

on the applicability of certain clauses to cost-reimbursement architect-engineer (A-E) contracts.

EFFECTIVE DATE: November 23, 1999.

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. Jack O'Neill, Procurement Analyst, at (202) 501-3856. Please cite FAC 97-14, FAR case 97-043.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils published a proposed rule in the **Federal Register** at 63 FR 71710, December 29, 1998, with comments requested by March 1, 1999. Only one respondent submitted comments, and those comments were not substantive. This final rule is unchanged from the proposed rule. The rule amends the prescriptions for use of the following FAR clauses to include cost-reimbursement architect-engineer services contracts:

- 52.236-24 Work Oversight in Architect-Engineer Contracts
- 52.236-25 Requirements for Registration of Designers
- 52.244-4 Subcontractors and Outside Associates and Consultants (Architect-Engineer Services)
- 52.249-6 Termination (Cost-Reimbursement)

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 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 only corrects certain clause prescriptions, and this correction will not bring about any increased costs to be borne by the contractor.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104-13) applies because the final rule requires use of the clause at FAR 52.249-6, Termination (Cost-Reimbursement), in cost-reimbursement contracts for architect-engineer services. The information collection requirements relating to termination clauses are

approved and covered by OMB Control No. 9000-0028.

List of Subjects in 48 CFR Parts 36, 44, 49, and 52

Government procurement.

Dated: September 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR Parts 36, 44, 49, and 52 as set forth below:

1. The authority citation for 48 CFR Parts 36, 44, 49, 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 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.609-3 [Amended]

2. In section 36.609-3, remove “fixed-price” and add “all” in its place.

36.609-4 [Amended]

3. In section 36.609-4, remove “fixed-price”.

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

44.204 [Amended]

4. In section 44.204, amend paragraph (b) by removing the words “fixed-price”.

PART 49—TERMINATION OF CONTRACTS

5. In section 49.503, revise paragraphs (a)(1) and (b) to read as follows:

49.503 Termination for convenience of the Government and default.

(a) *Cost-reimbursement contracts*—(1) *General use.* Insert the clause at 52.249-6, Termination (Cost-Reimbursement), in solicitations and contracts when a cost-reimbursement contract is contemplated, except contracts for research and development with an educational or nonprofit institution on a no-fee basis.

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(b) Insert the clause at 52.249-7, Termination (Fixed-Price Architect-Engineer), in solicitations and contracts for architect-engineer services, when a fixed-price contract is contemplated.

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PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. In section 52.236-25, revise the introductory text of the clause to read as follows:

52.236-25 Requirements for Registration of Designers.

As prescribed in 36.609-4, insert the following clause:

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 46

[FAC 97-14; FAR Case 98-002; Item XIII]

RIN 9000-A117

Federal Acquisition Regulation; Conditionally Accepted Items

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 on a final rule amending the Federal Acquisition Regulation (FAR) to require that, when conditionally accepting nonconforming items, amounts withheld from payments should be at least sufficient to cover the cost and related profit to correct deficiencies and complete unfinished work; and that the contracting officer must document the basis for the amounts withheld in the contract file.

EFFECTIVE DATE: November 23, 1999.

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 Klein, Procurement Analyst, at (202) 501-3775. Please cite FAC 97-14, FAR case 98-002.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils published a proposed rule in the **Federal Register** on October 28, 1998, (63 FR 57878). This final rule implements the recommendation of General Accounting Office Report GAO/NSIAD-98-20 Defense Acquisition, Guidance Is Needed On Payments For Conditionally Accepted Items, dated December 12, 1997. The rule amends FAR 46.101 to add a definition of “conditional acceptance,” and amends

FAR 46.407 to provide procedures for the conditional acceptance of supplies and services.

The Councils received public comments from two respondents and considered them in finalizing the rule.

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 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 use of conditional acceptance is not widespread. No additional requirements are imposed on small businesses.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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 Part 46

Government procurement.

Dated: September 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR Part 46 as set forth below:

PART 46—QUALITY ASSURANCE

1. The authority citation for 48 CFR Part 46 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. Amend section 46.101 by adding, in alphabetical order, the definition "Conditional acceptance" to read as follows:

46.101 Definitions.

* * * * *

Conditional acceptance, as used in this part, means acceptance of supplies or services that do not conform to contract quality requirements, or are otherwise incomplete, that the contractor is required to correct or otherwise complete by a specified date.

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3. Amend section 46.407 as follows:

a. Remove from paragraph (a) "Contracting officers" and insert "The contracting officer", in its place;

b. Remove from the first sentence of paragraph (b) "Contractors ordinarily shall be given" and from the second sentence "shall" and insert "The contracting officer ordinarily must give the contractor", and "must", respectively;

c. Revise paragraph (c)(1);

d. Remove from the first and second sentences of paragraph (c)(2) "shall" and insert "must," in their places;

e. Remove from paragraph (e) "Contracting officers shall" and insert "The contracting officer must";

f. Revise paragraph (f); and

g. Remove from the first and last sentences of the introductory text of paragraph (g) "shall" and insert "must," in their places;

Revised text read as follows:

46.407 Nonconforming supplies or services.

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(c)(1) In situations not covered by paragraph (b) of this section, the contracting officer ordinarily must reject supplies or services when the nonconformance is critical or major or the supplies or services are otherwise incomplete. However, there may be circumstances (e.g., reasons of economy or urgency) when the contracting officer determines acceptance or conditional acceptance of supplies or services is in the best interest of the Government. The contracting officer must make this determination based upon—

(i) Advice of the technical activity that the item is safe to use and will perform its intended purpose;

(ii) Information regarding the nature and extent of the nonconformance or otherwise incomplete supplies or services;

(iii) A request from the contractor for acceptance of the nonconforming or otherwise incomplete supplies or services (if feasible);

(iv) A recommendation for acceptance, conditional acceptance, or rejection, with supporting rationale; and

(v) The contract adjustment considered appropriate, including any adjustment offered by the contractor.

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(f) When supplies or services are accepted with critical or major nonconformances as authorized in paragraph (c) of this section, the contracting officer must modify the contract to provide for an equitable price reduction or other consideration. In the case of conditional acceptance, amounts withheld from payments generally should be at least sufficient to

cover the estimated cost and related profit to correct deficiencies and complete unfinished work. The contracting officer must document in the contract file the basis for the amounts withheld. For services, the contracting officer can consider identifying the value of the individual work requirements or tasks (subdivisions) that may be subject to price or fee reduction. This value may be used to determine an equitable adjustment for nonconforming services. However, when supplies or services involving minor nonconformances are accepted, the contract need not be modified unless it appears that the savings to the contractor in fabricating the nonconforming supplies or performing the nonconforming services will exceed the cost to the Government of processing the modification.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 48 and 52

[FAC 97-14; FAR Case 97-031; Item XIV]

RIN 9000-AH84

Federal Acquisition Regulation; Value Engineering Change Proposals/PAT

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 on a final rule amending the Federal Acquisition Regulation (FAR) to change the sharing periods and rates that contracting officers may establish for individual value engineering change proposals. **EFFECTIVE DATE:** November 23, 1999.

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SUPPLEMENTARY INFORMATION: