

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 1, 5, 6, 8, 17, 19, 32, and
52**[FAC 2001–06; FAR Case 2000–402; Item
II]

RIN 9000–AI76

**Federal Acquisition Regulation;
Definitions for “Contract Action” and
“Contracting Action”**

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 for consistent use of the term “contract action” and to make other editorial changes to clarify the text.

DATES: *Effective Date:* April 4, 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 Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 2001–06, FAR case 2000–402.

SUPPLEMENTARY INFORMATION:**A. Background**

This rule amends the FAR to provide for consistent use of the term “contract action.” The rule changes the term “contracting action” to “contract action” throughout the FAR and makes other editorial changes to clarify the text.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** on May 31, 2000 (65 FR 34894). One respondent submitted comments on the proposed rule. Based on those comments, the rule was changed to provide for more consistent use of the term “contract action” and to place definitions in the proper FAR sections.

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 we are not substantively changing procedures for award and administration of contracts. We did not receive any comments regarding this determination as a result of publication of the proposed rule in the **Federal Register** on May 31, 2000 (65 FR 34894).

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 Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Parts 1, 5, 6,
8, 17, 19, 32, and 52**

Government procurement.

Dated: March 6, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 5, 6, 8, 17, 19, 32, and 52 as set forth below:

1. The authority citation for 48 CFR parts 1, 5, 6, 8, 17, 19, 32, 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 1—FEDERAL ACQUISITION
REGULATIONS SYSTEM**

2. Revise section 1.403 to read as follows:

1.403 Individual deviations.

Individual deviations affect only one contract action, and, unless 1.405(e) is applicable, may be authorized by the agency head. The contracting officer must document the justification and agency approval in the contract file.

3. Revise the introductory paragraph of section 1.404 to read as follows:

1.404 Class deviations.

Class deviations affect more than one contract action. When an agency knows that it will require a class deviation on a permanent basis, it should propose a FAR revision, if appropriate. Civilian agencies, other than NASA, must furnish a copy of each approved class deviation to the FAR Secretariat.

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1.701 [Amended]

4. Amend the first sentence of section 1.701 by removing the word “contracting” and adding “contract” in its place.

1.703 [Amended]

5. Amend section 1.703 in paragraph (a) by removing the word “contracting” each time it appears (3 times) and adding “contract” in its place.

6. Amend section 1.705 by revising paragraph (b) to read as follows:

1.705 Supersession and modification.

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(b) The contracting officer need not cancel the solicitation if the D&F, as modified, supports the contract action.

**PART 5—PUBLICIZING CONTRACT
ACTIONS**

7. Revise section 5.001 to read as follows:

5.001 Definition.

Contract action, as used in this part, means an action resulting in a contract, as defined in subpart 2.1, including actions for additional supplies or services outside the existing contract scope, but not including actions that are within the scope and under the terms of the existing contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

**PART 6—COMPETITION
REQUIREMENTS****6.502 [Amended]**

8. Amend section 6.502 in paragraph (b)(1)(iv) by removing the word “contracting” and adding “contract” in its place.

**PART 8—REQUIRED SOURCES OF
SUPPLIES AND SERVICES**

9. Revise section 8.102 to read as follows:

8.102 Policy.

When practicable, agencies must use excess personal property as the first source of supply for agency and cost-reimbursement contractor requirements. Agency personnel must make positive efforts to satisfy agency requirements by obtaining and using excess personal property (including that suitable for adaptation or substitution) before initiating a contract action.

PART 17—SPECIAL CONTRACTING METHODS**17.104 [Amended]**

10. Amend section 17.104 in the second sentence of paragraph (b) by removing the words “contracting action” and adding “contract” in their place.

11. Amend section 17.503 by revising the introductory text of paragraph (b) to read as follows:

17.503 Determinations and findings requirements.

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(b) If the Economy Act order requires contract action by the servicing agency, the D&F must also include a statement that at least one of the following circumstances applies:

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PART 19—SMALL BUSINESS PROGRAMS**19.302 [Amended]**

12. Amend section 19.302 in the first sentence of paragraph (h)(4) by removing the words “contracting action” and adding “contract action” in their place.

13. Amend section 19.505 by revising paragraph (c) to read as follows:

19.505 Rejecting Small Business Administration recommendations.

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(c) If the head of the contracting activity agrees that the contracting officer's rejection was appropriate—

(1) Within 1 working day, the SBA procurement center representative may request the contracting officer to suspend action on the acquisition until the SBA Administrator appeals to the agency head (see paragraph (f) of this section); and

(2) The SBA must be allowed 15 working days after making such a written request, within which the Administrator of SBA—

(i) May appeal to the Secretary of the Department concerned; and

(ii) Must notify the contracting officer whether the further appeal has, in fact, been taken. If notification is not received by the contracting officer within the 15-day period, it is deemed that the SBA request to suspend the contract action has been withdrawn and that an appeal to the Secretary was not taken.

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PART 32—CONTRACT FINANCING

14. Revise the introductory paragraph of section 32.000 to read as follows:

32.000 Scope of part.

This part prescribes policies and procedures for contract financing and other payment matters. This part addresses—

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15. Amend section 32.001 by revising the definition “Contract action” to read as follows:

32.001 Definitions.

* * * * *

Contract action means an action resulting in a contract, as defined in subpart 2.1, including actions for additional supplies or services outside the existing contract scope, but not including actions that are within the scope and under the terms of the existing contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

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32.703–2 [Amended]

16. Amend section 32.703–2 in the first sentence of the introductory text of paragraph (a) by removing the words “contracting action” and adding “contract action” in their place; by removing the semicolon after the word “available” and adding a comma in its place; and by removing the comma after the word “provided”.

17. Amend section 32.705–1 by revising paragraph (a) to read as follows:

32.705–1 Clauses for contracting in advance of funds.

(a) Insert the clause at 52.232–18, Availability of Funds, in solicitations and contracts if the contract will be chargeable to funds of the new fiscal year and the contract action will be initiated before the funds are available.

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PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

18. Amend section 52.232–18 by revising the introductory text to read as follows:

52.232–18 Availability of Funds.

As prescribed in 32.705–1(a), insert the following clause:

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[FR Doc. 02–5821 Filed 3–19–02; 8:45 am]

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DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 2, 3, 14, 15, 28, 35, and 52**

[FAC 2001–06; FAR Case 2000–403; Item III]

RIN 9000–A184

Federal Acquisition Regulation; Definitions for Sealed Bid and Negotiated Procurements

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 sealed bids and negotiated procurements.

DATES: *Effective Date:* April 4, 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 De Stefano, Procurement Analyst, at (202) 501–1758. Please cite FAC 2001–06, FAR case 2000–403.

SUPPLEMENTARY INFORMATION:**A. Background**

The rule clarifies definitions that are used in the FAR for sealed bid and negotiated procurements. The rule—

- Moves the definitions of “bid sample” and “descriptive literature” from FAR part 14 to FAR 2.101 because the definitions apply to more than one FAR part;

- Amends those definitions and the definition of “offer” in accordance with plain language guidelines;

- Revises applicable provisions in FAR part 52 to conform with the new definitions;

- Adds a new definition for “solicitation” at FAR 2.101; and
- Provides definitions for “bid” and “bidder” in FAR part 28 because, as used in that part, the terms address sealed bid and negotiated acquisitions.

We also reviewed every instance where the terms “offeror,” “prospective offeror,” and “potential offeror” are used in the FAR. The rule clarifies