

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Parts 1 and 52

[FAC 97-18; FAR Case 1999-610; Item II]

RIN 9000-A166

Federal Acquisition Regulation; FAR
Drafting Principles

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 add FAR drafting principles to enhance a common understanding of the regulation among all members of the acquisition team and other users.

DATES: *Effective Date:* August 7, 2000.

Applicability Date: The FAR, as amended by this rule, is applicable to solicitations issued on or after August 7, 2000.

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. Ralph De Stefano, Procurement Analyst, at (202) 501-1758. Please cite FAC 97-18, FAR case 1999-610.

SUPPLEMENTARY INFORMATION:

A. Background

The final rule amends FAR Parts 1 and 52 to enhance a common understanding of how the FAR is drafted. The final rule adds FAR 1.108 and amends 1.105-2, 52.101, 52.104, 52.105, and 52.200 to reflect current FAR drafting conventions.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** on January 26, 2000 (65 FR 4346). Three respondents provided public comments. The Councils considered all the comments in the development of the final rule. The final rule revises the proposed rule as follows:

- FAR 1.108(d)(2) to clarify that contracting officers must not award or modify contracts to include the FAR change until the effective date of the FAR change.

- FAR 1.108(e) to include Executive orders, Office of Management and Budget policy letters, and Code of Federal Regulations citations.

- **Editorial changes throughout for clarity.**

This rule was not subject to Office of Management and Budget 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.*, because the rule only addresses drafting principles and does not impose any additional requirements on Government offerors or contractors. We did not receive any comments regarding this determination as a result of publication of the proposed rule in the **Federal Register** on January 26, 2000 (65 FR 4346).

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 1 and 52

Government procurement.

Dated: May 26, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1 and 52 as set forth below:

1. The authority citation for 48 CFR parts 1 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 1—FEDERAL ACQUISITION
REGULATIONS SYSTEM

2. Amend section 1.105-2 by revising paragraphs (a) and (b)(2) to read as follows:

1.105-2 Arrangement of regulations.

(a) *General.* The FAR is divided into subchapters, parts (each of which covers a separate aspect of acquisition), subparts, sections, and subsections.

(b) * * *

(2) Subdivisions below the section or subsection level consist of parenthetical alpha numerics using the following sequence: (a)(1)(i)(A)(1)(i).

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3. Add section 1.108 to read as follows:

1.108 FAR conventions.

The following conventions provide guidance for interpreting the FAR:

(a) *Words and terms.* Definitions in Part 2 apply to the entire regulation unless specifically defined in another part, subpart, section, provision, or clause. Words or terms defined in a specific part, subpart, section, provision, or clause have that meaning when used in that part, subpart, section, provision, or clause. Undefined words retain their common dictionary meaning.

(b) *Delegation of authority.* Each authority is delegable unless specifically stated otherwise (see 1.102-4(b)).

(c) *Dollar thresholds.* Unless otherwise specified, a specific dollar threshold for the purpose of applicability is the final anticipated dollar value of the action, including the dollar value of all options. If the action establishes a maximum quantity of supplies or services to be acquired or establishes a ceiling price or establishes the final price to be based on future events, the final anticipated dollar value must be the highest final priced alternative to the Government, including the dollar value of all options.

(d) *Application of FAR changes to solicitations and contracts.* Unless otherwise specified—

(1) FAR changes apply to solicitations issued on or after the effective date of the change;

(2) Contracting officers may, at their discretion, include the FAR changes in solicitations issued before the effective date, provided award of the resulting contract(s) occurs on or after the effective date; and

(3) Contracting officers may, at their discretion, include the changes in any existing contract with appropriate consideration.

(e) *Citations.* When the FAR cites a statute, Executive order, Office of Management and Budget circular, Office of Federal Procurement Policy policy letter, or relevant portion of the Code of Federal Regulations, the citation includes all applicable amendments, unless otherwise stated.

(f) *Imperative sentences.* When an imperative sentence directs action, the contracting officer is responsible for the action, unless another party is expressly cited.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Amend section 52.101 in paragraph (a) by revising the definition “Substantially as follows”; and by revising paragraph (d) to read as follows:

52.101 Using Part 52.

(a) * * *

Substantially as follows or *substantially the same as*, when used in the prescription of a provision or clause, means that authorization is granted to prepare and utilize a variation of that provision or clause to accommodate requirements that are peculiar to an individual acquisition. Any variation must include the salient features of the FAR provision or clause, and must be consistent with the intent, principle, and substance of the FAR provision or clause or related coverage of the subject matter.

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(d) *Introductory text.* Within Subpart 52.2, the introductory text of each provision or clause includes a cross-reference to the location in the FAR subject text that prescribes its use.

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5. Amend section 52.104 by revising paragraph (a) to read as follows:

52.104 Procedures for modifying and completing provisions and clauses.

(a) The contracting officer must not modify provisions and clauses unless the FAR authorizes their modification. For example—

(1) “The contracting officer may use a period shorter than 60 days (but not less than 30 days) in paragraph (x) of the clause”; or

(2) “The contracting officer may substitute the words ‘task order’ for the word ‘Schedule’ wherever that word appears in the clause.”

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6. Amend section 52.105 by revising paragraph (a) to read as follows:

52.105 Procedures for using alternates.

(a) The FAR accommodates a major variation in a provision or clause by use of an alternate. The FAR prescribes alternates to a given provision or clause in the FAR subject text where the provision or clause is prescribed. The alternates to each provision or clause are titled “Alternate I,” “Alternate II,” “Alternate III,” etc.

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7. Revise section 52.200 to read as follows:

52.200 Scope of subpart.

This subpart sets forth the text of all FAR provisions and clauses (see 52.101(b)(1)) and gives a cross-reference to the location in the FAR that prescribes the provision or clause.

[FR Doc. 00–13818 Filed 6–1–00; 3:59 pm]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 7, 11, 13, 23, and 52

[FAC 97–18; FAR Case 1998–015 (98–015); Item III]

RIN 9000–AI49

Federal Acquisition Regulation; Requirements Supporting Procurement of Recycled Products and Environmentally Preferable Services

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 implement Executive Order (E.O.) 13101, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, dated September 14, 1998. **DATES:** *Effective Date:* August 7, 2000.

Applicability Date: The FAR, as amended by this rule, is applicable to solicitations issued on or after August 7, 2000.

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. Paul Linfield, Procurement Analyst, at (202) 501–1757. Please cite FAC 97–18, FAR case 1998–015.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 64 FR 51656, September 23, 1999. Seven respondents provided public comments. We considered all comments in finalizing the rule.

This rule amends the FAR to implement E.O. 13101. The rule amends guidance in FAR Subpart 7.1, 11.002(d), Subpart 23.4, Subpart 23.7, and the FAR clauses at 52.223–9 and 52.223–10 to conform with E.O. 13101 and the Resource Conservation and Recovery Act. The rule—

- Revises FAR Subpart 7.1 to ensure that requirements for printing and writing paper meet minimum content requirements specified in the E.O.;
- Revises Subpart 11.3 to add definitions and special requirements to implement E.O. requirements and Environmental Protection Agency (EPA) regulations governing acquisitions of printing and writing paper, and to clarify that contracting officers may include in solicitations additional information requirements when needed to determine if the offeror’s product meets requirements for recycled content or related standards;
- Clarifies in Part 13 how the procurement requirements of the Resource Conservation and Recovery Act, 42 U.S.C. 6962, apply to micro-purchases and acquisitions that do not exceed \$100,000; and
- Reorganizes and revises Subparts 23.4 and 23.7 and associated clauses.

This rule was not subject to Office of Management and Budget 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 Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* applies to this final rule. Interested parties may obtain a copy of the a Final Regulatory Flexibility Analysis (FRFA) from the FAR Secretariat.

The Councils’ prepared FRFA is summarized as follows:

The objective of the rule is to improve the Government’s use of recycled products and environmentally preferable products and services. E.O. 13101 requires revision of the Federal Acquisition Regulation to prescribe policies for the acquisition and use of environmentally preferable products and services through procurement preference programs favoring the purchase of these products and services. The rule primarily affects the internal operating procedures of Government agencies. The provisions affecting small entities are the requirements at FAR 23.705, 52.223–9, and 52.223–10. These provisions of the rule will apply to all Government contractors, both large and small businesses.

The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.