

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Chapter 1****Federal Acquisition Circular 2001–04;
Introduction**

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

ACTION: Summary presentation of final and interim rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2001–04. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at <http://www.arnet.gov/far>.

DATES: For effective dates and comment dates, see separate documents which follow.

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 the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2001–04 and specific FAR case number(s). Interested parties may also visit our website at <http://www.arnet.gov/far>.

Item	Subject	FAR case	Analyst
I	Definitions for Classified Acquisitions	2000–404	DeStefano.
II	Special Simplified Procedures for Purchases of Commercial Items in Excess of the Simplified Acquisition Threshold.	2002–002	Moss.
III	Notification of Noncompliance with Cost Accounting Standards	2001–013	Olson.
IV	Executive Order 13204, Revocation of Executive Order on Nondisplacement of Qualified Workers Under Certain Contracts.	2001–017	Nelson.
V	Caribbean Basin Country End Products	2000–306	Davis.
VI	Final Contract Voucher Submission	1999–026	Klein.
VII	Technical Amendments

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2001–04 amends the FAR as specified below:

Item I—Definitions for Classified Acquisitions (FAR Case 2000–404)

This final rule amends the FAR to clarify definitions that are used for classified procurements. The final rule—

- Moves the definitions of “classified acquisition,” “classified contract,” and “classified information” from FAR 4.401 to FAR 2.101, because the definitions apply to more than one FAR part;
- Amends those definitions for clarity;
- Amends the definition of “classified information” to reflect classification of privately generated restricted data in accordance with Department of Energy regulations; and
- Amends the policy regarding bid openings for classified acquisitions at FAR 14.402–2 for clarity.

Item II—Special Simplified Procedures for Purchases of Commercial Items in Excess of the Simplified Acquisition Threshold (FAR Case 2002–002)

This rule amends FAR Subpart 13.5 to implement Section 823 of the National

Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107–107). Section 823 amends Section 4202(e) of the Clinger-Cohen Act of 1996 (Divisions D and E of Pub. L. 104–106; 110 Stat. 654; 10 U.S.C. 2304 note) to extend, through January 1, 2003, the expiration of the test of special simplified procedures for purchases of commercial items greater than the simplified acquisition threshold, but not exceeding \$5,000,000.

Item III—Notification of Noncompliance With Cost Accounting Standards (FAR Case 2001–013)

This final rule amends Table 15–2, Instructions for Submitting Cost/Price Proposals When Cost or Pricing Data are Required, located at FAR 15.4, Contract pricing. The rule removes the requirement for a contractor to notify the contracting officer when there is a noncompliance that has an immaterial cost impact. The rule affects contracting officers that require cost or pricing data on cost accounting standard-covered contracts.

Item IV—Executive Order 13204, Revocation of Executive Order on Nondisplacement of Qualified Workers Under Certain Contracts (FAR Case 2001–017)

The interim rule published in the *Federal Register* at 66 FR 27416, May 16, 2001, is converted to a final rule without change. This rule finalizes the implementation of Executive Order (E.O.) 13204, Revocation of Executive

Order on Nondisplacement of Qualified Workers Under Certain Contracts, signed by the President on February 17, 2001. The E.O. requires that any rules implementing E.O. 12933, Nondisplacement of Qualified Workers Under Certain Contracts, be promptly rescinded. As a result, Subpart 22.12 and the clause at 52.222–50 were removed and reserved. The clause at 52.212–5 was amended by revising the date and removing paragraph (c)(6). Contracting officers should not take any action on any complaint filed under former FAR Subpart 22.12.

Item V—Caribbean Basin Country End Products (FAR Case 2000–306)

This interim rule amends FAR 25.003, 25.400, 25.404, and the clause at 52.225–5, Trade Agreements, to implement the determination of the United States Trade Representative (USTR) to renew the treatment of Caribbean Basin country end products as eligible products under the Trade Agreements Act (TAA), with the exception of end products from the Dominican Republic, Honduras, and Panama. This rule applies only if an acquisition is subject to the TAA (see FAR 25.403). The Dominican Republic and Honduras were already removed from the definition of Caribbean Basin countries in FAC 97–17, FAR case 2000–003, published in the *Federal Register* at 65 FR 24321, April 25, 2000. This rule now removes Panama. Offers of end products from these countries are

no longer acceptable under acquisitions subject to the TAA unless the contracting officer does not receive any offers of U.S.-made end products or eligible products (designated, Caribbean Basin, or NAFTA country end products).

This interim rule also amends the definition of "Caribbean Basin country end product" at FAR 25.003 and in the clause at 52.225-5, Trade Agreements, to implement Section 211 of the United States—Caribbean Basin Trade Partnership Act and the determinations of the USTR as to which countries qualify for the enhanced trade benefits under that Act. Offerors of end products from the Caribbean Basin must understand the revised definition in order to certify whether the products that they are offering qualify as Caribbean Basin country end products. The definition of "Caribbean Basin country end product" excludes products that do not qualify for duty-free treatment. Information provided in this rule helps offerors determine the duty-free status of a product by review of the Harmonized Tariff Schedule of the United States.

Item VI—Final Contract Voucher Submission (FAR Case 1999-026)

This final rule amends FAR 42.705, Final indirect cost rates, and FAR 52.216-7, Allowable Cost and Payment, to explicitly state the right of the contracting officer to unilaterally determine the final contract payment amount when the contractor does not submit the final invoice or voucher within the time specified in the contract. The rule is applicable to contracting officers that administer contract closeout procedures.

Item VII—Technical Amendments

These amendments update sections and make editorial changes at sections 3.807, 9.203, 12.301, 13.301, 14.205-2, 14.409-1, 15.404-4, 31.002, 31.205-17, 36.606, 42.705-1, 46.202-4, 51.101, 52.212-3, 52.213-4, 52.219-21, and 52.222-44.

Dated: February 1, 2002.

Al Matera,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001-04 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2001-04 is effective February 20, 2002.

Dated: January 31, 2002.

Carolyn M. Balven,
Col., USAF Deputy Dir., Defense Procurement.

Dated: January 30, 2002.

David A. Drabkin,
Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: January 30, 2002.

Tom Luedtke,
Associate Administrator for Procurement, National Aeronautics and Space Administration.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 14, and 32

[FAC 2001-04; FAR Case 2000-404; Item I]

RIN 9000-AI81

Federal Acquisition Regulation; Definitions for Classified Acquisitions

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 (Councils) have agreed to amend the Federal Acquisition Regulation (FAR) to provide consistent definitions for classified acquisitions.

DATES: *Effective Date:* February 20, 2002.

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. Ralph DeStefano, Procurement Analyst, at (202) 501-1758. Please cite FAC 2001-04, FAR case 2000-404.

SUPPLEMENTARY INFORMATION:

A. Background

This rule amends the FAR to address perceived inconsistencies in definitions that are used for classified acquisitions. The rule moves the definitions of "classified acquisition," "classified contract," and "classified information"

from FAR 4.401 to FAR 2.101, because the definitions apply to more than one FAR part. Those definitions also have been amended for clarity. The definition of "classified information" has been further amended to reflect classification of privately generated restricted data in accordance with Department of Energy regulations at 10 CFR 1045.21. The rule also amends the policy regarding bid openings for classified acquisitions at FAR 14.402-2 for clarity.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 46558, July 28, 2000. Four respondents submitted comments on the proposed rule. The Councils considered all comments in the development of the final rule. The following issues merit noting:

- *Comment:* Expand the definition of "classified information" at FAR 2.101 to include privately generated Restricted Data, which is established under the Atomic Energy Act of 1954, as amended, and implemented in 10 CFR 1045.21. Response: Accepted.

- *Comment:* Amend the "classified contract" definition at FAR 2.101 to address only situations where the contract itself is classified and add a new "contracts involving access to classified" definition at FAR 2.101. Commentor believed that the suggested change was more in keeping with a "plain language" philosophy. Response: Not accepted. The suggested change does not conform to the way the terms are used in the FAR.

- *Comment:* The rule at FAR 14.402-2 states "the contracting officer must not make a public record of the bids or the bid prices." The language is too narrow because it only restricts the contracting officer from making a public record. Response: Accepted. The current FAR language will be retained in lieu of the language in the proposed rule. Keeping the present FAR language addresses the person opening the bids.

This is not a significant regulatory action, and therefore, was not subject to 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 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, while we have made changes for clarity, we