

regulations have been removed from FAR part 30 and promulgated separately by the CASB in 48 CFR Chapter 99.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 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 should cite 5 U.S.C. 601, *et seq.* (FAC 97-03, FAR case 97-014), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the change to the FAR does 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 1

Government procurement.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR part 1 is amended as set forth below:

PART 1—FEDERAL ACQUISITION REGULATION SYSTEM

1. The authority citation for 48 CFR part 1 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 1.402 is amended by revising the penultimate sentence to read as follows:

1.402 Policy.

* * * Deviations are not authorized with respect to 30.201-3 and 30.201-4, or the requirements of the Cost Accounting Standards Board (CASB) rules and regulations (48 CFR Chapter 99 (FAR Appendix)). * * *

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 5, 7, 8, 9, 12, 13, 16, 17, 19, 22, 32, 33, 34, 37, 38, 39, 45, 46, 51, 52, and 53

[FAC 97-03; FAR Case 96-319; Item II]

RIN 9000-AH75

Federal Acquisition Regulation; Information Technology Management Reform Act of 1996

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

ACTION: Interim rule adopted as final with change.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to adopt as final, with change, the interim rule published as Item I of Federal Acquisition Circular 90-41 on August 8, 1996. The rule amends the Federal Acquisition Regulation (FAR) to implement the Information Technology Management Reform Act (ITMRA) of 1996, Division E of Pub. L. 104-106. 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: February 9, 1998.

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 97-03, FAR case 96-319.

SUPPLEMENTARY INFORMATION:

A. Background

An interim rule was published in the **Federal Register** at 61 FR 41467, August 8, 1996. Twelve comments from four respondents were received during the public comment period. All comments were considered in the development of the final rule. In response to public comments on the interim rule, the definition of "information technology" at FAR 2.101 has been clarified.

B. Regulatory Flexibility Act

A Final Regulatory Flexibility Analysis (FRFA) has been prepared and

will be provided to the Chief Counsel for Advocacy of the Small Business Administration. The analysis is summarized as follows:

ITMRA requires a simplified, clear, and understandable process in the FAR for acquiring information technology. No issues were raised in response to the Initial Regulatory Flexibility Analysis. The rule applies to all entities, large and small, that propose to perform, or are awarded, Government contracts for information technology. There are no statistics available on the exact number of small businesses that submit bids or proposals for contracts for information technology. However, based on information provided by the Federal Procurement Data System, a total of 29,879 awards were made to small businesses during fiscal year 1996 under information technology product codes with a total dollar value of \$4,443,176,000. The rule imposes no new reporting, recordkeeping, or other compliance requirements. There are no practical alternatives that will effectively implement ITMRA. The final rule simplifies and streamlines the process of acquiring information technology, and minimizes the economic burden of such acquisitions, while expanding opportunities for small entities to participate in Federal information technology contracts.

A copy of the FRFA may be obtained from the FAR Secretariat.

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 Parts 2, 5, 7, 8, 9, 12, 13, 16, 17, 19, 22, 32, 33, 34, 37, 38, 39, 45, 46, 51, 52, and 53

Government procurement.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final With Change

Accordingly, the interim rule amending 48 CFR Parts 2, 5, 7, 8, 9, 12, 13, 16, 17, 19, 22, 32, 33, 34, 37, 38, 39, 45, 46, 51, 52, and 53, which was published at 61 FR 41467, August 8, 1996, is adopted as a final rule with the following change:

PART 2—DEFINITIONS OF WORDS AND TERMS

1. The authority citation for 48 CFR Part 2 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 2.101 is amended in the definition of "Information technology" by revising paragraph (c) to read as follows:

2.101 Definitions.

* * * * *

Information technology * * *

* * * * *

(c) The term *information technology* does not include—

(1) Any equipment that is acquired by a contractor incidental to a contract; or

(2) Any equipment that contains imbedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment such as thermostats or temperature control devices, and medical equipment where information technology is integral to its operation, are not information technology.

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DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Parts 4, 42, and 52

[FAC 97-03; FAR Case 95-017; Item III]

RIN 9000-AG87

**Federal Acquisition Regulation; Final
Overhead Settlement**

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 amending the Federal Acquisition Regulation (FAR) to improve the process of final settlement of contractor overhead rates. 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: February 9, 1998.

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 Klein, Procurement Analyst, at (202) 501-3775. Please cite FAC 97-03, FAR case 95-017.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Parts 4, 42, and 52 to improve the process of final settlement of contractor indirect cost rates under cost-reimbursement contracts by—

- Extending the time period within which a contractor must submit an indirect cost rate proposal from 90 days to 6 months after the end of the contractors fiscal year;
- Permitting extensions to the 6-month time period for exceptional circumstances only; and
- Providing a specific reference to the Defense Contract Audit Agency pamphlet that contains guidance on what generally constitutes an adequate final indirect cost rate proposal and supporting data.

A proposed rule was published in the **Federal Register** on July 29, 1996 (61 FR 39518). Fourteen sources submitted comments. All comments were considered in the development of the final rule.

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 most contracts awarded to small entities are awarded on a competitive, fixed-price basis and do not require settlement of contractor indirect cost rates.

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 Parts 4, 42, and 52

Government procurement.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 4, 42, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 4, 42, 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 4—ADMINISTRATIVE MATTERS

4.703 [Amended]

2. Section 4.703 is amended in paragraph (b)(3) by removing "90-day" each time it appears (twice).

**PART 42—CONTRACT
ADMINISTRATION**

3. Section 42.705-1 is amended by revising paragraph (b)(1) to read as follows:

42.705-1 Contracting officer determination procedure.

* * * * *

(b) *Procedures.* (1) In accordance with the Allowable Cost and Payment clause at 52.216-7 or 52.216-13, the contractor shall submit to the contracting officer and to the cognizant auditor a final indirect cost rate proposal. The required content of the proposal and supporting data will vary depending on such factors as business type, size, and accounting system capabilities. The contractor, contracting officer, and auditor must work together to make the proposal, audit, and negotiation process as efficient as possible. Accordingly, each contractor shall submit an adequate proposal to the contracting officer and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the contractor and granted in writing by the contracting officer. A contractor shall support its proposal with adequate supporting data. For guidance on what generally constitutes an adequate final indirect cost rate proposal and supporting data, contractors should refer to the Model Incurred Cost Proposal in Chapter 5 of the Defense Contract Audit Agency Pamphlet (DCAAP) No. 7641.90, Information for Contractors. The Model can be obtained by—

(i) Contacting Internet address <http://www.dtic.mil/dcaa>;

(ii) Sending a telefax request to Headquarters DCAA, ATTN: CMO, Publications Officer, at (703) 767-1061;

(iii) Sending an E-Mail request to *CMO@hql.dcaa.mil; or