

**DEPARTMENT OF DEFENSE
GENERAL SERVICES
ADMINISTRATION
NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Parts 43 and 52

[FAR Case 1999-606]

RIN 9000-AI65

Federal Acquisition Regulation; Time-and-Materials or Labor-Hours

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

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to clarify the requirements regarding changes to time-and-materials and labor-hour contracts.

DATES: Interested parties should submit comments in writing on or before March 24, 2000 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVRs), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit e-mail comments via the Internet to:

farcase.1999_606@gsa.gov.

Please submit comments only and cite FAR case 1999-606 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501-3775. Please cite FAR case 1999-606.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends the FAR to conform the guidance in the clause at FAR 52.243-3, Changes—Time-and-Materials or Labor-Hours, with the guidance in Alternate II of the clause at FAR 52.243-1, Changes—Fixed Price, because most of the work performed

under time-and-materials or labor-hour contracts involves services.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to 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 contractors are entitled to an equitable adjustment to contract terms and conditions if a change order is issued under the Changes clause of the contract. Therefore, we have not prepared an Initial Regulatory Flexibility Analysis. Comments are invited from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR subparts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 1999-606), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that 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 43 and 52

Government procurement.

Dated: January 18, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 43 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 43 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 43—CONTRACT MODIFICATIONS

2. Amend section 43.205 by revising paragraph (c) to read as follows:

43.205 Contract clauses.

* * * * *

(c) Insert the clause at 52.243-3, Changes—Time-and-Materials or Labor-Hours, in solicitations and contracts when a time-and-materials or labor-hour contract is contemplated. The contracting officer may vary the 30-day period in paragraph (c) of the clause according to agency procedures.

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PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend section 52.243-3 by—
 - a. Revising the introductory text;
 - b. Revising the date of the clause;
 - c. Revising paragraph (a) of the clause;
 - d. In the introductory text of paragraph (b) and in paragraph (b)(4) by removing “shall” and adding “will” in their place;
 - e. In the first sentence of paragraph (c) by removing “must” and adding “shall” in its place; and
 - f. Revising paragraph (d). The revised text reads as follows:

52.243-3 Changes—Time-and-Materials or Labor-Hours.

As prescribed in 43.205(c), insert the following clause:

Changes—Time-and-Materials or Labor-Hours (Date)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (*i.e.*, hours of the day, days of the week, etc.).
- (3) Place of performance of the services.
- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.
- (5) Method of shipment or packing of supplies.
- (6) Place of delivery.
- (7) Amount of Government-furnished property.

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(d) Failure to agree to any adjustment will be a dispute under the Disputes clause. However, nothing in this clause excuses the Contractor from proceeding with the contract as changed. (End of clause)

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