

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 applies to only those contractors whose sales (excluding sales under sealed bid procedures and sales of commercial items) are expected to exceed \$25 million during the subsequent year.

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 Part 44

Government procurement.

Dated: March 7, 1997.

Edward C. Loeb

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 44 is amended as set forth below:

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

1. The authority citation for 48 CFR Part 44 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).

2. Section 44.302 is revised to read as follows:

44.302 Requirements.

(a) Determine the need for a CPSR based on, but not limited to, the past performance of the contractor, and volume, complexity and dollar value of the subcontracting activity. If a contractor's sales to the Government (excluding sales under sealed bid procedures and sales of commercial items pursuant to part 12) are expected to exceed \$25 million during the next year, perform a review to determine if a CPSR is needed. Such sales include those represented by prime contracts, subcontracts under Government prime contracts, and modifications. Generally, a CPSR is not performed for a specific contract. The head of the agency responsible for contract administration may raise or lower the \$25 million review level if such action is considered to be in the Government's best interest.

(b) Once an initial determination has been made under paragraph (a) of this section, at least every 3 years the cognizant contract administration activity will determine whether a purchasing system review is necessary. If necessary, the cognizant contract administration activity will conduct a purchasing system review.

3. Section 44.303 is amended by revising the introductory text to read as follows:

44.303 Extent of review.

A CPSR requires an evaluation of the contractor's purchasing system. This evaluation shall not include subcontracts awarded by the contractor exclusively in support of Government contracts awarded to the contractor that used sealed bid procedures or that are for commercial items pursuant to part 12. The considerations listed in 44.202-2 for consent evaluation of particular subcontracts also shall be used to evaluate the contractor's purchasing system, including the contractor's policies, procedures, and performance under that system. Special attention shall be given to—

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4. Section 44.304 is amended by revising paragraph (a) to read as follows:

44.304 Surveillance.

(a) The ACO shall maintain a sufficient level of surveillance to ensure that the contractor is effectively managing its purchasing program.

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5. Section 44.305-1 is revised to read as follows:

44.305-1 Responsibilities.

The cognizant ACO is responsible for granting, withholding, or withdrawing approval of a contractor's purchasing system. The ACO shall—

(a) Approve a purchasing system only after determining that the contractor's purchasing policies and practices are efficient and provide adequate protection of the Government's interests; and

(b) Promptly notify the contractor in writing of the granting, withholding, or withdrawal of approval.

6. Section 44.305-2 is amended by revising paragraph (a) to read as follows:

44.305-2 Notification.

(a) The notification granting system approval shall include—

(1) Identification of the plant or plants covered by the approval;

(2) The effective date of approval; and

(3) A statement that system

approval—

(i) Applies to all Federal Government contracts at that plant to the extent that cross-servicing arrangements exist;

(ii) Waives the contractual requirement for advance notification in fixed-price contracts, but not for cost-reimbursement contracts;

(iii) Waives the contractual requirement for consent to subcontracts in fixed-price contracts and for specified subcontracts in cost-reimbursement contracts but not for those subcontracts, if any, selected for special surveillance and identified in the contract Schedule; and

(iv) May be withdrawn at any time at the ACO's discretion.

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7. Sections 44.306 and 44.307 are revised to read as follows:

44.306 Disclosure of approval status.

Upon request, the ACO may inform a contractor that the purchasing system of a proposed subcontractor has been approved or disapproved, but shall caution that the Government will not keep the contractor advised of any changes in the approval status. If the proposed subcontractor's purchasing system has not been reviewed, the contractor shall be so advised.

44.307 Reports.

The ACO shall distribute copies of CPSR reports; notifications granting, withholding, or withdrawing system approval; and Government recommendations for improvement of an approved system, including the contractor's response, to at least—

(a) The cognizant contract audit office;

(b) Activities prescribed by the cognizant agency; and

(c) The contractor (except that furnishing copies of the contractor's response is optional).

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DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Part 52**

[FAC 90-46; FAR Case 96-005; Item XIII]

RIN 9000-AH22**Federal Acquisition Regulation; Performance-Based Payments**

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 address title to residual material and certain liability provisions concerning performance-based payments. 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: May 16, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 90-46, FAR case 96-005.

SUPPLEMENTARY INFORMATION:**A. Background**

The clause at 52.232-32, Performance-Based Payments, addresses a method of contract financing, and was printed in Federal Acquisition Circular 90-33, and published in the Federal Register at 60 FR 49707, September 26, 1995. Paragraph (f), Title, of the clause was intended to be functionally equivalent to paragraph (d) of FAR clause 52.232-16, Progress Payments, which addresses another type of contract financing. However, the topics of title to residual material and liability for Government-furnished property acquired under the contract, addressed in paragraphs (d) (6) and (7) of the Progress Payments clause, were inadvertently omitted from the Performance-Based Payments clause. This rule amends FAR 52.232-32 by adding paragraphs (f) (6) and (7) to address these topics.

A proposed rule was published in the Federal Register at 61 FR 47798, September 10, 1996. Two sources submitted public comments. All comments were considered in developing 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 most contracts awarded to small entities use simplified acquisition procedures or are

awarded on a competitive basis, and, therefore, do not use the performance-based method of contract financing.

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 Part 52

Government procurement.

Dated: March 7, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 52 amended as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR Part 42 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).

2. Section 52.232-32 is amended by revising the clause date; redesignating the heading of paragraph (f)(1) as the heading of paragraph (f), and adding new paragraphs (f) (6) and (7) to read as follows:

52.232-32 Performance-Based Payments.

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PERFORMANCE-BASED PAYMENTS (MAY 1997)

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(f) *Title.* * * *

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(6) When the Contractor completes all of the obligations under this contract, including liquidation of all performance-based payments, title shall vest in the Contractor for all property (or the proceeds thereof) not—

(i) Delivered to, and accepted by, the Government under this contract; or

(ii) Incorporated in supplies delivered to, and accepted by, the Government under this contract and to which title is vested in the Government under this clause.

(7) The terms of this contract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this clause.

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DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 13 and 52**

[FAC 90-46; Item XIV]

Federal Acquisition Regulation; Technical Corrections

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

ACTION: Corrections.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are issuing corrections to documents previously published in the Federal Register.

EFFECTIVE DATE: May 16, 1997.

FOR FURTHER INFORMATION CONTACT: FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 90-46, Technical Corrections.

Corrections

PART 13—SIMPLIFIED ACQUISITION PROCEDURES**13.602 [Corrected]**

1. At 62 FR 266, January 2, 1997, in the third column, 13.602 is corrected in the introductory text of paragraph (a) by removing from the parenthetical "section 4202 of the Clinger-Cohen Act" and inserting "10 U.S.C. 2304 or 41 U.S.C. 253".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2. At 61 FR 67408, December 20, 1996, in the first column of page 67422, amendatory instruction 15 is corrected to read as follows:

52.219-18 [Amended]

15. 52.219-18 is amended by removing Alternate II and redesignating Alternate III as Alternate II; and by revising the date of the newly designated Alternate II to read as follows:

52.219-18 Notification of Competition Limited to Eligible 8(a) Concerns.

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Alternate II (DEC 1996). * * *

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