

of the National Aeronautics and Space Administration that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to ensure that Federal agencies do not procure non-compliant information technology products that would otherwise require premature replacement or costly repairs to make them Year 2000 compliant before December 31, 1999. 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 39 and 52

Government procurement.

Dated: December 24, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 39 and 52 are amended as set forth below:

#### **PART 39—ACQUISITION OF INFORMATION TECHNOLOGY**

1. The authority citation for 48 CFR Parts 39 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).

2. Section 39.002 is amended by adding, in alphabetical order, the definition "Year 2000 compliant" to read as follows:

##### **39.002 Definitions.**

\* \* \* \* \*

Year 2000 compliant means information technology that accurately processes date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations. Furthermore, Year 2000 compliant information technology, when used in combination with other information technology, shall accurately process date/time data if the other information technology properly exchanges date/time data with it.

##### **39.106 [Redesignated as 39.107]**

3. Section 39.106 is redesignated as 39.107, and a new section 39.106 is added to read as follows:

##### **39.106 Year 2000 compliance.**

When acquiring information technology that will be required to perform date/time processing involving dates subsequent to December 31, 1999, agencies shall ensure that solicitations and contracts—

(a)(1) Require the information technology to be Year 2000 compliant; or

(2) Require that non-compliant information technology be upgraded to be Year 2000 compliant prior to the earlier of

(i) the earliest date on which the information technology may be required to perform date/time processing involving dates later than December 31, 1999, or

(ii) December 31, 1999; and

(b) As appropriate, describe existing information technology that will be used with the information technology to be acquired and identify whether the existing information technology is Year 2000 compliant.

#### **PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

##### **52.239-1 [Amended]**

4. Section 52.239-1 is amended in the introductory text by revising "39.106" to read "39.107".

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#### **48 CFR Part 42**

[FAC 90-45; FAR Case 96-324; Item XV]

RIN 9000-AH52

#### **Federal Acquisition Regulation; Limitation on Indirect Cost Audits**

**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 have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) implementing Section 808 of the FY 97 Defense Authorization Act (Pub. L. 104-201), which expands required audit reciprocity among Federal agencies to include post-award audits. 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.

**EFFECTIVE DATE:** January 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jerry Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-45, FAR case 96-324.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

This FAR change implements Section 808 of the Fiscal Year 1997 National Defense Authorization Act (Public Law 104-201). Section 808 amends 10 U.S.C. 2313(d) and 41 U.S.C. 254d(d) to expand required audit reciprocity among Federal agencies to include post-award audits. Section 808 was effective September 23, 1996. 10 U.S.C. 2313(d) and 41 U.S.C. 254d(d) were added by the Federal Acquisition Streamlining Act of 1994, Sections 2201(a)(1) and 2251(a) (Public Law 103-355), to include reciprocity on pre-award audits.

##### **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, 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.* (FAC 90-45, FAR case 96-324), 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 the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 42

Government procurement.

Dated: December 24, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 42 amended as set forth below:

#### **PART 42—CONTRACT ADMINISTRATION**

1. The authority citation for 48 CFR Part 42 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. Section 42.703-1 is amended by revising paragraph (a) to read as follows:

##### **42.703-1 Policy.**

(a) A single agency (see 42.705-1(a)) shall be responsible for establishing indirect cost rates for each business unit. These rates shall be binding on all agencies and their contracting offices, unless otherwise specifically prohibited

by statute. An agency shall not perform an audit of indirect cost rates when the contracting officer determines that the objectives of the audit can reasonably be met by accepting the results of an audit that was conducted by any other department or agency of the Federal Government (10 U.S.C. 2313(d) and 41 U.S.C. 254d(d)).

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[FR Doc. 96-33219 Filed 12-31-96; 8:45 am]

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## 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 as the Federal Acquisition Regulation (FAR) Council. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the

Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 90-45 which amend the FAR. The rules marked with an asterisk (\*) are those for which a final regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Further information regarding these rules may be obtained by referring to FAC 90-45 which precedes this notice. This document may be obtained from the Internet at <http://www.gsa.gov/far/SECG>.

**FOR FURTHER INFORMATION CONTACT:** Beverly Fayson, FAR Secretariat, (202) 501-4755.

#### SUPPLEMENTARY INFORMATION:

### LIST OF RULES IN FAC 90-45

Item	Subject	FAR case	Analyst
I*	Procurement Integrity .....	96-314	Linfield.
II *	Certification Requirements .....	96-312	O'Neill.
III .....	Humanitarian Operations .....	96-323	Linfield.
IV .....	Freedom of Information Act .....	96-326	O'Neill.
V .....	Exceptions to Requirements for Certified Cost or Pricing Data .....	96-306	Olson.
VI *	Implementation of the North American Free Trade Agreement Implementation Act .....	93-310	Linfield
VII *	Application of Special Simplified Procedures to Certain Commercial Items .....	96-307	Moss.
VIII .....	Compliance with Immigration and Nationality Act Provisions .....	96-320	Linfield.
IX .....	Caribbean Basin and Designated Countries .....	96-017	Linfield.
X .....	Caribbean Basin Country End Products—Renewal of Treatment as Eligible .....	96-020	Linfield.
XI .....	Compensation of Certain Contractor Personnel (Interim) .....	96-325	DeStefano.
XII *	Agency Procurement Protests .....	95-309	O'Neill.
XIII *	Two-Phase Design Build Selection Procedures .....	96-305	O'Neill.
XIV .....	Year 2000 Compliance (Interim) .....	96-607	O'Neill.
XV .....	Limitation on Indirect Cost Audits .....	96-324	Olson.

#### Item I—Procurement Integrity (FAR Case 96-314)

This final rule amends the FAR to implement the procurement integrity provisions of Section 27 of the Office of Federal Procurement Policy (OFPP) Act, as amended by Section 4304 of the 1996 National Defense Authorization Act. Section 4304 is part of the Clinger-Cohen Act of 1996. Section 3.104 is rewritten. Unlike the previous statute, some of the post-employment restrictions in the rewritten 3.104 apply to post-award activities. The final rule eliminates all of the procurement integrity certifications required by the previous statute.

The final rule makes other significant changes. The new post-employment restrictions apply to services provided or decisions made on or after January 1, 1997; the old restrictions apply for former officials whose employment ended before January 1, 1997. The clause at 52.203-10 is revised. The clauses at 52.203-9 and 52.203-13, and the Optional Form 333 at 53.202-1, are

removed. The solicitation provision at 52.203-8 is replaced with a new clause to provide the means to void or rescind contracts where there has been a violation of the procurement integrity restrictions.

#### Item II—Certification Requirements (FAR Case 96-312)

This final rule amends FAR Parts 1, 3, 4, 6, 8, 9, 12, 14, 16, 19, 23, 27, 29, 31, 32, 36, 37, 42, 45, 47, 49, 52, and 53 to remove certain certification requirements for contractors and offerors that are not specifically required by statute. The rule implements Section 4301(b) of the Clinger-Cohen Act of 1996 (Public Law 104-106).

#### Item III—Humanitarian Operations (FAR Case 96-323)

This final rule amends the definition of "simplified acquisition threshold" at FAR 2.101 to increase the threshold to \$200,000 for contracts to be awarded and performed, or purchases to be made, outside the United States in

support of a humanitarian or peacekeeping operation. The rule implements 10 U.S.C. 2302(7) and 41 U.S.C. 259(d) as amended by Section 807 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201).

#### Item IV—Freedom of Information Act (FAR Case 96-326)

This final rule amends FAR Subpart 24.2 to implement Section 821 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201). Section 821 prohibits, with certain exceptions, Government release of competitive proposals under the Freedom of Information Act.

#### Item V—Exceptions to Requirements for Certified Cost or Pricing Data (FAR Case 96-306)

This final rule implements Section 4201 of the Clinger-Cohen Act of 1996 (Public Law 104-106). Section 4201: (1) Exempts suppliers of commercial items under Federal contracts from the requirement to submit costs or pricing