

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 it only affects a limited number of products from a few Caribbean Basin countries. The Berry Amendment (formerly at 10 U.S.C. 2241, note, but recently codified at 10 U.S.C. 2533a) still prohibits the Department of Defense from buying most of the textile and apparel articles receiving duty-free treatment under this Act.

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.*

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: November 12, 2002.

Al Matera,

Director, Acquisition Policy Division.

Interim Rule Adopted as Final With Changes

Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR parts 25 and 52, which was published in the **Federal Register** at 67 FR 6116, February 8, 2002, as a final rule with the following changes:

1. The authority citation for 48 CFR parts 25 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 25—FOREIGN ACQUISITION

25.003 [Amended]

2. Amend section 25.003 in the definition “Caribbean Basin country” by adding “Honduras,” after “Haiti,”.

25.400 [Amended]

3. Amend section 25.400 in paragraph (a)(2) by removing “, Honduras,”.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.225–5 [Amended]

4. Amend section 52.225–5 in the clause heading by removing “(Feb 2002)” and adding “(Nov 2002)” in its place; and in paragraph (a) in the definition “Caribbean Basin country”, by adding “Honduras,” after “Haiti,”. [FR Doc. 02–29091 Filed 11–21–02; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 32 and 52

[FAC 2001–10; FAR Case 2000–007; Item IV]

RIN 9000–AI92

Federal Acquisition Regulation; Financing Policies

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 (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to permit the use of performance-based payments type of financing on fixed-price contracts prior to definitization, and to revise the criteria governing when a prime contractor can bill the Government for costs incurred, but not yet paid, for supplies and services purchased directly for the contract and for associated subcontractor financing payment requests.

DATES: Effective Date: December 23, 2002.

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 Mr. Jeremy Olson at (202) 501–3221. Please cite FAC 2001–10, FAR case 2000–007.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 56454, September 18, 2000. The proposed rule—

- Revised the requirement at FAR 32.1003(b) to permit performance-based payments type of financing on fixed-price contracts prior to definitization;
- Completely removed the “paid cost rule” restriction from the payment clauses at FAR 52.216–26, Payments of Allowable Costs Before Definitization, and FAR 52.232–7, Payments under Time-and-Materials and Labor-Hour Contracts. The “paid cost rule” is the requirement that a large business must actually pay (not just incur) costs for

supplies and services purchased directly for the contract and financing payments to subcontractors before including the payments in its billings to the Government. A final rule under FAR case 1998–400 was published in the **Federal Register** at 65 FR 16274, March 27, 2000. The intent of that final rule was to remove this restriction from all the payment clauses if contractors met certain conditions. Inadvertently, this restriction was not removed in its entirety from FAR 52.216–26(d)(2) and FAR 52.232–7(b)(3). The proposed rule published under this FAR case 2000–007 corrected this oversight and the rule—

- Established, for both cost-reimbursement and fixed-price contracts, a standard time period of 30 days that contractors have to pay their subcontractors after the contractors have billed the Government for incurred subcontractor costs. As indicated in the previous paragraph, the final rule under FAR case 1998–400 amended the FAR to permit a large business to include, in its billings, certain costs that it had incurred but not actually paid, if the following conditions were met: The unpaid amounts were paid (1) in accordance with the terms and conditions of a subcontract or invoice; and (2) ordinarily prior to the submission of the contractor’s next payment request to the Government. The second condition permitted a large business to submit cost vouchers on a cost-reimbursement contract every 14 days, but the large business could bill no more frequently than every 30 days when billing progress payments on a fixed-price contract. Therefore, contractors may need to maintain several systems and procedures to accommodate the timing differences for payments to subcontractors, depending on whether the costs are billed on a cost-reimbursement or fixed-price type prime contract. To eliminate the timing differences, the proposed FAR rule revised the second condition to establish a single standard time period of 30 days; and

- Made several editorial changes.
- Four respondents submitted public comments to the proposed rule. The Councils considered all comments when developing the final rule which differs from the proposed rule with regard to when a contractor can bill the Government for supplies and services purchased directly for the contract and associated financing payment requests received from their subcontractors that have not yet been paid for by the prime contractors. As amended by this final rule, the contractor can bill the Government when contractor payment

for the amount determined due the supplier or subcontractor is scheduled to be made within 30 days of the submission of the contractor's current payment request to the Government. The Councils believe that a 30-day float period for the prime contractor represents a reasonable time period and do not believe it would be in the best interests of the Government or subcontractors to effectively encourage float periods in excess of 30 days.

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 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.* Most contracts awarded to small entities have a dollar value less than the simplified acquisition threshold and, therefore, do not have the progress payment or performance-based payment type of financing. In addition, the "paid cost rule" restriction does not apply to small entities.

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.*

List of Subjects in 48 CFR Parts 32 and 52

Government procurement.

Dated: November 12, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 32 and 52 as set forth below:

1. The authority citation for 48 CFR parts 32 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 32—CONTRACT FINANCING

2. Amend section 32.504 by revising the introductory text of paragraph (b) and paragraph (b)(2) to read as follows:

32.504 Subcontracts under prime contracts providing progress payments.

(b) The contractor's requests for progress payments may include the full amount of commercial item purchase financing payments, performance-based payments, or progress payments to a subcontractor, whether paid or unpaid, provided that unpaid amounts are limited to amounts determined due and that the contractor will pay—

(2) Ordinarily within 30 days of the submission of the contractor's progress payment request to the Government.

3. Amend section 32.1003 by revising the introductory text and paragraph (b) to read as follows:

32.1003 Criteria for use.

The contracting officer may use performance-based payments only if the following conditions are met:

(b) The contract is a fixed-price type contract; and

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Amend section 52.216–7 by revising the date of the clause; and by revising the introductory text of paragraph (b)(1)(ii)(A) and paragraph (b)(1)(ii)(A)(2) to read as follows:

52.216–7 Allowable Cost and Payment.

Allowable Cost and Payment (Dec. 2002)

(b) *Reimbursing costs.* (1) * * *

(ii) * * *

(A) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments determined due will be made—

(2) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government;

5. Amend section 52.216–26 by revising the date of the clause, the introductory text of paragraph (d)(2)(i), and paragraph (d)(2)(i)(B) to read as follows:

52.216–26 Payments of Allowable Costs Before Definitization.

Payments of Allowable Costs Before Definitization (Dec 2002)

(d) * * *

(2) * * *

(i) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments determined due will be made—

(B) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government;

6. Amend section 52.232–7 by revising the date of the clause, and paragraphs (b)(3) and (b)(4)(ii) to read as follows:

52.232–7 Payments under Time-and-Materials and Labor-Hour Contracts.

Payments Under Time-and-Materials and Labor-Hour Contracts (Dec 2002)

(b) * * *

(3) The Government will reimburse the Contractor for supplies and services purchased directly for the contract when the Contractor—

(i) Has made payments of cash, checks, or other forms of payment for these purchased supplies or services; or

(ii) Will make these payments determined due—

(A) In accordance with the terms and conditions of a subcontract or invoice; and

(B) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government.

(4)(i) * * *

(ii) The Government will limit reimbursable costs in connection with subcontracts to the amounts paid for supplies and services purchased directly for the contract when the Contractor has made or will make payments determined due of cash, checks, or other forms of payment to the subcontractor—

(A) In accordance with the terms and conditions of a subcontract or invoice; and

(B) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government.

7. Amend section 52.232–16 by revising the date of the clause, the introductory text of paragraph (a)(2), and paragraph (a)(2)(ii) to read as follows:

52.232–16 Progress Payments.

Progress Payments (Dec 2002)

(a) * * *

(2) The amount of financing and other payments for supplies and services purchased directly for the contract are limited to the amounts that have been paid by cash, check, or other forms of payment, or that are determined due and will be paid to subcontractors—

(ii) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 7 and 19

[FAC 2001-10; Item V]

Federal Acquisition Regulation; Technical Amendments

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

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation (FAR) in order to update references and make editorial changes.

DATES: *Effective Date:* November 22, 2002.

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. Please cite FAC 2001-10, Technical Amendments.

List of Subjects in 48 CFR Parts 7 and 19

Government procurement.

Dated: November 12, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 7 and 19 as set forth below:

1. The authority citation for 48 CFR parts 7 and 19 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 7—ACQUISITION PLANNING

2. Amend section 7.105 by adding a sentence to the end of paragraph (b)(4)(i) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) * * *

(4) *Acquisition considerations.* (i) * * * Provide rationale if a performance-based contract will not be used or if a performance-based contract for services is contemplated on other than a firm-fixed-price basis (see 37.102(a) and 16.505(a)(3)).

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PART 19—SMALL BUSINESS PROGRAMS

19.502-2 [Amended]

3. Amend section 19.502-2 in the first sentence of paragraph (a) by removing “13.202(g)” and adding “13.201(g)” in its place.

[FR Doc. 02-29093 Filed 11-21-02; 8:45 am]

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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 (Public Law 104-121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2001-10 which amend 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 2001-10 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.

LIST OF RULES IN FAC 2001-10

Item	Subject	FAR case	Analyst
I	General Records Schedule	2002-016	Nelson
II	Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal And Federally Funded Construction Projects.	2001-016	Nelson
III	Caribbean Basin Country End Products	2000-306	Davis
IV	Financing Policies	2000-007	Olson
V	Technical Amendments.		

Item I—General Records Schedule (FAR Case 2002-016)

This final rule amends the FAR to reflect the previous language of FAR 4.705-2 exactly as it was written prior to revision of this subsection by FAC 97-18, Item IV, General Records Schedule (FAR case 1999-615) published in the **Federal Register** on

June 6, 2000 (65 FR 36012). It was brought to the attention of the Councils that the prior change to FAR 4.705-2 made in FAC 97-18 inadvertently resulted in longer record retention periods for contractors and subcontractors. This final rule—

- Revises the subsection title of FAR 4.705-2 to read “Pay administration

records” instead of “Construction contract pay administration records,” thus, making all record retention requirements in the entire subsection applicable to all contracts rather than limiting it to construction contracts;

- Revises FAR 4.705-2(a) to change from a record retention period of 3 years after completion of contract unless