

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Parts 12, 19, and 52**

[FAC 97-15; FAR Case 98-011; Item VII]

RIN 9000-AI33

**Federal Acquisition Regulation; SBA's  
8(a) Business Development Program**

**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 implement revisions made to Small Business Administration (SBA) regulations pertaining to its 8(a) Business Development (8(a)BD) Program.

**DATES:** *Effective Date:* December 27, 1999.

*Applicability Date:* The FAR, as amended by this rule, is applicable to solicitations issued on or after December 21, 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. Victoria Moss, Procurement Analyst, at (202) 501-4764. Please cite FAC 97-15, FAR case 98-011.

**SUPPLEMENTARY INFORMATION:****A. Background**

The Councils published an interim rule in the **Federal Register** on June 17, 1999 (64 FR 32742). The rule amended FAR Parts 12, 19, and 52 to conform to recent amendments made by the Small Business Administration (SBA) to their regulations pertaining to the 8(a)BD Program. The SBA published a final rule in the **Federal Register** on June 30, 1998 (63 FR 35726). The SBA rule amended the eligibility procedures for admission to the 8(a)BD and contractual assistance programs. These changes involve administrative matters concerning requirement offerings, contract execution, contract administration, and SBA appeals.

There were no public comments submitted in response to the interim

rule. Therefore, the Councils have agreed to convert the interim rule to a final rule without change.

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 merely addresses changes made by the Small Business Administration (SBA) to 13 CFR parts 121, 124, and 134. The SBA has certified that the changes set forth in its rule will not have a significant economic impact on a substantial number of small entities because the changes do not increase the net number of current 8(a) certified small businesses or the net number of current 8(a) participants by more than 500 to 800 businesses, or less than 1 percent of the total universe of small firms seeking Government contracts.

**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 Parts 12, 19, and 52**

Government procurement.

Dated: December 20, 1999.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

**Interim Rule Adopted as Final Without Change**

Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR parts 12, 19, and 52, which was published in the **Federal Register** on June 17, 1999 (64 FR 32742), as a final rule without change.

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

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**BILLING CODE 6820-EP-P**

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Part 13**

[FAC 97-15; FAR Case 99-304; Item VIII]

RIN 9000-AI59

**Federal Acquisition Regulation;  
Special Simplified Procedures for  
Purchases of Commercial Items in  
Excess of the Simplified Acquisition  
Threshold**

**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 implement Section 806 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106-65). Section 806 extends the test of the special simplified procedures for purchases of commercial items greater than the simplified acquisition threshold, but not exceeding \$5,000,000, until January 1, 2002.

**DATES:** *Effective Date:* December 27, 1999.

*Applicability Date:* The FAR, as amended by this rule, is applicable to solicitations issued on or after December 27, 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. Victoria Moss, Procurement Analyst, at (202) 501-4764. Please cite FAC 97-15, FAR case 99-304.

**SUPPLEMENTARY INFORMATION:****A. Background**

This final rule amends FAR Subpart 13.5 to implement Section 806 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106-65). Section 806 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, 2002, 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. This rule also makes plain language editorial revisions.

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 final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR subpart 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.* (FAC 97-15, FAR case 99-304), in correspondence.

### 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 13

Government procurement.

Dated: December 20, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 13 as set forth below:

### PART 13—SIMPLIFIED ACQUISITION PROCEDURES

1. The authority citation for 48 CFR part 13 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 13.500 in paragraph (b) by removing “shall” and adding “must” in its place; and by revising paragraph (d) to read as follows:

#### 13.500 General.

\* \* \* \* \*

(d) The authority to issue solicitations under this subpart expires on January 1, 2002. Contracting officers may award contracts after the expiration of this authority for solicitations issued before the expiration of the authority.

3. Amend section 13.501 in the introductory text of paragraphs (a)(1) and (b) by removing “shall” and adding “must” in their place; and by revising paragraph (a)(2)(ii) to read as follows:

#### 13.501 Special documentation requirements.

(a) \* \* \*

(2) \* \* \*

(ii) For a proposed contract exceeding \$500,000, the competition advocate for the procuring activity, designated pursuant to 6.501, or an official described in 6.304(a)(3) or (a)(4) must approve the justification and approval. This authority is not delegable.

\* \* \* \* \*

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 16, 48, and 52

[FAC 97-15; FAR Case 98-017; Item IX]

RIN 9000-AI35

#### Federal Acquisition Regulation; Review of Award Fee Determinations (Burnside-Ott)

**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). The amendment implements rulings of the United States Court of Appeals and the United States Court of Federal Claims. The rulings are that the Contract Disputes Act applies to all disputes arising under Government contracts, unless a more specific statute provides for other remedies.

**DATES:** Effective Date: February 25, 2000.

**Applicability Date:** The FAR, as amended by this rule, is applicable to solicitations issued on or after February 25, 2000.

**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 De Stefano, Procurement Analyst, at (202) 501-1758. Please cite FAC 97-15, FAR case 98-017.

**SUPPLEMENTARY INFORMATION:**

### A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 64 FR 24472, May 6, 1999, and received no comments. This final rule amends the FAR to implement the rulings of the United States Court of Appeals in *Burnside-Ott Aviation Training Center v. Dalton, Secretary of the Navy*, 107 F.3d 854 (Fed. Cir. 1997) and of the United States Court of Federal Claims in *Rig Masters, Inc. v. The United States*, 42 (Fed. Cl. 369 (1998)). The rulings are that the Contract Disputes Act applies to all disputes arising under Government contracts, unless a more specific statute provides for other remedies. The rule amends FAR 16.405-2(a) by deleting the statement that award-fee determinations are not subject to the disputes clause of the contract and inserting a statement that such determinations and the methodology for determining award fee are unilateral decisions made solely at the discretion of the Government. In addition, the rule amends—

(a) FAR 16.406 to conform with the newly revised 16.405-2(a);

(b) FAR Part 48 to—

(1) Remove references to the Contract Disputes Act;

(2) State that certain unilateral decisions are made solely at the discretion of the Government; and

(3) Insert a statement that the contracting officer's determination of the duration of the sharing period and the contractor's sharing rate is one such decision;

(c) The clauses at 52.248-1 and 52.248-3 to conform with the newly revised Part 48; and

(d) The clauses at 52.219-10, 52.219-26, and 52.226-1 to remove exemptions to the Contract Disputes Act. Also, we made editorial revisions to all affected sections for plain language purposes.

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 implements court rulings relating to a statute that has been in effect since 1979. This final rule retains the government's unilateral decision