

52.214-5, 52.214-7, 52.214-23, 52.214-32, 52.214-33, 52.215-9, 52.215-10, 52.215-36, 52.216-7, 52.216-8, 52.216-9, 52.216-10, and 52.216-13 [Corrected]

3. At 61 FR 69286, December 31, 1996, remove the clause date "(FEB 1997)" and insert "(MAR 1997)" in the following sections:

(a) On page 69293, in the middle and third columns, sections 52.214-5, 52.214-7, 52.214-23, 52.214-32, and 52.214-33;

(b) On page 69294, in the first and second columns, sections 52.215-9, 52.215-10, and 52.215-36;

(c) On page 69296, in all three columns, sections 52.216-7, 52.216-8, 52.216-9, 52.216-10, and 52.216-13; and

(d) On page 69297, in the first column, Alternate I.

Dated: March 7, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 97-6323 Filed 3-14-97; 8:45 am]

BILLING CODE 6820-EP-P

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

**Federal Acquisition Regulation; Small Entity Compliance Guide**

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

**ACTION:** Small entity compliance guide notice.

**SUMMARY:** This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration as the Federal Acquisition Regulation (FAR) Council. This *Small Entity*

*Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 90-46 which amend the FAR. The rules marked with an asterisk (\*) are those for which a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Further information regarding these rules may be obtained by referring to FAC 90-46 which precedes this notice. This document may be obtained from the Internet at <http://www.gsa.gov/far/SECG>.

**FOR FURTHER INFORMATION CONTACT:** Beverly Fayson, FAR Secretariat, (202) 501-4755.

**LIST OF RULES IN FAC 90-46**

Item	Subject	FAR Case	Analyst
I	Gratuities	96-300	Linfield.
II	* Electronic Contracting	91-104	DeStefano.
III	* Office of Federal Procurement Policy Letter 93-1, Management Oversight of Service Contracting	94-008	O'Neill
IV	Performance Incentives for Fixed-Price Contracts	93-603	DeStefano.
V	* Environmentally Preferable Products (Interim)	92-054B	Linfield.
VI	Buy American Act—Construction (Grimberg Decision)	91-119	Linfield.
VII	Collection of Historically Black Colleges and Universities/Minority Institutions Award Data	95-306	Klein.
VIII	Allowability of Foreign Selling Costs	95-021	DeStefano.
IX	Independent Research and Development/Bid and Proposal Costs in Cooperative Agreements	95-024	Olson.
X	* Prompt Payment	91-091	Olson.
XI	Attorneys' Fees in GAO Protests	96-016	O'Neill.
XII	Contractors' Purchasing Systems Reviews	94-605	Klein.
XIII	Performance-Based Payments	96-005	Olson.

**Item I—Gratuities (FAR Case 96-300)**

The interim rule published as Item III of Federal Acquisition Circular (FAC) 90-40 is converted to a final rule without change. The rule amended FAR 3.202 and 52.203-3 to exempt solicitations and contracts which do not exceed the simplified acquisition threshold from the prescribed use of the "Gratuities" clause.

**Item II—Electronic Contracting (FAR Case 91-104)**

The interim rule published as Item II of FAC 90-29 is converted to a final rule with amendments in Parts 5, 14, 15, and 52. The rule facilitates the use of electronic data interchange in Government contracting and complements the rule published as Item II of FAC 90-40 pertaining to the Federal Acquisition Computer Network.

**Item III—Office of Federal Procurement Policy Letter 93-1, Management Oversight of Service Contracting (FAR Case 94-008)**

This final rule amends FAR 37.000 and 37.102, and adds a new Subpart 37.5, to implement OFPP Policy Letter 93-1, Management Oversight of Service Contracting. The policy letter provides Governmentwide guiding principles which are intended to improve the acquisition, management, and administration of service contracts. This rule also amends FAR 9.505-3 and 35.017-2 to remove references to OMB Circular A-120, Guidelines for the Use of Advisory and Assistance Services, which was rescinded by OMB on November 19, 1993.

**Item IV—Performance Incentives for Fixed-Price Contracts (FAR Case 93-603)**

This final rule amends FAR Parts 16 and 52 to permit the use of award-fee provisions as performance incentives in fixed-price contracts.

**Item V—Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements (FAR Case 92-054B)**

This interim rule adds a new FAR Subpart 23.10, and a new clause at 52.223-5 to implement Executive Order (E.O.) 12856 of August 3, 1993, Federal Compliance with Right-To-Know Laws and Pollution Prevention Requirements. The E.O. requires that a contract performed on a Federal facility shall provide that the contractor supply information on its use of certain hazardous or toxic substances in the

performance of the contract. This information is required to enable Federal facilities to comply with the reporting and emergency planning requirements of the Pollution Prevention Act of 1990 and the Emergency Planning and Community Right-To-Know Act of 1986.

**Item VI—Buy American Act—Construction (Grimberg Decision) (FAR Case 91-119)**

This final rule amends FAR Subpart 25.2 and the associated clauses at 52.225-5 and 52.225-15 to add guidance on exceptions to the Buy American Act, both pre-award and post-award. The rule adds two new solicitation provisions at 52.225-12 and 52.225-13 for use in solicitations for construction in the United States. These solicitation provisions set forth procedures by which offerors may request determinations regarding the inapplicability of the Buy American Act. The rule also adds a new section at 25.206, which provides guidance regarding instances of noncompliance with the Buy American Act.

**Item VII—Collection of Historically Black Colleges and Universities/Minority Institutions Award Data (FAR Case 95-306)**

This final rule adds a new FAR Subpart 26.3 and a new solicitation provision at 52.226-2 to implement Executive Order 12928, which requires agencies to provide periodic reporting on the progress made in award of contracts to Historically Black Colleges and Universities and Minority Institutions.

**Item VIII—Allowability of Foreign Selling Costs (FAR Case 95-021)**

This final rule revises FAR 31.205-38(c)(2) by removing the ceiling on allowable foreign selling costs. The rule also amends 31.205-1, Public relations and advertising costs, by deleting reference to the ceiling limitation, and further revises 31.205-38(c)(2) by deleting obsolete language.

**Item IX—Independent Research and Development/Bid and Proposal Costs in Cooperative Agreements (FAR Case 95-024)**

This final rule amends the cost principle at FAR 31.205-18, Independent research and development (IR&D) and bid and proposal costs, by removing from paragraph (e) the prohibition against treatment of contractor IR&D contributions under NASA cooperative arrangements as allowable indirect costs.

**Item X—Prompt Payment (FAR Case 91-091)**

This final rule amends FAR 32.102, Subpart 32.9, and related clauses at 52.212-4, 52.232-5, 52.232-8, 52.232-25, 52.232-26, and 52.232-27 in order to implement changes made in OMB Circular A-125 (Revised), dated December 12, 1989, to comply with the Prompt Payment Act Amendments of 1988 (Public Law 100-496). The rule also contains amendments to clarify and simplify the FAR text and clauses.

**Item XI—Attorneys' Fees in GAO Protests (FAR Case 96-016)**

This final rule amends FAR 33.104 to clarify that the \$150 hourly cap on attorneys' fees applies only to those

protests filed on or after October 1, 1995. Protests filed with the General Accounting Office prior to October 1, 1995, are not subject to the hourly cap on attorneys' fees, in accordance with Sections 10001 and 10002 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355).

**Item XII—Contractors' Purchasing Systems Reviews (FAR Case 94-605)**

This final rule amends FAR 44.302 to (1) add a requirement for the cognizant contract administration agency to determine the need for a contractor purchasing system review (CPSR) based on, but not limited to, the past performance of the contractor and volume, complexity, and dollar value of the contractor's subcontracting activity; and (2) delete the requirement for a CPSR to be performed initially and at least every 3 years thereafter, for contractors exceeding a certain sales level. Also, FAR sections 44.303 through 44.307 are amended to conform to amendments at 44.302.

**Item XIII—Performance-Based Payments (FAR Case 96-005)**

This final rule amends FAR 52.232-32, Performance-Based Payments, by adding paragraphs (f) (6) and (7) to address title to residual material and liability for Government-furnished property, for consistency with paragraphs (d) (6) and (7) of FAR 52.232-16, Progress Payments.

Dated: March 7, 1997.  
Edward C. Loeb,  
*Director, Federal Acquisition Policy Division.*  
[FR Doc. 97-6324 Filed 3-14-97; 8:45 am]

BILLING CODE 6820-EP-P