

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 8 and 51**

[FAR Case 1999–614]

RIN 9000–AJO1

**Federal Acquisition Regulation;
Federal Supply Schedule Order
Disputes and Incidental Items**

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

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to add policies on disputes and incidental items under Federal Supply Schedule contracts and to remove the requirement to notify the General Services Administration when a schedule contractor refuses to honor an order placed by a Government contractor.

DATES: Interested parties should submit comments in writing on or before February 20, 2001 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: farcase.1999-614@gsa.gov

Please submit comments only and cite FAR case 1999–614 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement

Analyst, at (202) 501–1900. Please cite FAR case 1999–614.

SUPPLEMENTARY INFORMATION:**A. Background**

This proposed rule—

- Adds to FAR 8.401 policy regarding incorporating incidental supplies or services that are not included in the schedule contract into an order placed against the schedule contract;

- Revises FAR 8.405–7 to permit the ordering office contracting officer to issue a final decision regarding disputes pertaining solely to performance of schedule orders;

- Deletes FAR 51.103(b) because agencies are no longer required to notify the General Services Administration when a Federal Supply Schedule contractor refuses to honor an order placed by a Government contractor under an agency authorization.

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 Councils do not expect this proposed rule to 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 addresses internal Government administrative procedures and does not impose any additional requirements on Government offerors or contractors. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 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.* (FAR case 1999–614), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed 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 8 and 51

Government procurement.

Dated: December 13, 2000.

Al Matera,

Acting Director, Federal Acquisition, Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 8 and 51 be amended as set forth below:

1. The authority citation for 48 CFR parts 8 and 51 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 8—REQUIRED SOURCES OF
SUPPLIES AND SERVICES**

2. Amend section 8.401 by adding paragraph (d) to read as follows:

8.401 General.

* * * * *

(d) For administrative convenience, an ordering office contracting officer may add open market (noncontract) items to a Federal Supply Schedule blanket purchase agreement (BPA) or an individual task or delivery order only if—

(1) All applicable acquisition regulations have been followed (*e.g.*, publicizing (Part 5), competition requirements (Part 6), acquisition of commercial items (Part 12), and contracting methods (Parts 13, 14, and 15));

(2) The ordering office contracting officer has determined the price for the open market items is reasonable; and

(3) The items are clearly labeled as open market (noncontract) items on the order.

3. Revise section 8.405–7 to read as follows:

8.405-7 Disputes.

(a) *Disputes pertaining to the performance of orders under a schedule contract.* (1) Under the Disputes clause of the schedule contract, the ordering office contracting officer may—

(i) Issue final decisions on disputes arising from performance of the order (but see paragraph (b)); or

(ii) Refer the dispute to the schedule contracting officer.

(2) The ordering office contracting officer must notify the schedule contracting officer promptly of any final decision.

(b) *Disputes pertaining to the terms and conditions of schedule contracts.*

The ordering office contracting officer must refer all disputes that relate to the contract terms and conditions to the schedule contracting officer for resolution under the Disputes clause of the contract and notify the schedule contractor of the referral.

(c) *Appeals.* Contractors may appeal final decisions to either the Board of Contract Appeals servicing the agency that issued the final decision or the U.S. Court of Federal Claims.

(d) *Alternative dispute resolution.* The contracting officer should use the alternative dispute resolution (ADR) procedures, when appropriate (see 33.214).

PART 51—USE OF GOVERNMENT SOURCES BY CONTRACTORS**51.103 [Amended]**

4. Amend section 51.103 by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

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