.202 Prohibitions.

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(c) A dispute resolution communication that is between a neutral person and a party to alternative dispute resolution proceedings, and that may not be disclosed under 5 U.S.C. 574, is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552(b)(3)).

**PART 33—PROTESTS, DISPUTES,
AND APPEALS**

4. Section 33.201 is amended by revising the definition "Alternative dispute resolution (ADR)" to read as follows:

33.201 Definitions.

* * * * *

Alternative dispute resolution (ADR) means any type of procedure or combination of procedures voluntarily used to resolve issues in controversy. These procedures may include, but are not limited to, conciliation, facilitation, mediation, fact-finding, minitrials, arbitration, and use of ombudsmen.

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33.204 [Amended]

5. Section 33.204 is amended in the fifth sentence by removing "Public Law 100-522" and inserting "(5 U.S.C. 571, *et seq.*)".

6. Section 33.207 is amended by revising paragraph (a) to read as follows:

33.207 Contractor certification.

(a) Contractors shall provide the certification specified in paragraph (c) of this section when submitting any claim exceeding \$100,000.

7. Section 33.214 is amended at the end of paragraph (a)(3) by inserting "and"; at the end of paragraph (a)(4) by removing "; and" and inserting a period; by removing paragraph (a)(5); by revising paragraph (b); and by adding paragraphs (f) and (g) to read as follows:

33.214 Alternative dispute resolution (ADR).

(b) If the contracting officer rejects a contractor's request for ADR proceedings, the contracting officer shall provide the contractor a written explanation citing one or more of the conditions in 5 U.S.C. 572(b) or such other specific reasons that ADR procedures are inappropriate for the resolution of the dispute. In any case where a contractor rejects a request of an agency for ADR proceedings, the contractor shall inform the agency in writing of the contractor's specific reasons for rejecting the request.

(f)(1) A solicitation shall not require arbitration as a condition of award, unless arbitration is otherwise required by law. Contracting officers should have flexibility to select the appropriate ADR procedure to resolve the issues in controversy as they arise.

(2) An agreement to use arbitration shall be in writing and shall specify a maximum award that may be issued by the arbitrator, as well as any other conditions limiting the range of possible outcomes.

(g) Binding arbitration, as an ADR procedure, may be agreed to only as specified in agency guidelines. Such guidelines shall provide advice on the appropriate use of binding arbitration and when an agency has authority to settle an issue in controversy through binding arbitration.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Section 52.233-1 is amended by revising the date of the clause and paragraphs (d)(2)(i) and (g) to read as follows:

52.233-1 Disputes.

* * * * *

Disputes (Dec 1998)

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(d)(2)(i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.

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(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

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DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 15, 31 and 52**

[FAC 97-09; FAR Case 89-012; Item IV]

RIN 9000-AC90

Federal Acquisition Regulation; Pay-As-You-Go Pension Costs

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) for consistency with the cost accounting standards for composition and measurement of pension cost and adjustment and allocation of pension cost. 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: December 29, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy F. Olson at (202) 501-0692. Please cite FAC 97-09, FAR case 89-012.

SUPPLEMENTARY INFORMATION:**A. Background**

An interim rule was published in the **Federal Register** at 54 FR 13022, March 29, 1989. The issuance of an interim rule was necessary because the United States Court of Appeals had ruled that FAR 31.205-6(j)(5) was inconsistent with 48 CFR 9904.412, Cost accounting standard for composition and measurement of pension cost (CAS 412), and that the controlling regulation was CAS 412.

Since the 1989 interim FAR rule was published, the Office of Federal Procurement Policy, Cost Accounting Standards Board, made substantial changes to CAS 412 and 48 CFR 9904.413, Adjustment and allocation of pension cost (CAS 413), relating to accounting for pension costs under negotiated Government contracts. These proposed changes were published and made available for public comment on November 5, 1993 (58 FR 58999). Public comments were received and considered in the development of the final CAS rule which was published in the **Federal Register** at 60 FR 16534, March 30, 1995. The changes in the final CAS rule addressed pension cost recognition for qualified pension plans subject to the tax-deductibility limits of the Federal Tax Code, problems associated with pension plans that are not qualified plans under the Federal Tax Code, and problems associated with overfunded pension plans.

A proposed FAR rule was published in the **Federal Register** at 62 FR 49900, September 23, 1997, to provide consistency with the revised CAS 412 and CAS 413. The rule proposed to (1) revise the definitions at FAR 31.001 to conform with the CAS Board's definitions; (2) delete references to "unfunded pension plans" since CAS 412 and CAS 413 no longer refer to unfunded pension plans; (3) add new language to FAR 31.205-6(j) to address transfer of assets to another account within the same fund, to address the allowability of costs for nonqualified pension plans using the pay-as-you-go cost method, and to address both CAS requirements and all other situations not covered by CAS; (4) add new language to FAR 31.205-6(j)(6), which was previously reserved, to refer to CAS 412 and CAS 413 for treatment of pension plans using the pay-as-you-go cost method; (5) provide other editorial changes to make FAR 31.001 and 31.205-6 consistent with the language of CAS 412 and CAS 413; and (6) revise the clause at FAR 52.215-27, Termination of Defined Benefit Pension Plans, to conform the clause with the