

(ii) A performance-based contract or task order that is not firm-fixed price.

(iii) A contract or task order that is not performance-based.

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[FR Doc. 01-11008 Filed 5-1-01; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 39

[FAC 97-25; FAR Case 2000-609; Item II]

RIN 9000-AJ11

Federal Acquisition Regulation; Contractor Personnel in the Procurement of Information Technology Services

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

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 813 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001. The Act requires that the FAR be amended to address the use, in the procurement of information technology services, of requirements regarding the experience and education of contractor personnel.

DATES: *Effective Date:* May 2, 2001.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before July 2, 2001 to be considered in the formulation of a final rule.

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

Submit electronic comments via the Internet to: farcase.2000-609@gsa.gov.

Please submit comments only and cite FAC 97-25, FAR case 2000-609 in all correspondence related to this case.

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 Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 97-25, FAR case 2000-609.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends the FAR to implement Section 813 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398). The Act prohibits the use of minimum experience or education requirements for contractor personnel in solicitations for the acquisition of information technology services, unless—

1. The contracting officer first determines that the needs of the agency cannot be met without such requirement; or

2. The needs of the agency require the use of a type of contract other than a performance-based contract.

This interim rule implements the Act by adding a new section to Subpart 39.1 to implement Section 813 of the Act.

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 changes may 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 it will make it easier for them to hire employees to work on information technology service contracts, as well as increase their business opportunities in obtaining Government contracts. Therefore, we have prepared an Initial Regulatory Flexibility Analysis that is summarized as follows:

The interim rule amends FAR Part 39 to implement Section 813 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398). The Act requires that the Federal Acquisition Regulation be revised to address the use, in the procurement of information technology services, of requirements regarding the experience and education of contractor personnel. The rule prohibits the use of minimum experience or education requirements for contractor personnel in solicitations for the acquisition of information technology services, unless the contracting officer first determines the needs of the agency cannot be met without that requirement; or the needs of the agency require the use of a type of contract other than a performance-based contract. The interim rule will apply to all large and small

entities that seek award of Federal information service contracts. The rule should have a positive economic impact on small businesses because it will make it easier for them to hire employees to work on information technology service contracts, as well as increase their business opportunities in obtaining Federal contracts.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR Part 39 in accordance with 5 U.S.C. 610. Submit such comments separately and cite 5 U.S.C. 601, *et seq.* (FAC 97-25, FAR case 2000-609), 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.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary in order to implement section 813 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398). The Act requires that the FAR be amended within 180 days of enactment; enactment was on October 30, 2000. However, pursuant to Public Law 98-577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Part 39

Government procurement.

Dated: April 27, 2001.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 39 as set forth below:

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

1. The authority citation for 48 CFR part 39 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. Add § 39.104 to read as follows:

39.104 Information technology services.

When acquiring information technology services, solicitations must not describe any minimum experience or educational requirement for proposed contractor personnel unless the contracting officer determines that the needs of the agency—

- (a) Cannot be met without that requirement; or
- (b) Require the use of other than a performance-based contract (see subpart 37.6).

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DEPARTMENT OF DEFENSE

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.

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.

This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 97-25 which amends the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 97-25 which precedes this document. These documents are also available via the Internet at <http://www.arnet.gov/far>.

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501-4225. For clarification of content, contact the analyst whose name appears in the table below.

SUPPLEMENTARY INFORMATION:

LIST OF RULES IN FAC 97-25

Item	Subject	FAR case	Analyst
I	Preference for Performance-Based Contracting	2000-307	Wise.
II	Contractor Personnel in the Procurement of Information Technology Services.	2000-609	Nelson.

Item I—Preference for Performance-Based Contracting (FAR Case 2000-307)

This interim rule amends FAR 2.101, Definitions, and 37.102, Policy, to implement section 821 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398). The rule affects contracting officers that buy services by explicitly establishing a preference for performance-based contracts or task orders.

Item II—Contractor Personnel in the Procurement of Information Technology Services (FAR Case 2000-609)

This interim rule adds FAR 39.104 to implement Section 813 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398). Section 813 prohibits the use of minimum experience or education requirements for contractor personnel in solicitations for the acquisition of information technology services, unless—

1. The contracting officer first determines that the needs of the agency cannot be met without such requirement; or

2. The needs of the agency require the use of a type of contract other than a performance-based contract.

Dated: April 27, 2001.

Al Matera,

Director, Acquisition Policy Division.

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