

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.213-4 [Amended]

5. Section 52.213-4 is amended by revising the date of the clause to read "(APR 1998)"; and in paragraph (b)(1)(vii) of the clause by revising "(MAR 1997)" to read "(APR 1998)".

6. Section 52.223-5 is amended by revising the clause date and paragraph (b) to read as follows:

52.223-5 Pollution Prevention and Right-to-Know Information.

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Pollution Prevention and Right-to-Know Information (Apr 1998)

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(b) The Contractor shall provide all information needed by the Federal facility to comply with the emergency planning reporting requirements of Section 302 of EPCRA; the emergency notice requirements of Section 304 of EPCRA; the list of Material Safety Data Sheets required by Section 311 of EPCRA; the emergency and hazardous chemical inventory forms of Section 312 of EPCRA; the toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA; and the toxic chemical reduction goals requirements of Section 3-302 of Executive Order 12856. (End of clause)

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4 and 52

[FAC 97-04; FAR Case 97-601; Item III]

RIN 9000-AH92

Federal Acquisition Regulation; Review of Procurement Integrity Clauses

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 revise the application of procurement integrity requirements to contracts for commercial items. This regulatory action was not subject to Office of

Management and Budget (OMB) review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: April 24, 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. Paul Linfield, Procurement Analyst, at (202) 501-1757. Please cite FAC 97-04, FAR case 97-601.

SUPPLEMENTARY INFORMATION:

A. Background

Prior to its amendment by the Clinger-Cohen Act of 1996 (Public Law 104-106), Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) required that the FAR prescribe a contract clause specifying appropriate contractual penalties for procurement integrity violations. The resulting clause is FAR 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity. A reference to this clause was included in the clause at FAR 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items. The final rule published in the **Federal Register** at 62 FR 226, January 2, 1997, as FAR case 96-314, Item I of FAC 90-45, implemented the Clinger-Cohen amendments to 41 U.S.C. 423, but did not revise the contract clauses applicable to contracts for commercial items.

Upon subsequent review, the Councils have determined that 41 U.S.C. 423, as amended, no longer requires that a contract clause specify administrative remedies for procurement integrity violations. Therefore, this rule amends FAR 52.212-5 to remove the reference therein to FAR 52.203-10. However, since contracts for commercial items are not exempt from the procurement integrity prohibitions at 41 U.S.C. 423, the clause at FAR 52.212-4 is amended to add 41 U.S.C. 423 to the list of applicable laws.

The rule also amends FAR 4.803 to remove the obsolete requirement to maintain a record of persons having access to proprietary or source selection information.

B. Regulatory Flexibility Act

This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577 and publication for public comment is not required. However, comments from small entities concerning the affected FAR subparts

will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C 601, *et seq.* (FAC 97-04, FAR Case 97-601), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 4 and 52

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 4 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 4 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 4—ADMINISTRATIVE MATTERS

4.803 [Amended]

2. Section 4.803 is amended by removing paragraph (a)(42).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.212-4 is amended by revising the date of the clause and paragraph (r) to read as follows:

52.212-4 Contract Terms and Conditions—Commercial Items.

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Contract Terms and Conditions—Commercial Items (Apr 1998)

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(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327, *et seq.*, Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

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52.212-5 [Amended]

4. Section 52.212-5 is amended by revising the date of the clause to read

“(Apr 1998)” and removing and reserving paragraph (b)(2).

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 9 and 19

[FAC 97-04; FAR Case 96-002; Item IV]

RIN 9000-AH66

Federal Acquisition Regulation; Certificate of Competency

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

ACTION: Interim rule adopted as final with a minor change.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to adopt as final, with one change, the interim rule published in the **Federal Register** at 62 FR 44819, August 22, 1997, as Item IX of Federal Acquisition Circular 97-01. This final rule amends the Federal Acquisition Regulation (FAR) to implement revisions made to the Small Business Administration's regulations covering the procurement assistance programs. 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: April 24, 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 Ms. Victoria Moss, Procurement Analyst, at (202) 501-4764. Please cite FAC 97-04, FAR case 96-002.

SUPPLEMENTARY INFORMATION:

A. Background

The interim rule amended FAR Parts 9 and 19 to comply with revisions made to the Small Business Administration's (SBA) procurement assistance programs contained in 13 CFR Part 125 and published at 61 FR 3310, January 31, 1996. The rule increased the threshold over which contracting officers may appeal the award of a certificate of

competency (COC) from \$25,000 to \$100,000; updated the names of SBA offices involved in processing COCs; implemented the requirement that compliance with the limitations on subcontracting be considered an element of responsibility; and removed language implementing Section 305 of Pub. L. 103-403, as Section 305 has expired.

No public comments were received in response to the interim FAR rule. The interim FAR rule is being converted to a final rule with a minor change to provide a more precise reference to SBA regulations.

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 does not impose any new requirements on contractors, large or small. The Small Business Administration has certified that the revisions to 13 CFR Part 125 being implemented by this rule will not have a significant economic impact on a substantial number of small entities.

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 9 and 19

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final With A Minor Change

Accordingly, the interim rule amending 48 CFR Parts 9 and 19, which was published at 62 FR 44819, August 22, 1997, is adopted as a final rule with the following change:

PART 19—SMALL BUSINESS PROGRAMS

1. The authority citation for 48 CFR Part 19 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).

19.302 [Amended]

2. Section 19.302 is amended in the introductory text of paragraph (d) by removing the reference “13 CFR 121.10” and inserting “13 CFR 121.1004”.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12 and 52

[FAC 97-04; FAR Case 97-020; Item V]

RIN 9000-AH89

Federal Acquisition Regulation; Applicability of Cost Accounting Standards (CAS) Coverage

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 revise the criteria for application of Cost Accounting Standards (CAS) to negotiated Government contracts. This regulatory action was not subject to Office of Management and Budget (OMB) review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: April 24, 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 Ms. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 97-04, FAR case 97-020.

SUPPLEMENTARY INFORMATION:

A. Background

On June 6, 1997, the CAS Board published a final rule, Applicability of CAS Coverage, in the **Federal Register** (62 FR 31294). The CAS rule implemented Section 4205 of Public Law 104-106, the Clinger-Cohen Act, by exempting contracts and subcontracts for the acquisition of commercial items from CAS requirements when these contracts and subcontracts are firm-