

exception to this requirement is made for costs incurred to defend against a protest, if the costs are incurred pursuant to a written request from the contracting officer.

Dated: August 2, 1996.

Edward C. Loeb,

*Director, Federal Acquisition Policy Division.*

#### Federal Acquisition Circular

August 8, 1996; Number 90-41

Federal Acquisition Circular (FAC) 90-41 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

FAR case 96-320 is effective August 8, 1996. FAR cases 93-010, 95-303, and 95-305 are effective October 7, 1996. Far Case 96-319 is effective August 8, 1996, and applies to all information technology solicitations issued on or after August 8, 1996.

Dated: July 29, 1996.

Eleanor R. Spector,

*Director, Defense Procurement.*

Dated: July 23, 1996.

Edward C. Loeb,

*Acting Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.*

Tom Luedtke,

*Deputy Associate Administrator for Procurement, National Aeronautics and Space Administration.*

[FR Doc. 96-20186 Filed 8-7-96; 8:45 am]

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 5, 7, 8, 9, 12, 15, 16, 17, 19, 22, 32, 33, 34, 37, 38, 39, 45, 46, 51, 52, and 53

[FAC 90-41, FAR Case 96-319, Item I]

RIN 9000-AHXX

### Federal Acquisition Regulation; Information Technology Management Reform Act of 1996 (ITMRA)

**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 have agreed to an interim rule amending the Federal Acquisition Regulation (FAR) to provide for a simplified, clear, and understandable process for acquiring information technology (IT) that addresses the management of risk. This interim rule implements the Information Technology Management Reform Act (ITMRA), Division E of Public Law 104-106, dated February 10, 1996. The interim rule also incorporates the recommendations of the Federal Information Resources Management Regulation (FIRMR) Transition Committee, relocating those provisions of the FIRMR, which were recommended for retention, in the FAR. This regulatory action was not subject to Office of Management and Budget (OMB) review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

**DATES:** Effective Date: August 8, 1996.

**Applicability:** This regulation applies to all IT solicitations issued on or after August 8, 1996. The General Services Board of Contract Appeals (GSBCA) will not accept any protest received on or after August 8, 1996.

**Comment Date:** Comments should be submitted to the FAR Secretariat at the address shown below on or before October 7, 1996 to be considered in the formulation of a final rule.

**ADDRESSES:** Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRs), 18th & F Streets, NW, Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405.

Please cite FAC 90-41, FAR case 96-319 in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jack O'Neill at (202) 501-3856 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-41, FAR case 96-319.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Federal information systems are critical to every American. The efficiency and effectiveness of the Federal Government is dependent upon the effective use of information. The Information Technology Management Reform Act (ITMRA) of 1996 seeks to improve Federal information management and to facilitate Federal Government acquisition of state-of-the-art IT that is critical for improving the efficiency and effectiveness of Federal Government operations.

Under ITMRA, each executive agency is authorized to acquire IT, including entering into contracts that provide for multi-agency acquisitions of IT in accordance with guidance issued by OMB. The Chief Information Officer (CIO) of each agency is responsible for the IT programs of the agency. The Director of OMB is responsible for improving the acquisition, use, and disposal of IT by the Federal Government. The development and use of best practices in the acquisition of IT will be encouraged. Additionally, the Director will monitor the effectiveness of, and compliance with, directives issued under ITMRA. The Director will also coordinate the development and review of policy by the Administrator, Office of Information and Regulatory Affairs, with the Office of Federal Procurement Policy.

In light of the passage of ITMRA, and the recognition by the CIO Council that a new regulatory framework is necessary to effect the tenor and tenets of the ITMRA, the FIRMR Transition Committee reviewed the FIRMR (41 CFR Chapter 201) and made recommendations as to provisions of the FIRMR that should be included in the FAR. The language resulting from those recommendations is included in this interim rule.

This interim rule implements ITMRA, the recommendations of the FIRMR Transition Committee, and the goals of transforming acquisition of IT into a results-oriented procurement system which ensures responsibility and accountability of Federal agencies in the use of IT in support of agency missions.

Section 5202 of ITMRA encourages agency heads to use modular contracting or incremental acquisition when acquiring a major information technology system. A proposed rule giving guidance to contracting officers on use of this technique will be developed after publication of this interim rule. Regulation drafters will work closely with industry and contracting agencies to ensure that the proposed rule provides guidance to agencies using this technique.

##### B. Regulatory Flexibility Act

This rule is expected to have a significant beneficial 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 simplifies and streamlines procedures for the acquisition of information technology. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy of the Small Business

Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subparts will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAR Case 96-319), in correspondence.

#### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of OMB 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 compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the ITMRA, passed February 10, 1996, should be effective by August 8, 1996. Regulations should be in effect by that date. However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 2, 5, 7, 8, 9, 12, 15, 16, 17, 19, 22, 32, 33, 34, 37, 38, 39, 45, 46, 51, 52 and 53

Government procurement.

Dated: August 2, 1996.

Edward C. Loeb,  
Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 2, 5, 7, 8, 9, 12, 15, 16, 17, 19, 22, 32, 33, 34, 37, 38, 39, 45, 46, 51, 52, and 53 are amended as set forth below:

1. The authority citation for 48 CFR Parts 2, 5, 7, 8, 9, 12, 15, 16, 17, 19, 22, 32, 33, 34, 37, 38, 39, 45, 46, 51, 52 and 53 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 2—DEFINITIONS OF WORDS AND TERMS

2. Section 2.101 is amended by adding, in alphabetical order, the definitions for "Information technology" and "Major system" to read as follows:

### 2.101 Definitions.

\* \* \* \* \*

*Information technology* means any equipment, or interconnected system(s) or subsystem(s) of equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the agency.

(a) For purposes of this definition, equipment is used by an agency if the equipment is used by the agency directly or is used by a contractor under a contract with the agency which—

(1) Requires the use of such equipment; or

(2) Requires the use, to a significant extent, of such equipment in the performance of a service or the furnishing of a product.

(b) The term *information technology* includes computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources.

(c) The term *information technology* does not include any equipment that is acquired by a contractor incidental to a contract.

*Major system* means that combination of elements that will function together to produce the capabilities required to fulfill a mission need. The elements may include hardware, equipment, software, or any combination thereof, but exclude construction or other improvements to real property. A system shall be considered a major system if—

(a) The Department of Defense is responsible for the system and the total expenditures for research, development, test, and evaluation for the system are estimated to be more than \$75,000,000 (based on fiscal year 1980 constant dollars) or the eventual total expenditure for the acquisition exceeds \$300,000,000 (based on fiscal year 1980 constant dollars);

(b) A civilian agency is responsible for the system and total expenditures for the system are estimated to exceed \$750,000 (based on fiscal year 1980 constant dollars) or the dollar threshold for a "major system" established by the agency pursuant to Office of Management and Budget Circular A-109, entitled "Major System Acquisitions," whichever is greater; or

(c) The system is designated a "major system" by the head of the agency responsible for the system.

\* \* \* \* \*

## PART 5—PUBLICIZING CONTRACT ACTIONS

### 5.207 [Amended]

3. Section 5.207 is amended in paragraph (g)(1) by revising in the table the entry for "Code D" to read "Information technology services, including telecommunications services."; and in (g)(2) by revising in the table the entry for "Code 70" to read "General-purpose information technology equipment."

## PART 7—ACQUISITION PLANNING

4. Section 7.403(b)(1) is revised to read as follows:

### 7.403 General Services Administration assistance.

\* \* \* \* \*

(b) \* \* \*

(1) Center for Strategic IT Analysis (MKS), Washington, DC 20405, for information on acquisition of information technology.

\* \* \* \* \*

## PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

### 8.002 [Amended]

5. Section 8.002 is amended by removing paragraph (d) and redesignating paragraphs (e) through (g) as (d) through (f), respectively.

### 8.402 [Reserved]

6. Section 8.402 is removed and reserved.

7. Subpart 8.9 is added to read as follows:

### Subpart 8.9—Financial Management Systems Software (FMSS) Mandatory Multiple Award Schedule (MAS) Contracts Program

Sec.

8.901 General.

8.902 Policy.

8.903 Exceptions.

8.904 Procedures.

### 8.901 General.

(a) OMB has established a mandatory Governmentwide Financial Management Systems Software (FMSS) program.

(b) Agencies may obtain information and assistance concerning the use of the FMSS MAS contracts program from: General Services Administration, Procurement Services Center (KRB), FMSS Contracting Officer, 18th and F Streets, NW, Washington, DC 20405.

(c) OMB Circular No. A-127, Revised, "Financial Management Systems," provides further policy direction regarding the FMSS program.

**8.902 Policy.**

The FMSS MAS contracts program is mandatory for use by executive agencies for the acquisition of commercial software for core financial systems and for the acquisition of services and support related to the implementation of such software.

**8.903 Exceptions.**

(a) If an executive agency holds a licensing agreement for a software package that is available on the FMSS MAS contracts, and the package was obtained under a contract awarded before the award of the FMSS MAS contracts, the agency's use of the FMSS MAS contracts program is optional for the acquisition of services and support related to the implementation of that package until the previous non-MAS contract expires.

(b) Use of the FMSS MAS contracts program by Federal agencies that are not executive agencies is optional and is subject to the FMSS contractor accepting the order.

(c) An executive agency shall obtain a waiver from GSA if it determines that its requirements for financial management systems software cannot be satisfied through use of the FMSS MAS contracts program.

(1) The request for a waiver shall contain the following information—

(i) A description of the agency's requirements;

(ii) The reasons the FMSS MAS contracts program does not satisfy the requirements; and

(iii) A description of how the agency proposes to satisfy its needs for financial management system software.

(2) Agencies shall send waiver requests to GSA at the address in 8.901(b).

**8.904 Procedures.**

(a) The contracting officer shall announce the agency's requirements in a letter of interest (LOI) to all contractors participating in the FMSS MAS contracts program.

(b) At the time of issuance, the contracting officer shall provide a copy of the LOI to—

(1) GSA at the address in 8.901(b);

(2) OMB at: Office of Federal Financial Management, Federal Financial Systems Branch, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503; and

(3) Department of Treasury at: Division of Financial Management, Financial Management Service, Department of the Treasury, PG Center #2, Room 800A, Hyattsville, MD 20782.

(c) The LOI shall—

(1) Contain sufficient information to enable a competitive acquisition under the FMSS MAS contracts program;

(2) Include instructions to the FMSS MAS contractors for responding to the LOI; and

(3) Include evaluation and award factors.

(d) The agency shall conduct an analysis of the offerings of the FMSS MAS contractors and issue a delivery order to the contractor that provides the most advantageous alternative to the Government.

(e) The contracting officer may issue single or multiple delivery orders to satisfy the total requirement.

(f) The contracting officer shall provide a copy of each delivery order, or modification thereto, to OMB and the Department of Treasury at the address shown in paragraph (b) of this section and to GSA at the address in 8.901(b).

**PART 9—CONTRACTOR QUALIFICATIONS**

8. Section 9.508(e) is revised to read as follows:

**9.508 Examples.**

\* \* \* \* \*

(e) Before an acquisition for information technology is conducted, Company A is awarded a contract to prepare data system specifications and equipment performance criteria to be used as the basis for the equipment competition. Since the specifications are the basis for selection of commercial hardware, a potential conflict of interest exists. Company A should be excluded from the initial follow-on information technology hardware acquisition.

\* \* \* \* \*

**PART 12—ACQUISITION OF COMMERCIAL ITEMS**

9. Section 12.603(c)(2)(xiii) is revised to read as follows:

**12.603 Streamlined solicitation for commercial items.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(xiii) A statement regarding any additional contract requirement(s) or terms and conditions (such as contract financing arrangements or warranty requirements) determined by the contracting officer to be necessary for this acquisition and consistent with customary commercial practices.

\* \* \* \* \*

**PART 13—SIMPLIFIED ACQUISITION PROCEDURES****13.103 [Amended]**

10. Section 13.103 is amended by removing "GSA Nonmandatory Schedule Contracts for FIP Resources," in paragraph (a).

11. Section 13.202(c)(3) is revised to read as follows:

**13.202 Establishment of blanket purchase agreements (BPA's).**

\* \* \* \* \*

(c) \* \* \*

(3) Federal Supply Schedule contractors if not inconsistent with the terms of the applicable schedule contract.

**PART 15—CONTRACTING BY NEGOTIATION****15.805-1 [Amended]**

12. Section 15.805-1(d) is amended in the sixth sentence by removing "the FIRMR", and by removing "regulatory" and inserting "regulations" in its place.

**PART 16—TYPES OF CONTRACTS**

13. Section 16.500 is amended by revising the fourth and fifth sentences to read as follows:

**16.500 Scope of subpart.**

\* \* \* Therefore, GSA regulations and the coverage for the Federal Supply Schedule program in subpart 8.4 and part 38 take precedence over this subpart. This subpart may be used to acquire information technology requirements that are not satisfied under the Federal Supply Schedule program. \* \* \*

**PART 17—SPECIAL CONTRACTING METHODS**

14. Section 17.200 is revised to read as follows:

**17.200 Scope of subpart.**

This subpart prescribes policies and procedures for the use of option solicitation provisions and contract clauses. Except as provided in agency regulations, this subpart does not apply to contracts for (a) services involving the construction, alteration, or repair (including dredging, excavating, and painting) of buildings, bridges, roads, or other kinds of real property; (b) architect-engineer services; and (c) research and development services. However, it does not preclude the use of options in those contracts.

15. Section 17.204(e) is amended by removing the last sentence and adding in its place two new sentences to read as follows:

**17.204 Contracts.**

\* \* \* \*

(e) \* \* \* These limitations do not apply to information technology contracts. However, statutes applicable to various classes of contracts, for example, the Service Contract Act (see 22.1002-1), may place additional restrictions on the length of contracts.

\* \* \* \*

**PART 19—SMALL BUSINESS PROGRAMS**

16. Subsection 19.502-1 is amended by revising the last sentence to read as follows:

**19.502-1 Requirements for setting aside acquisitions.**

\* \* \* This requirement does not apply to purchases of \$2,500 or less, or purchases from required sources of supply under Part 8 (e.g., Federal Prison Industries, Committee for Purchase from People Who are Blind or Severely Disabled, and Federal Supply Schedule contracts).

**PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS****22.1006 [Amended]**

17. Section 22.1006(e)(1) is amended by removing the acronym "ADP" and inserting "information technology" in its place.

**PART 32—CONTRACT FINANCING**

18. Section 32.602(h) is revised to read as follows:

**32.602 General.**

\* \* \* \*

(h) Reimbursement of costs, as provided in 33.102(b) and 33.104(h)(1), paid by the Government where a postaward protest is sustained as a result of an awardee's misstatement, misrepresentation, or miscertification.

19. Section 32.603 is revised to read as follows:

**32.603 Applicability.**

Except as otherwise specified, this subpart applies to all debts to the Government arising in connection with contracts and subcontracts for the acquisition of supplies or services, and debts arising from the Government's payment of costs, as provided in 33.102(b) and 33.104(h)(1), where a postaward protest is sustained as a result of an awardee's misstatement, misrepresentation, or miscertification.

**PART 33—PROTESTS, DISPUTES, AND APPEALS**

20. Section 33.102 is amended by revising the first sentence of paragraph (a); in (b)(3)(i) by removing "or GSBICA"; in (c) by removing "or GSBICA" and by removing "90 working" and inserting "100" in its place; and by revising (e). The revised text reads as follows:

**33.102 General.**

(a) Contracting officers shall consider all protests and seek legal advice, whether protests are submitted before or after award and whether filed directly with the agency or the General Accounting Office (GAO). \* \* \*

\* \* \* \*

(e) An interested party wishing to protest is encouraged to seek resolution within the agency (see 33.103) before filing a protest with the GAO, but may protest to the GAO in accordance with GAO regulations (4 CFR part 21).

**33.104 [Amended]**

21. Section 33.104 is amended in paragraph (a)(3)(i) introductory text by removing "35" and inserting "30" in its place, and in paragraph (f) by removing "125" and inserting "100" in its place.

**33.105 [Reserved]**

22. Section 33.105 is removed and reserved.

**PART 34—MAJOR SYSTEM ACQUISITION****34.001 [Amended]**

23. Section 34.001 is amended by removing the definition for "Major system".

**PART 37—SERVICE CONTRACTING**

24. Section 37.202(a) is revised to read as follows:

**37.202 Exclusions.**

\* \* \* \*

(a) Routine information technology services unless they are an integral part of a contract for the acquisition of advisory and assistance services.

\* \* \* \*

**PART 38—FEDERAL SUPPLY SCHEDULE CONTRACTING****38.000 [Amended]**

25. Section 38.000 is amended by removing the second sentence.

26. Part 39 is revised to read as follows:

**PART 39—ACQUISITION OF INFORMATION TECHNOLOGY**

Sec.

39.000 Scope of part.

39.001 Applicability.

39.002 Definitions.

**Subpart 39.1—General**

39.101 Policy.

39.102 Management of risk.

39.103 [Reserved]

39.104 [Reserved]

39.105 Privacy.

39.106 Contract clause.

**39.000 Scope of part.**

This part prescribes acquisition policies and procedures for use in acquiring information technology consistent with other parts of this chapter and OMB Circular No. A-130, Management of Federal Information Resources.

**39.001 Applicability.**

This part applies to the acquisition of information technology by or for the use of agencies except for acquisitions of information technology for national security systems. However, acquisitions of information technology for national security systems shall be conducted in accordance with 40 U.S.C. 1412 with regard to requirements for performance and results-based management; the role of the agency Chief Information Officer in acquisitions; and accountability. These requirements are addressed in OMB Circular No. A-130.

**39.002 Definitions.**

*National security system*, as used in this part, means any telecommunications or information system operated by the United States Government, the function, operation, or use of which—

(a) Involves intelligence activities;

(b) Involves cryptologic activities related to national security;

(c) Involves command and control of military forces;

(d) Involves equipment that is an integral part of a weapon or weapons system; or

(e) Is critical to the direct fulfillment of military or intelligence missions. This does not include a system that is to be used for routine administrative and business applications, such as payroll, finance, logistics, and personnel management applications.

**Subpart 39.1—General****39.101 Policy.**

In acquiring information technology, agencies shall identify their requirements pursuant to OMB Circular A-130, including consideration of

security of resources, protection of privacy, national security and emergency preparedness, accommodations for individuals with disabilities, and energy efficiency. When developing an acquisition strategy, contracting officers should consider the rapidly changing nature of information technology through market research (see part 10) and the application of technology refreshment techniques.

### 39.102 Management of risk.

(a) Prior to entering into a contract for information technology, an agency should analyze risks, benefits, and costs. (See part 7 for additional information regarding requirements definition.) Reasonable risk taking is appropriate as long as risks are controlled and mitigated. Contracting and program office officials are jointly responsible for assessing, monitoring and controlling risk when selecting projects for investment and during program implementation.

(b) Types of risk may include schedule risk, risk of technical obsolescence, cost risk, risk implicit in a particular contract type, technical feasibility, dependencies between a new project and other projects or systems, the number of simultaneous high risk projects to be monitored, funding availability, and program management risk.

(c) Appropriate techniques should be applied to manage and mitigate risk during the acquisition of information technology. Techniques include, but are not limited to: prudent project management; use of modular contracting; thorough acquisition planning tied to budget planning by the program, finance and contracting offices; continuous collection and evaluation of risk-based assessment data; prototyping prior to implementation; post implementation reviews to determine actual project cost, benefits and returns; and focusing on risks and returns using quantifiable measures.

### 39.103–39.104 [Reserved]

### 39.105 Privacy.

Agencies shall ensure that contracts for information technology address protection of privacy in accordance with the Privacy Act (5 U.S.C. 552a) and part 24. In addition, each agency shall ensure that contracts for the design, development, or operation of a system of records using commercial information technology services or information technology support services include the following:

(a) Agency rules of conduct that the contractor and the contractor's employees shall be required to follow.

(b) A list of the anticipated threats and hazards that the contractor must guard against.

(c) A description of the safeguards that the contractor must specifically provide.

(d) Requirements for a program of Government inspection during performance of the contract that will ensure the continued efficacy and efficiency of safeguards and the discovery and countering of new threats and hazards.

### 39.106 Contract clause.

The contracting officer shall insert a clause substantially the same as the clause at 52.239–1, Privacy or Security Safeguards, in solicitations and contracts for information technology which require security of information technology, and/or are for the design, development, or operation of a system of records using commercial information technology services or support services.

## PART 45—GOVERNMENT PROPERTY

### 45.608–1 [Amended]

27. Section 45.608–1 is amended in Table 45–1 under the Screening Category “Special Items” by removing in the second column “Automatic data processing equipment.”, and in the third column by removing “(see 45.608–5(d))” and revising “(see 45.608–5(e))” to read “(see 45.608–5(d))”.

### 45.608–5 [Amended]

28. Section 45.608–5 is amended by removing paragraph (d) and by redesignating paragraph (e) as (d).

## PART 46—QUALITY ASSURANCE

29. Section 46.801 is amended by revising the first sentence of paragraph (a) to read as follows:

### 46.801 Applicability.

(a) This subpart applies to contracts other than those for (1) information technology, including telecommunications, (2) construction, (3) architect-engineer services, and (4) maintenance and rehabilitation of real property. \* \* \*

\* \* \* \* \*

## PART 51—USE OF GOVERNMENT SOURCES BY CONTRACTORS

30. Section 51.103(c) is revised to read as follows:

### 51.103 Ordering from Government supply sources.

\* \* \* \* \*

(c) Contractors placing orders under indefinite delivery contracts issued by GSA for automatic data processing equipment, software and maintenance, communications equipment and supplies, and teleprocessing services shall follow the terms of the applicable contract and the procedures in 51.103(a)(1) and (2).

\* \* \* \* \*

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

31. Section 52.212–5 is amended by revising the clause date; by removing from paragraph (a)(2) “and 40 U.S.C. 759” and from the introductory text of paragraph (b) “and FIRMR”; and by revising (b)(16) and (17) to read as follows:

### 52.212–5 Contract terms and conditions required to implement statutes or executive orders—commercial items.

\* \* \* \* \*

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (Aug. 1996)

\* \* \* \* \*

(b) \* \* \*

\_\_\_\_\_ (16) 52.239–1, Privacy or Security Safeguards (5 U.S.C. 552a).

\_\_\_\_\_ (17) 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels (46 U.S.C. 1241).

\* \* \* \* \*

(End of clause)

32. Section 52.222–48 is amended by revising the section heading, the clause heading and date, and by removing from paragraph (a)(2) “ADP” and inserting “information technology” in its place. The revised text reads as follows:

### 52.222–48 Exemption from Application of Service Contract Act Provisions for Contracts for Maintenance, Calibration, and/or Repair of Certain Information Technology, Scientific and Medical and/or Office and Business Equipment—Contractor Certification.

\* \* \* \* \*

Exemption From Application of Service Contract Act Provisions For Contracts For Maintenance, Calibration, and/or Repair of Certain Information Technology, Scientific and Medical and/or Office and Business Equipment—Contractor Certification (Aug. 1996)

\* \* \* \* \*

(End of clause)

33. Section 52.233–2 is revised to read as follows:

### 52.233–2 Service of Protest.

As prescribed in 33.106(a), insert the following provision:

## Service of Protest (Aug. 1996)

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from \_\_\_\_\_. [Contracting Officer designate the official or location where a protest may be served on the Contracting Officer.]

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

(End of provision)

34. Section 52.233-3 is amended by revising the clause date and the first sentence of paragraph (f) to read as follows:

**52.233-3 Protest after Award.**

\* \* \* \* \*

Protest After Award (Aug. 1996)

\* \* \* \* \*

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. \* \* \*

(End of clause)

\* \* \* \* \*

35. Section 52.239-1 is added to read as follows:

**52.239-1 Privacy or Security Safeguards.**

As prescribed in 39.106, insert a clause substantially the same as the following:

Privacy or Security Safeguards (Aug. 1996)

(a) The Contractor shall not publish or disclose in any manner, without the Contracting Officer's written consent, the details of any safeguards either designed or developed by the Contractor under this contract or otherwise provided by the Government.

(b) To the extent required to carry out a program of inspection to safeguard against threats and hazards to the security, integrity, and confidentiality of Government data, the Contractor shall afford the Government access to the Contractor's facilities, installations, technical capabilities, operations, documentation, records, and databases.

(c) If new or unanticipated threats or hazards are discovered by either the Government or the Contractor, or if existing safeguards have ceased to function, the discoverer shall immediately bring the situation to the attention of the other party. (End of clause)

**PART 53—FORMS**

36. Section 53.245(a) is amended by revising the last sentence to read as follows:

**53.245 Government property.**

\* \* \* \* \*

(a) \* \* \* (See 45.608-2(b)(2) and 45.608-8.)

\* \* \* \* \*

[FR Doc. 96-20187 Filed 8-7-96; 8:45 am]

BILLING CODE 6820-EP-P

**DEPARTMENT OF DEFENSE****GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Part 9**

[FAC 90-41, FAR Case 96-320, Item II]

RIN 9000-AHXX

**Federal Acquisition Regulation; Compliance With Immigration and Nationality Act Provisions**

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

**ACTION:** Interim rule with request for comment.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule amending the Federal Acquisition Regulation (FAR) Part 9 to implement Executive Order 12989 of February 13, 1996, Economy and Efficiency in Government Procurement Through Compliance With Certain Immigration and Nationality Act Provisions. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

**DATES:** Effective Date: August 8, 1996.

**Comment Date:** Comments should be submitted to the FAR Secretariat at the address shown below on or before October 7, 1996 to be considered in the formulation of a final rule.

**ADDRESSES:** Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRs), 18th & F Streets, NW, Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405. Please cite FAC 90-41, FAR case 96-320, in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ralph DeStefano at (202) 501-1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-41, FAR case 96-320.

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

Executive Order 12989, Economy and Efficiency in Government Procurement Through Compliance With Certain Immigration and Nationality Act Provisions, was signed on February 13, 1996. The Executive Order provides that a contractor may be debarred upon a determination by the Attorney General that the contractor is not in compliance with the employment provisions of the Immigration and Nationality Act (INA). This interim rule revises FAR 9.406-2, to specify that such a determination by the Attorney General is a basis for debarment, and 9.406-4, to stipulate the duration of the debarment mandated by the Executive order.

**B. Regulatory Flexibility Act**

This interim rule is not expected to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Only a small number of Federal contractors are likely to be the subject of a determination, by the Attorney General, that they are not in compliance with the employment provisions of the Immigration and Nationality Act. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAR Case 96-320), in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of OMB 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 compelling