(ii) The mortgage is otherwise ineligible for insurance.

If, following this review, the mortgage is determined to be eligible, the Secretary will endorse the mortgage for insurance by issuance of a Mortgage Insurance Certificate. If the mortgage is determined to be ineligible, the Secretary will inform the mortgagee in writing of this fact, and include the reasons thereof and any corrective actions that may be taken.

(d) *Submission by mortgagee other than originating mortgagee.* If the originating mortgagee assigns the mortgage to another approved mortgagee before pre-endorsement review under paragraph (c), the assignee may submit the required documents for pre-endorsement review in the name of the originating mortgagee. All certifications must be executed by the originating mortgagee (or its underwriter, if appropriate). The purchasing mortgagee may pay any required mortgage insurance premium, late charge and interest.

(e) *Post-Endorsement review for Direct Endorsement.* Following endorsement for insurance, the Secretary may review all documents required by paragraph (b) of this section. If, following this review, the Secretary determines that the mortgage does not satisfy the requirements of the Direct Endorsement program, the Secretary may place the mortgagee on Direct Endorsement probation, or terminate the authority of the mortgagee to participate in the Direct Endorsement program pursuant to § 203.3(d), or refer the matter to the Mortgagee Review Board for action pursuant to 24 CFR part 25.

20. Section 203.502(a) would be revised to read as follows:

§ 203.502 Responsibility for servicing.

(a) After [one year from effective date of final rule], servicing of insured mortgages must be performed by a mortgagee that is approved by HUD to service insured mortgages. The servicer must fully discharge the servicing responsibilities of the mortgagee as outlined in this part. The mortgagee shall remain fully responsible to the Secretary for proper servicing, and the actions of its servicer shall be considered to be the actions of the mortgagee. The servicer also shall be fully responsible to the Secretary for its actions as a servicer.

* * * * *

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

21. The authority citation for 24 CFR part 207 would continue to read as follows:

Authority: Secs. 207, 211, National Housing Act (12 U.S.C. 1713, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Sections 207.258 and 207.258b are also issued under section 203(e), Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z–11(e)).

22. A new § 207.263 would be added to read as follows:

§ 207.263 Responsibility for servicing.

After [one year after effective date of this rule] servicing of insured mortgages must be performed by a mortgagee which is approved by HUD to service insured mortgages.

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

23. The authority citation for 24 CFR part 213 would continue to read as follows:

Authority: Secs. 211, 213, National Housing Act (12 U.S.C. 1715b, 1715e); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 213.503, 213.504 and 213.505 [Removed]

24. The center heading under subpart C, entitled "Application and Commitment", and §§ 213.503, 213.504 and 213.505 would be removed and reserved.

25. The center heading under subpart C entitled "Approval of Mortgagees" and § 213.502 would be revised to read as follows:

Application for Insurance

§ 213.502 Processing for insurance.

Mortgages under this part 213 shall be processed by approved mortgagees and insured by the Secretary through the Direct Endorsement procedure at part 203 of this chapter, unless otherwise determined by the Secretary.

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

26. The authority citation for 24 CFR part 234 would continue to read as follows:

Authority: Secs. 211, 234, National Housing Act (12 U.S.C. 1715b, 1715y); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Section 234.520(a)(2)(ii) is also issued under sec. 201(a), National Housing Act (12 U.S.C. 1707(a)).

§§ 234.11 and 234.12 [Removed]

27. Sections 234.11 and 234.12 would be removed and reserved, and the center heading under Subpart A entitled "Application and Commitment" and § 234.10 would be revised to read as follows:

Application for Insurance

§ 234.10 Processing for insurance.

Mortgages under this part 234 shall be processed by approved mortgagees and insured by the Secretary through the Direct Endorsement procedure at 24 CFR part 203, unless otherwise determined by the Secretary.

Dated: May 10, 1991.

Alfred A. DelliBovi,

Deputy Secretary.

[FR Doc. 91–14961 Filed 6–24–91; 8:45 am]

BILLING CODE 4210–32–M

federal register

Tuesday
June 25, 1991

Part IX

Department of the Treasury

Office of Foreign Assets Control

31 CFR Part 575
Iraqi Sanctions Regulations; Final Rule

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 575

Iraqi Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule; amendments to the list of specially designated nationals of the Government of Iraq.

SUMMARY: The Iraq Sanctions Regulations, 31 CFR part 575 (56 FR 2112, Jan. 18, 1991—the "Regulations"), are being amended to add seven names to and remove two names from appendix A, the list of Individuals and Organizations Determined to be Within the Term "Government of Iraq" (Specially Designated Nationals of Iraq). Appendix A contains the names of companies and individuals which the Director of the Office of Foreign Assets Control has determined are owned or controlled by or acting or purporting to act directly or indirectly for the Government of Iraq. This list may be expanded at any time.

EFFECTIVE DATE: June 25, 1991.

ADDRESSES: Copies of this list are available upon request at the following location: Office of Foreign Assets Control, U.S. Department of the Treasury, Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Richard J. Hollas, Chief, Enforcement Section, Office of Foreign Assets Control, Tel.: (202) 566–5021.

SUPPLEMENTARY INFORMATION: The Regulations were issued by the Treasury Department to implement Executive Orders No. 12722 and 12724 of August 2 and August 9, 1990, in which the President declared a national emergency with respect to Iraq, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) and the United Nations Participation Act (22 U.S.C. 287c), and ordering specific measures against the Government of Iraq. An amendment to the regulations (56 FR 13584, Apr. 3, 1991) added a new appendix A, the list of Individuals and Organizations Determined to be Within the Term "Government of Iraq" (Specially Designated Nationals of Iraq), and a new appendix B, the list of Merchant Vessels Registered, Owned, or Controlled by the Government of Iraq or by Persons Acting Directly or Indirectly on Behalf of the Government of Iraq.

Section 575.306 of the Regulations defines the term "Government of Iraq" to include

(a) The state and the Government of Iraq, as well as any political subdivision, agency, or instrumentality thereof, including the Central Bank of Iraq;

(b) Any partnership, association, corporation, or other organization substantially owned or controlled by the foregoing;

(c) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since the effective date, acting or purporting to act directly or indirectly on behalf of any of the foregoing; and

(d) Any other person or organization determined by the Director of the Office of Foreign Assets Control to be included within this section.

Determinations that persons fall within this definition are effective upon the date of determination by the Director, Office of Foreign Assets Control ("FAC"). Public notice is effective upon the date of publication or upon actual notice, whichever is sooner.

This rule adds seven names to and removes two names from appendix A to part 575 to provide public notice of a list of persons, known as "specially designated nationals" of the Government of Iraq. The list consists of companies and individuals which the Director of the Office of Foreign Assets Control has determined to be owned or controlled by or to be acting or purporting to act directly or indirectly for the Government of Iraq, and which thus fall within the definition of the "Government of Iraq" contained in § 575.306 of the Regulations. The persons included in appendix A are subject to all prohibitions applicable to other components of the Government of Iraq. All unlicensed transactions with such persons, or in property in which they have an interest, are prohibited.

The list of specially designated nationals is a partial one, since FAC may not be aware of all the persons that might be owned or controlled by the Government of Iraq or acting as officers, agents, or front organizations for Iraq, and which thus qualify as specially designated nationals of the Government of Iraq. Therefore, persons engaging in transactions may not rely on the fact that any particular person is not on the specially designated nationals list as evidence that it is not owned or controlled by, or acting or purporting to act directly or indirectly for, the Government of Iraq. The Treasury Department regards it as incumbent upon all U.S. persons to take reasonable steps to ascertain for themselves whether persons they enter into transactions with are owned or controlled by the Government of Iraq or are acting or purporting to act on its behalf, or on behalf of other countries subject to blocking or transportation-related restrictions (at present, Cambodia, Cuba, Libya, North Korea, and Vietnam).

Section 586E of the Iraq Sanctions Act of 1990, Public Law 101–513, 104 Stat. 2049, provides for civil penalties not to exceed $250,000 for violations of the Regulations and fines of up to $1,000,000 and imprisonment for up to 12 years for willful violations of the Regulations. In addition, section 5(b) of the United Nations Participation Act of 1945 (22 U.S.C. 287c(b)) provides for the forfeiture of any property involved in a violation of the Regulations.

Pursuant to the Regulations, PMK/QUDOS (Liverpool Polytechnic), England, United Kingdom, and Sollatek, England, United Kingdom, were included in appendix A to the Regulations, published in the **Federal Register** on April 3, 1991 (56 FR 13584) as specially designated nationals of the Government of Iraq. Following a review of additional information and extensive consultations with the British Government, it has been determined that PMK/QUDOS (Liverpool Polytechnic) and Sollatek are not within the scope of the definition of the "Government of Iraq" as defined in § 575.306 of the Regulations; and, therefore, are removed from the list of specially designated nationals of the Government of Iraq.

Because the Regulations involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

List of Subjects in 31 CFR Part 575

Administrative practice and procedure, Banks, Banking, Blocking of assets, Foreign trade, Iraq, Penalties, Reporting and recordkeeping requirements, Securities, Specially designated nationals, Travel restrictions.

PART 575—IRAQI SANCTIONS REGULATIONS

For the reasons set forth in the preamble, 31 CFR part 575 is amended as set forth below:

1. The Authority citation for part 575 continues to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; 50 U.S.C. 1601 *et seq.*; 22 U.S.C. 287c; Pub. L. 101–513, 104 Stat. 2047–55 (Nov. 5, 1990); 3 U.S.C. 301; E.O. 12722, 55 FR 31803 (Aug. 3, 1990); E.O. 12724, 55 FR 33089 (Aug. 13, 1990).

Appendix A—Individuals and Organizations Determined to be Specially Designated Nationals of the Government of Iraq

2. Appendix A to part 575 is amended by removing the numerical designations from the list of companies and the list of indivi luals.

3. Appendix A to part 575 is amended by removing the following names from the list of companies:

PMK/QUDOS (Liverpool Polytechnic), England, United Kingdom.
Sollatek, England, United Kingdom.

4. Appendix A to part 575 is amended by adding the following names in their proper alphabetical positions to the list of individuals:

Al-Majid, Ali Hassan, Baghdad, Iraq
Al-Majid, Hussein Kamel Hassan, Baghdad, Iraq
Al-Takriti, Barzan Ibrahim Hassan, Geneva, Switzerland
Al-Takriti, Sabawi Ibrahim Hassan, Baghdad, Iraq
Al-Takriti, Watban, Baghdad, Iraq
Hussein, Udai Saddam, Baghdad, Iraq
Jasim, Latif Nusayyif, Baghdad, Iraq

Dated: May 17, 1991.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: May 22, 1991.

Nancy L. Worthington,

Acting Assistant Secretary (Enforcement).

[FR Doc. 91–15008 Filed 6–20–91; 12:49 pm]
BILLING CODE 4810–25–M

federal register

Tuesday
June 25, 1991

Part X

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 6, et al.

Federal Acquisition Regulation; Miscellaneous Amendments; Final Rules and Interim Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 6, 8, 9, 10, 14, 15, 20, 31, 32, 36, 39, and 52

[Federal Acquisition Circular 90-5]

Federal Acquisition Regulation; Miscellaneous Amendments

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

ACTION: Final rules and interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) are issuing Federal Acquisition Circular (FAC) 90-5 to amend the Federal Acquisition Regulation (FAR)—

I. To add 6.302-1(c) and revise 10.004(b)(2) to emphasize that the use of "brand name description" specifications in procurements is a restriction on "full and open" competition under the Competition in Contracting Act (CICA).

II. To provide procedural guidance for contracting officers to follow when they receive a bid from a firm on the List of Parties Excluded from Procurement Programs;

III. To amend 20.302(a) to clarify that the use of Labor Surplus Area clauses is not appropriate in acquisitions for petroleum and petroleum products because there is no likelihood of labor surplus area subcontracting under such contracts.

IV. To set forth a new rule on the allowability of postretirement benefits other than pensions (PRB) on U.S. Government contracts.

V. To clarify the definition of Architect-Engineer (A-E) Services;

VI. To require prime contractors to require each first tier subcontractor to disclose, to the prime contractor, whether the subcontractor is or is not debarred, suspended, or proposed for debarment by the Federal Government.

VII. To provide an information item regarding procurement integrity and to perform several technical amendments to the FAR.

DATES: *Effective Date:* July 25, 1991, except for § 52.209-6 (interim rule, Item VI) which is effective June 25, 1991.

Comment Date: Comments on the interim rule (Item VI, FAR case 91-16) should be submitted to the FAR Secretariat at the address shown below on or before August 26, 1991 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4041, Washington, DC 20405.

Please cite FAC 90-5 and the FAR case number in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Fayson, FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 90-5.

SUPPLEMENTARY INFORMATION:

LIST OF ITEMS

Item	Subject	FAR Case	DAR Case	Analyst
I	Brand Name Description Procurements	91-24	90-35	O'Neill.
II	Effect of Debarment/Suspension on Bids/Offers	90-27	90-418	Loeb.
III	Utilization of LSA Concerns	90-44	90-431B	Scott.
IV	Postretirement Benefits Other Than Pensions	89-70	89-07	Olson.
V	Definition of Architect-Engineer Services	89-25	88-316	O'Neill.
VI	Disclosure Requirement Relating to Subcontractors	91-16	90-311	Loeb.

A. Background

I. Brand Name Description Procurements (FAR Case 91-24)

The addition of 6.302-1(c) and revision of 10.004(b)(2) result from a recommendation made by the General Accounting Office in two reports on Federal agencies' efforts to implement the Competition in Contracting Act (CICA) (GAO/NSIAD-87-145, August 1987, and GAO/NSIAD-90-104, May 1990). The rule is published as a final rule without publication as a proposed rule because it clarifies existing coverage.

For further information pertaining to this case, contact Mr. Jack O'Neill at (202) 501-3856.

II. Effect of Debarment/Suspension on Bid/Offers (FAR Case 90-27)

The FAR at 9.405 did not provide a uniform approach for handling bids/offers submitted by contractors debarred, suspended, proposed for debarment or declared ineligible from award of Government contracts. The councils believed that a consistent policy should be adopted. This change to the FAR does so. The proposed rule was published in the **Federal Register** (55 FR 22284) on May 31, 1990.

For further information pertaining to this case, contact Mr. Edward Loeb at (202) 501-4547.

III. Utilization of LSA Concerns (FAR Case 90-44)

The FAR at 20.302 requires inclusion of Labor Surplus Area clauses in solicitations and contracts. The Councils believe that inclusion of those clauses in acquisitions for petroleum and petroleum products is not appropriate since any subcontracting would normally be in the locale of the refinery. The proposed rule was published in the **Federal Register** (55 FR 38790) on September 20, 1990. There are no substantive differences between the proposed rule and the final rule.

For further information pertaining to this case, contact Ms. Shirley Scott at (202) 501-0168.

IV. Post-Retirement Benefits Other Than Pensions (FAR Case 89-70)

A proposed rule was published in the **Federal Register** on November 9, 1989 (54 FR 47182), to set forth criteria for the allowability of the costs of postretirement benefits other than pensions (PRB) under Government contracts. The rule results from a new Financial Accounting Standards Board financial reporting requirement that retiree health and other PRB costs be recognized during employees' active working lives. The purpose of the FAR rule is to establish a clear requirement that contractor accruals of PRB costs must be funded to be allowable.

The final rule differs from the proposed rule in that PRB coverage in FAR 31.205-6(m) has been moved to a new paragraph 31.205-6(o) which more

clearly defines the benefits covered. PRB calculations must be performed in accordance with principles and practices promulgated by the Actuarial Standards Board (31.205-6(o)(2)). Any PRB costs assigned to the current year, but not funded or liquidated by tax return time, are unallowable in any future period (31.205-6(o)(2)), and increased PRB costs caused by delay in funding beyond 30 days after each quarter of the year to which the costs are assignable are unallowable (31.205-6(o)(3)).

For further information pertaining to this case, contact Mr. Jeremy Olson at (202) 501-3221.

V. Definition of Architect-Engineer Services (FAR Case 89-25)

The Brooks Act (Pub. L. 92-582), passed in 1972, established as Federal Government policy that all requirements for architect-engineer (A-E) services must be publicly announced and that contracts for those services would be negotiated on the basis of demonstrated competence and qualification for the type of professional services required, at fair and reasonable prices. Since passage of the Brooks Act, various change were made, both by legislation and by Comptroller General decisions, that caused inconsistent interpretations of the definition of A-E services. Finally, on November 17, 1988, the Congress enacted the OFPP Act Amendments of 1988 (Pub. L. 100-679), which clarified the definition of A-E services in the Brooks Act. An interim rule was published in the **Federal Register** (54 FR 13332, March 31, 1989) amending FAR part 36 to implement the OFPP Act Amendments. Public comments were received and considered in drafting this final rule.

For further information pertaining to this case, contact Mr. Jack O'Neill at (202) 501-3856.

VI. Disclosure Requirement Relating to Subcontractors (FAR Case 91-16)

Section 813 of the Fiscal Year 1991 Defense Authorization Act (Pub. L. 101-510) required the Department of Defense to prescribe rules to require each prime contractor to require each subcontractor to whom it awards a contract, in excess of the small purchase limitation, to disclose to the contractor whether the subcontractor is or is not, as of the date of award of the subcontract, debarred or suspended by the Federal Government from Government contracting or subcontracting. The change to 52.209-6 is issued as an interim rule because the statutory requirement was effective upon signing of the Defense Authorization Act, November 5, 1990. The change is being applied Governmentwide in an attempt to keep debarment and suspension rules and procedures uniform to the extent practicable.

For further information pertaining to this case, contact Mr. Edward Loeb at (202) 501-4547.

B. Regulatory Flexibility Act

(FAR Case 91-24)

The amendment to 6.302-1 and revision to 10.004(b)(2) 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 does not constitute a significant FAR revision within the meaning of FAR 1.501. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities will be considered in accordance with 5 U.S.C. 601 of the Act. Such comments must be submitted separately and cite FAR Case 91-24 (FAC 90-5) in correspondence.

(FAR Case 90-27)

The amendments to FAR 9.405, 9.405-2, and 14.404-2 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 merely provides procedural and policy guidance to contracting officers, and imposes no requirements of any kind upon small entities.

(FAR Case 90-44)

The amendments to FAR 20.302 concerning the use of labor surplus area subcontracting clauses in solicitations and contracts for petroleum and petroleum products, and the introductory text of the clause at 52.220-3 are not expected to have a significant impact on a substantial number of small entities because there is no likelihood of labor surplus area subcontracting in such contracts. A Final Regulatory Flexibility Analysis (FRFA) has been prepared and will be provided to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat. However, public comments were solicited on September 20, 1990 (55 FR 38790). No comments were received that took issue with the Regulatory Flexibility Act statement.

(FAR Case 89-70)

The amendments to the postretirement benefits coverage levies no additional requirements on contractors. The amendments clarify a condition of allowability of costs, namely funding or payment, upon contractors who wish to be reimbursed under Government contracts. Therefore, 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 businesses are awarded on a competitive, fixed-price basis and the cost principles do not apply.

(FAR Case 89-25)

The amendments to FARs 36.102 and 36.601 implement a statutory amendment that Congress has stated is intended to clarify, rather than expand, the statutory definition of architect-engineer services. Accordingly, the amendments are not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The change imposes no requirements of any kind upon small entities.

(FAR Case 91-16)

The revision of 52.209-6 is not expected to have a significant cost or administrative impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it merely requires prime contractors to obtain from subcontractors a disclosure as to whether or not they are debarred, suspended, or proposed for debarment.

C. Paperwork Reduction Act

(FAR Case 91-24)

The amendment to 6.302-1 and revision to 10.004(b)(2) do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval OMB under 44 U.S.C. 3501, *et seq.*

(FAR Case 90-27)

The amendments to FAR 9.405, 9.405-2, and 14.404-2 do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

(FAR Case 90-44)

The amendments to FAR 20.302 and the clause at 52.220-3 do not involve any reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

(FAR Case 89–70)

The amendments to the PRB coverage do not impose any reporting or recordkeeping requirements which require approval of OMB under 44 U.S.C. 3501, *et seq.*

(FAR Case 89–25)

The changes made to clarify the definition of architect-engineer services do not impose any reporting or recordkeeping requirements which require approval of OMB under 44 U.S.C. 3501, *et seq.*

(FAR Case 91–16)

The revision of 52.209–6 does not impose recordkeeping information collection requirements or collection 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

(FAR Case 91–16)

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) to issue the regulations in FAR case 91–16, Item VI of FAC 90–5, as an interim rule. This action is necessary as a result of section 813 of the Fiscal Year 1991 Defense Authorization Act (Pub. L. 101–510), which requires DOD to prescribe regulations requiring that DOD contractors must require subcontractors to disclose whether or not they are debarred or suspended from Federal Government contracting or subcontracting. The date of enactment was November 5, 1990. As a matter of policy, the regulation is being applied to all executive agencies. It is determined that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. However, pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 6, 8, 9, 10, 14, 15, 20, 31, 32, 36, 39, and 52

Government procurement.

Dated: June 17, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Federal Acquisition Circular

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90–5 is effective July 25, 1991.

Dated: June 11, 1991.

D.S. Parry,

Captain, USN Acting Director of Defense Procurement.

Dated: June 17, 1991.

Richard H. Hopf,

Associate Administrator for Acquisition Policy, GSA.

Dated: June 7, 1991.

Don G. Bush,

Acting Assistant Administrator for Procurement.

Federal Acquisition Circular (FAC) 90–5 amends the Federal Acquisition Regulation as specified below.

I—Brand Name Description Procurements (FAR Case 91–24)

Section 6.302–1 is amended by adding a new paragraph (c) to emphasize that the use of "brand name description" specifications in procurements is a restriction on full and open competition under the Competition in Contracting Act (CICA) and requires a Justification and Approval (J&A). Two changes are made to 10.004(b)(2) to clarify existing coverage on "brand name description" procurements. The first adds the term "brand name description" to tie that term, as defined in 10.001, to the restrictions specified in 10.004(b)(2). The second includes a reference to 6.302–1 to clarify that the determination "in accordance with agency procedures" in 10.004(b)(2) is a J&A under 6.302–1.

II—Effect of Debarment/Suspension on Bids/Offers (FAR Case 90–27)

Section 9.405 is amended to provide procedural guidance by adding paragraph (d) for contracting officers to follow when they receive a bid from a firm on the List of Parties Excluded from Procurement Programs. A conforming change to 14.404–2 is also being made.

III—Labor Surplus Area Concerns (FAR Case 90–44)

FAR 20.302 is amended to clarify that the use of Labor Surplus Area clauses is not appropriate in acquisitions for petroleum and petroleum products. FAR 52.220–3, Utilization of Labor Surplus Area Concerns, is amended to delete the prescription for use of the clause.

IV—Postretirement Benefits Other Than Pensions (FAR Case 89–70)

Sections 15.804–8, 31.205–6, 52.216–7 and 52.232–16 are amended and 52.215–39 is added to establish funding as a required condition of cost allowability for accruals of postretirement benefits other than pensions (PRB). The final rule also provides for the Government to recover an equitable share of any previously reimbursed PRB costs which revert or inure to the contractor because of a plan change or termination.

V—Definition of Architect-Engineer Services (FAR Case 89–25)

FAR § 36.102 is amended and subpart 36.6 is revised to clarify which services are to be procured using Brooks Act procedures.

VI—Disclosure Requirement Relating to Subcontractors (FAR Case 91–16)

The revision of 52.209–6 is issued as an interim rule because the statutory requirement was effective upon signing of the Defense Authorization Act, November 5, 1990, and is being applied Governmentwide in an attempt to keep debarment and suspension rules and procedures uniform to the extent practicable.

VII—Technical Amendments

Procurement Integrity

A number of otherwise successful bidders have been rejected as nonresponsive for failing to sign the Procurement Integrity certifications in the clauses at 52.203–8 and 52.203–9. The GAO has upheld these rejections. This FAC incorporates a technical amendment which adds lines to the blank spaces at the end of those certification forms to emphasize that a signature is required to be placed at the end of the certification statements.

Miscellaneous Amendments

Technical amendments have also been made to FAR §§ 8.405–1, 9.405–2, 31.205–10, 32.610, 32.613, 32.614–1, 32.616, 39.002, 52.219–19, 52.219–21, and 52.220–1 to update references and amounts, to replace inaccurate terms, and to add an appendix A to part 39 of the FAR.

Editorial Note

In the looseleaf edition, part III of the appendix to part 30 was inadvertently placed at the end of part 30 preceding parts I and II of the appendix. The FAR Secretariat will issue corrected pages at a later date.

Therefore, 48 CFR parts 6, 8, 9, 10, 14, 15, 20, 31, 32, 36, 39, and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 6, 8, 9, 10, 14, 15, 20, 31, 32, 36, 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).

PART 6—COMPETITION REQUIREMENTS

2. Section 6.302–1 is amended by redesignating existing paragraph (c) as (d) and adding new paragraph (c) to read as follows:

6.302–1 Only one responsible source and no other supplies or services will satisfy agency requirements.

* * * * *

(c) *Application for brand name descriptions.* An acquisition that uses a brand name description or other purchase description to specify a particular brand name, product, or feature of a product, peculiar to one manufacturer does not provide for full and open competition regardless of the number of sources solicited. It shall be justified and approved in accordance with FAR 6.303 and 6.304. The justification should indicate that the use of such descriptions in the acquisition is essential to the Government's requirements, thereby precluding consideration of a product manufactured by another company. (Brand-name or equal descriptions, and other purchase descriptions that permit prospective contractors to offer products other than those specifically referenced by brand name, provide for full and open competition and do not require justifications and approvals to support their use.)

* * * * *

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.405–1 [Amended]

3. Section 8.405–1 is amended in the fourth sentence of paragraph (a) by correcting the reference "13.106(c)" to read "13.106".

PART 9—CONTRACTOR QUALIFICATIONS

4. Section 9.405 is amended by adding paragraph (d) to read as follows:

9.405 Effect of listing.

* * * * *

(d) (1) After the opening of bids or receipt of proposals, the contracting officer shall review the List of Parties Excluded from Procurement Programs.

(2) Bids received from any listed contractor in response to an invitation for bids shall be entered on the abstract of bids, and rejected unless the acquiring agency's head or designee determines in writing that there is a compelling reason to consider the bid.

(3) Proposals, quotations, or offers received from any listed contractor shall not be evaluated for award or included in the competitive range, nor shall discussions be conducted with a listed offeror during a period of ineligibility, unless the acquiring agency's head or designee determines, in writing, that there is a compelling reason to do so. If the period of ineligibility expires or is terminated prior to award, the contracting officer may, but is not required to, consider such proposals, quotations, or offers.

(4) Immediately prior to award, the contracting officer shall again review the List to ensure that no award is made to a listed contractor.

5. Section 9.405–2 is amended by revising the second sentence of the introductory text of paragraph (b) to read as follows:

9.405–2 Restrictions of subcontracting.

* * * * *

(b) * * * Contractors shall not enter into any subcontract in excess of the small purchase limitation at 13.000 with a contractor that has been debarred, suspended, or proposed for debarment unless there is a compelling reason to do so. * * *

* * * * *

PART 10—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

6. Section 10.004 is amended by revising paragraph (b)(2) to read as follows:

10.004 Selecting specifications or descriptions for use.

* * * * *

(b) * * *

(2) Purchase descriptions shall not be written so as to specify a particular brand name, product, or feature of a product, peculiar to one manufacturer, thereby precluding consideration of a product manufactured by another company, unless—

(i) The particular brand name, product, or feature is essential to the Government's requirements, and that other companies' similar products, or products lacking the particular feature, would not meet the minimum requirements for the item; and

(ii) The authority to contract without providing for full and open competition is supported by the required justifications and approvals (see 6.302–1).

* * * * *

PART 14—SEALED BIDDING

7. Section 14.404–2 is amended by revising paragraph (h) to read as follows:

14.404–2 Rejection of individual bids.

* * * * *

(h) Bids received from any person or concern that is suspended, debarred, proposed for debarment, or declared ineligible as of the bid opening date shall be rejected unless a compelling reason determination is made (see subpart 9.4).

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

8. Section 15.804–8 is amended by adding paragraph (f) to read as follows:

15.804–8 Contract clauses.

* * * * *

(f) *Postretirement benefit funds.* The contracting officer shall insert the clause at 52.215–39, Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB), in solicitations and contracts for which it is anticipated that certified cost or pricing data will be required or for which any preaward or postaward cost determinations will be subject to subpart 32.2.

PART 20—LABOR SURPLUS AREA CONCERNS

9. Section 20.302 is amended by removing the word "and" from the end of paragraph (a)(1); removing the period from the end of paragraph (a)(2) and inserting the punctuation and word "; and" in its place; and adding paragraph (a)(3) to read as follows:

20.302 Contract clauses.

(a) * * *

(3) Contracts with the petroleum and petroleum products industry.

* * * * *

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

10. Section 31.205–6 is amended by removing from the third sentence of paragraph (m)(1) the word "elsewhere" and inserting in its place "otherwise"; and adding paragraph (o) to read as follows:

31.205–6 Compensation for personal services.

* * * * *

(o) *Postretirement benefits other than pensions (PRB).* (1) PRB covers all benefits, other than cash benefits and life insurance benefits paid by pension plans, provided to employees, their beneficiaries, and covered dependents during the period following the employees' retirement. Benefits encompassed include, but are not limited to, postretirement health care;

life insurance provided outside a pension plan; and other welfare benefits such as tuition assistance, day care, legal services, and housing subsidies provided after retirement.

(2) To be allowable, PRB costs must be reasonable and incurred pursuant to law, employer-employee agreement, or an established policy of the contractor. In addition, to be allowable in the current year, PRB costs must be paid either to (i) an insurer, provider, or other recipient as current year benefits or premiums, or (ii) an insurer or trustee to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees. The costs in paragraph (o)(2)(ii) of this subsection must also be calculated in accordance with generally accepted actuarial principles and practices as promulgated by the Actuarial Standards Board, and be funded by the time set for filing the Federal income tax return or any extension thereof. PRB costs assigned to the current year, but not funded or otherwise liquidated by the tax return time, shall not be allowable in any subsequent year.

(3) Increased PRB costs caused by delay in funding beyond 30 days after each quarter of the year to which they are assignable are unallowable.

(4) The Government shall receive an equitable share of any amount of previously funded PRB costs which revert or inure to the contractor. Such equitable share shall reflect the Government's previous participation in PRB costs through those contracts for which certified cost or pricing data were required or which were subject to subpart 31.2.

31.205–10 [Amended]

11. Section 31.205–10 is amended in paragraph (a)(1)(ii)(C) by removing the reference "50 U.S.C. App. 1215(b)(2)" and inserting in its place "Public Law 92–41".

PART 32—CONTRACT FINANCING

32.610, 32.613, and 32.614–1 [Amended]

12. The FAR is amended by removing the reference "50 U.S.C. App. 1215(b)(2)" and inserting "Public Law 92–41" in its place in the following sections:

(a) Section 32.610, paragraph (b)(2);

(b) Section 32.613, paragraph (l); and

(c) Section 32.614–1, paragraph (c).

32.616 [Amended]

13. Section 32.616 is amended in the first sentence by removing the amount "$20,000" and inserting in its place "$100,000".

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

14. Section 36.102 is amended by revising the definition of "Architect-Engineer Services" to read as follows:

36.102 Definitions.

Architect-engineer services, as defined in 40 U.S.C. 541, means:

(1) Professional services of an architectural or engineering nature, as defined by State law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services;

(2) Professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and

(3) Such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

* * * * *

15. The table of contents under subpart 36.6 is amended to add the following entries following section 36.601:

Subpart 36.6—Architect-Engineer Services

Sec.

36.601–1 Public announcement.
36.601–2 Competition.
36.601–3 Applicable contracting procedures.
36.601–4 Implementation.

36.601 [Amended]

16a. Section 36.601 is amended by removing the text.

16b. Sections 36.601–1, 36.601–2, 36.601–3, and 36.601–4 are added to read as follows:

36.601–1 Public announcement.

The Government shall publicly announce all requirements for architect-engineer services and negotiate contracts for these services based on the demonstrated competence and qualifications of prospective contractors to perform the services at fair and reasonable prices. (See Pub. L. 92–582, as amended; 40 U.S.C. 541–544.)

36.601–2 Competition.

Acquisition of architect-engineer services in accordance with the procedures in this subpart will constitute a competitive procedure. (See 6.102(d)(1).)

36.601–3 Applicable contracting procedures.

(a) Sources for contracts for architect-engineer services shall be selected in accordance with the procedures in this subpart rather than the solicitation or source selection procedures prescribed in parts 13, 14, and 15 of this regulation.

(b) When the contract statement of work includes both architect-engineer services and other services, the contracting officer shall follow the procedures in this subpart if the statement of work, substantially or to a dominant extent, specifies performance or approval by a registered or licensed architect or engineer. If the statement of work does not specify such performance or approval, the contracting officer shall follow the procedures in parts 13, 14, or 15.

(c) Other than "incidental services" as specified in the definition of architect-engineer services in Section 36.102 and in Section 36.601–4(a)(3), services that do not require performance by a registered or licensed architect or engineer, notwithstanding the fact that architect-engineers also may perform those services, should be acquired pursuant to parts 13, 14, and 15.

36.601–4 Implementation.

(a) Contracting officers should consider the following services to be "architect-engineer services" subject to the procedures of this subpart:

(1) Professional services of an architectural or engineering nature, as defined by applicable State law, which the State law requires to be performed or approved by a registered architect or engineer.

(2) Professional services of an architectural or engineering nature associated with design or construction of real property.

(3) Other professional services of an architectural or engineering nature or services incidental thereto (including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing

reviews, preparation of operating and maintenance manuals and other related services) that logically or justifiably require performance by registered architects or engineers or their employees.

(4) Professional surveying and mapping services on an architectural or engineering nature. Surveying is considered to be an architectural and engineering service and shall be procured pursuant to § 36.601 from registered surveyors or architects and engineers. Mapping associated with the research, planning, development, design, construction, or alteration of real property is considered to be an architectural and engineering service and is to be procured pursuant to § 36.601. However, mapping services such as those typically performed by the Defense Mapping Agency that are not connected to traditionally understood or accepted architectural and engineering activities, are not incidental to such architectural and engineering activities or have not in themselves traditionally been considered architectural and engineering services shall be procured pursuant to provisions in parts 13, 14, and 15.

(b) Contracting officers may award contracts for architect-engineer services to any firm permitted by law to practice the professions of architecture or engineering.

PART 39—ACQUISITION OF INFORMATION RESOURCES

17a. The "Note" appearing at the beginning of part 39 is removed.

17b. Section 39.002 is amended by designating the existing paragraph as (a); removing from the last sentence the reference "201–23" and inserting in its place "201–20"; and adding paragraph (b) to read as follows:

39.002 Delegations of procurement authority.

* * * * *

(b) The FIRMR part 201–39 is reprinted as FAR appendix A to part 39 as an aid to contracting officials operating under a delegation of procurement authority from GSA. Whenever a change is made to FIRMR part 39, that change will be reflected in FAR appendix A to part 39.

17c. A new appendix A is added to FAR part 39 to read as follows:

Editorial Note: Appendix A to part 39 is a reprint of FIRMR part 201–39 appearing in title 41 of the Code of Federal Regulations.

Appendix A to Part 39

Subchapter D—Acquisition of Federal Information Processing (FIP) Resources by Contracting

PART 201–39—ACQUISITION OF FEDERAL INFORMATION PROCESSING (FIP) RESOURCES BY CONTRACTING

Sec.
201–39.000 Scope of part.
201–39.001 General.

Subpart 201–39.1—Federal Information Resources Management Regulation (FIRMR) System

201–39.100 Scope of subpart.
201–39.101 Purpose, authority, applicability, and issuance.
201–39.101–1 Purpose.
201–39.101–2 Authority.
201–39.101–3 Applicability.
201–39.101–4 [Reserved].
201–39.101–5 Arrangement of part.
201–39.101–6 Copies.
201–39.102 Relationship of acquisition regulations.
201–39.103 [Reserved].
201–39.104 Deviations.
201–39.104–1 Deviations from the FIRMR.
201–39.104–2 Deviations from the FAR.
201–39.105 [Reserved].
201–39.106 Contracting authority and responsibilities.
201–39.106–1 General.
201–39.106–2 Policy.
201–39.106–3 Procedures.
201–39.106–4 Contract clause.

Subpart 201–39.2—Definitions of Words and Terms

201–39.200 Scope of subpart.
201–39.201 Definitions.

Subparts 201–39.3 and 201–39.4—[Reserved]

Subpart 201–39.5—Publicizing Contract Actions

201–39.500 Scope of subpart.
201–39.501 Synopses of proposed contract actions.
201–39.501–1 Policies.
201–39.501–2 Exceptions.
201–39.501–3 Procedures.

Subpart 201–39.6—Competition Requirements

201–39.600 Scope of subpart.
201–39.601 Specific make and model specifications.
201–39.601–1 Policy.
201–39.601–2 Exception.
201–39.601–3 Authority.
201–39.602 Outdated FIP equipment.
201–39.602–1 Policy.
201–39.602–2 Exception.

Subpart 201–39.7—[Reserved]

Subpart 201–39.8—Required Sources of Supplies and Services

201–39.800 Scope of subpart.
201–39.801 Ordering FIP resources from Federal Supply Schedules.
201–39.801–1 General.
201–39.801–2 Policy.
Sec.
201–39.802 Purchase of telephones and services (POTS) contracts.
201–39.802–1 General.
201–39.802–2 Policy.
201–39.802–3 Procedures.
201–39.803 GSA nonmandatory schedule contracts for FIP resources.
201–39.803–1 General.
201–39.803–2 Policy.
201–39.803–3 Procedures.
201–39.804 Financial Management Systems Software (FMSS) Mandatory Multiple Award Schedule (MAS) Contracts Program.
201–39.804–1 General.
201–39.804–2 Policy.
201–39.804–3 Exceptions.
201–39.804–4 Procedures.

Subpart 201–39.9—[Reserved]

Subpart 201–39.10—Specifications, Standards, and other Purchase Descriptions

201–39.1000 Scope of subpart.
201–39.1001 Security and privacy specifications.
201–39.1001–1 Security specifications.
201–39.1001–2 Privacy specifications.
201–39.1001–3 Contract clause.
201–39.1002 Federal standards.
201–39.1002–1 General.
201–39.1002–2 Policy.
201–39.1002–3 Procedures.
201–39.1002–4 Solicitation provision.
201–39.1003 Specifications for outdated FIP equipment.

Subparts 201–39.11 and 201–39.12—[Reserved]

Subpart 201–39.13—Small Purchase and Other Simplified Purchase Procedures

201–39.1300 Scope of subpart.
201–39.1301 Policy.

Subpart 201–39.14—Sealed Bidding

201–39.1400 Scope of subpart.
201–39.1401 General.
201–39.1402 Price-related factors.
201–39.1402–1 Policies.
201–39.1402–2 Exception.
201–39.1403 Solicitation.
201–39.1404 Award.

Subpart 201–39.15—Contracting By Negotiation

201–39.1500 Scope of subpart.
201–39.1501 Evaluation factors.
201–39.1501–1 Policies.
201–39.1501–2 Exception.
201–39.1502 Solicitation.
201–39.1503 Award.

Subpart 201–39.16—[Reserved]

Subpart 201–39.17—Special Contracting Methods

201–39.1700 Scope of subpart.
201–39.1701 Options.
201–39.1701–1 General.
201–39.1701–2 Applicability.
201–39.1701–3 Policy.
201–39.1701–4 Contracts.
201–39.1701–5 Documentation.
201–39.1701–6 Evaluation.
201–39.1701–7 [Reserved].

Sec.
201-39.1701-8 Solicitation provision and contract clauses.

Subparts 201-39.18—201-39.32—[Reserved]

Subpart 201-39.33—Protests, Disputes, and Appeals

201-39.3300 Scope of subpart.
201-39.3301 General.
201-39.3302 Applicability.
201-39.3303 Policy.
201-39.3304 Procedures.
201-39.3304-1 Protest notice.
201-39.3304-2 GSA participation.

Subparts 201-39.34—201-39.43—[Reserved]

Subpart 201-39.44—Subcontracting Policies and Procedures

201-39.4400 Scope of subpart.
201-39.4401 Policy.

Subpart 201-39.45—Government Property

201-39.4500 Scope of subpart.
201-39.4501 Dedicated FIP equipment or software in FIP services contracts.
201-39.4501-1 General.
201-39.4501-2 Policy.

Subpart 201-39.46—Quality Assurance

201-39.4600 Scope of subpart.
201-39.4601 Contract clause.

Subparts 201-39.47—201-39.51—[Reserved]

Subpart 201-39.52—Solicitation Provisions and Contract Clauses

201-39.5200 Scope of subpart.
201-39.5201 [Reserved].
201-39.5202 Texts of provisions and clauses.
201-39.5202-1 FIRMR Applicability.
201-39.5202-2 Availability of the "Federal ADP and Telecommunications Standards Index".
201-39.5202-3 Procurement authority.
201-39.5202-4 Evaluation of Options—FIP Resources.
201-39.5202-5 Privacy or security safeguards.
201-39.5202-6 Warranty exclusion and limitation of damages.

Subpart 201-39.53—[Reserved]

Authority: 40 U.S.C. 486(c) and 751(f).

§ 201-39.000 Scope of part.

This part sets forth the unique rules that apply Government-wide to the acquisition of Federal information processing (FIP) resources by contracting.

§ 201-39.001 General.

(a) In addition to this part 201-39, contracting officers should review and be familiar with the policies and procedures contained in the complete FIRMR.

(b) To assist Federal agencies in preparing solicitations for FIP resources, the General Services Administration (GSA) makes available standard solicitations and other guidance. Federal agencies can obtain copies of these materials by contacting: General Services Administration, Regulations Branch (KMPR), 18th and F Streets, NW., Washington, DC 20405.

Subpart 201-39.1—Federal Information Resources Management Regulation (FIRMR) System

§ 201-39.100 Scope of subpart.

This subpart sets forth basic policies and general information pertaining to part 201-39 of the Federal Information Resources Management Regulation (FIRMR).

§ 201-39.101 Purpose, authority, applicability, and issuance.

§ 201-39.101-1 Purpose.

This part 201-39 sets forth FIRMR contracting policies and procedures in a single part organized for consistency with the Federal Acquisition Regulation (FAR). This part contains only those contracting policies and procedures that are unique to FIP resources.

§ 201-39.101-2 Authority.

This part 201-39 is prepared, issued, and maintained by the Administrator of General Services under the Federal Property and Administrative Services Act of 1949, as amended.

§ 201-39.101-3 Applicability.

(a) *Policies.* The FIRMR applies to—

(1) The acquisition, management, and use of FIP resources by Federal agencies.

(2) Any Federal agency solicitation or contract when either paragraph (a)(2)(i), (a)(2)(ii), or (a)(2)(iii) applies:

(i) The solicitation or contract requires the delivery of FIP resources for use by a Federal agency or users designated by the agency.

(ii) The solicitation or contract explicitly requires the use by the contractor of FIP resources that are not incidental to the performance of the contract. FIP resources acquired by a contractor are incidental to the performance of a contract when: (A) None of the principal tasks of the contract depend directly on the use of the FIP resources; or

(B) The requirements of the contract do not have the effect of substantially restricting the contractor's discretion in the acquisition and management of FIP resources, whether the use of FIP resources is or is not specifically stated in the contract.

(iii) The solicitation or contract requires the performance of a service or the furnishing of a product that is performed or produced making significant use of FIP resources that are not incidental to the performance of the contract. Significant use of FIP resources means:

(A) The service or product of the contract could not reasonably be produced or performed without the use of FIP resources; and

(B) The dollar value of FIP resources expended by the contractor to perform the service or furnish the product is expected to exceed $500,000 or 20 percent of the estimated cost of the contract, whichever amount is lower.

(3) The creation, maintenance, and use of records by Federal agencies.

(b) *Exceptions.* (1) The FIRMR does not apply to the procurement of FIP resources—

(i) By the Central Intelligence Agency (CIA).

(ii) By the Department of Defense when the function, operation, or use of such resources—

(A) Involves intelligence activities, cryptologic activities related to national security, the command and control of military forces, or equipment that is an integral part of a weapon or weapons system; or

(B) Is critical to the direct fulfillment of military or intelligence missions, provided that this exclusion shall not include FIP resources used for routine administrative and business applications such as payroll, finance, logistics, and personnel management.

(2) The FIRMR does not apply to radar, sonar, radio, or television equipment, except that the FIRMR is used by GSA to implement Federal Telecommunications Standards for radio equipment.

(3) When both FIP and other resources are being acquired under the same solicitation or contract and the FIRMR applies to the solicitation or contract, the FIRMR applies only to the FIP resources.

(4) While the FIRMR may require an agency to include in Federal solicitations and contracts provisions and clauses that control the contractor's acquisition of FIP resources, the FIRMR does not apply to FIP resources acquired by a Federal contractor that are incidental to the performance of a contract.

(5) The FIRMR does not apply to the acquisition, management, and use of products containing embedded FIP equipment when:

(i) The embedded FIP equipment would need to be substantially modified to be used other than as an integral part of the product; or (ii) The dollar value of the embedded FIP equipment is less than $500,000 or less than 20 percent of the value of the product, whichever amount is lower. Embedded FIP equipment is FIP equipment that is an integral part of the product, where the principal function of the product is not the "automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information."

(c) *Contract clause.* The contracting officer should consider inserting a clause in solicitations and contracts substantially the same as the clause at § 201-39.5202-1, FIRMR Applicability, when the agency determines that part 201-39 does not apply to an acquisition for FIP resources.

§ 201-39.101-4 [Reserved]

§ 201-39.101-5 Arrangement of part.

For consistency with the FAR, part 201-39 is divided into 53 subparts consisting of sections and subsections. In the same manner in which each FAR part deals with a separate aspect of acquisition, the corresponding subpart of part 201-39 deals with that aspect of acquisition as it relates to FIP resources. For example, since FAR part 6 deals with general competition requirements, FIRMR subpart 201-39.6 sets forth unique policies and procedures applicable to competition requirements for FIP resources. If there is no need to supplement a particular FAR part, the

corresponding subpart of part 201–39 is reserved.

§ 201–39.101–6 Copies.

(a) Copies of the complete FIRMR in looseleaf or annual bound versions may be purchased from: Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402.

(b) Contracting officers should contact the GPO, their agency liaison officer, or GSA (KMPR) for ordering information.

§ 201–39.102 Relationship of acquisition regulations.

(a) This part 201–39 sets forth Governmentwide policies and procedures unique to the acquisition of FIP resources by contracting. It relies on the FAR for general policies and procedures to be used in acquiring these resources. The policies and procedures of this part 201–39 are in addition to, not in lieu of, the FAR policies and procedures, except when the FIRMR specifically requires its policies and procedures, and not those of the FAR, to be followed.

(b) Notwithstanding the fact that the FAR is for the use of executive agencies in the acquisition of supplies and services, Federal agencies not otherwise subject to the FAR shall use the FAR in conjunction with the FIRMR when acquiring FIP resources.

§ 201–39.103 [Reserved]

§ 201–39.104 Deviations.

§ 201–39.104–1 Deviations from the FIRMR.

(a) *Policy.* Unless precluded by law, executive order, or regulation, GSA may grant deviations, as defined in subpart 201–39.2, from part 201–39 when necessary to meet the specific needs and requirements of each agency. Class deviations (affecting more than one contract action) and individual deviations (affecting only one contract action) may be authorized by—

(1) The Commissioner, Information Resources Management Service, or

(2) The officials designated by the Commissioner for that purpose.

(b) *Procedures.* (1) The agency head (or a designee) shall prescribe procedures for processing deviation requests.

(2) Each request for deviation shall explain the nature of and the reasons for the deviation.

(3) Agencies shall forward requests for deviations to: General Services Administration, Policy and Regulations Division (KMP), 18th & F Streets, NW., Washington, DC 20405.

§ 201–39.104–2 Deviations from the FAR.

Deviations from the FAR shall be accomplished in accordance with FAR subpart 1.4.

§ 201–39.105 [Reserved]

§ 201–39.106 Contracting authority and responsibilities.

§ 201–39.106–1 General.

(a) Notwithstanding FAR 1.601, authority and responsibility to contract for FIP resources is vested in the Administrator of General Services unless an exception in 40 U.S.C. 759(a)(3) applies. The Administrator of General Services, or a designee, authorizes agencies to contract for FIP resources by granting a delegation of procurement authority (DPA) to the agency designated senior official (DSO) when GSA determines that the DSO is sufficiently independent of program responsibility and has sufficient experience, resources, and ability to fairly and effectively carry out procurements under CSA's authority. Such delegations are granted by one of the following methods:

(1) The regulatory delegation of GSA's exclusive procurement authority which allows Federal agencies to contract for certain types of FIP resources up to specified dollar amounts without obtaining a specific DPA;

(2) A specific agency delegation of GSA's exclusive procurement authority whereby the GSA Commissioner for Information Resources Management or a designee may authorize changes in the regulatory DPA for individual Federal agencies (or components thereof) on the basis of their ability to acquire, manage, and use FIP resources in accordance with FIRMR policies and procedures; or

(3) A specific acquisition delegation of CSA's exclusive procurement authority provided to the agency as a result of the submission of an agency procurement request (APR) to CSA when acquisitions are not covered by either the regulatory or a specific agency DPA.

(b) The agency's DSO may redelegate GSA's exclusive authorities for FIP resources to qualified officials. However, such redelegation does not relieve the DSO of the responsibilities under 44 U.S.C. 3506 for the conduct of and accountability for acquisitions of FIP resources made under a DPA from GSA.

(c) Only a contracting officer may enter into and sign a contract on behalf of the Government. A DPA from GSA does not make the DSO a contracting officer. Contracting officers are appointed under procedures established by agency heads under FAR subpart 1.6.

(d) Additional policies and procedures related to delegations of procurement authority are addressed in part 201–20.

§ 201–39.106–2 Policy.

Before contracting for FIP resources, the contracting officer shall ensure that the agency's DSO has redelegated GSA's procurement authority to the contracting officer.

§ 201–39.106–3 Procedures.

The contracting officer shall consider this § 201–39.106, agency directives, and written instructions to the contracting officer issued under FAR 1.602–1 to ensure that the contracting officer is authorized to make the award.

§ 201–39.106–4 Contract clause.

(a) All solicitations and contracts for FIP resources subject to the FIRMR shall contain a clause identifying whether the contracting action is being conducted under the regulatory DPA, a specific agency DPA, or a specific acquisition DPA.

(b) If the contracting action is being conducted under a specific agency or specific acquisition DPA, the contract clause shall also include the GSA case number of the specific DPA.

(c) Accordingly, the contracting officer shall—

(1) Insert a clause substantially the same as the clause at § 201–39.5202–3, Procurement Authority, in each solicitation and contract for FIP resources; and

(2) Promptly issue an amendment to the solicitation modifying this clause if any of the facts set forth in it change prior to contract award.

Subpart 201–39.2—Definitions of Words and Terms

§ 201–39.200 Scope of subpart.

This subpart defines words and terms used in part 201–39.

§ 201–39.201 Definitions.

Designated senior official (DSO) means—

(a) The senior official designated by executive agencies pursuant to the Paperwork Reduction Act to be responsible for carrying out the agency's IRM functions (see 44 U.S.C. 3506); or

(b) The senior IRM official designated by the agency head for Federal agencies not subject to the Paperwork Reduction Act to be responsible for acquisitions of FIP resources made pursuant to a DPA.

Deviation means any one or a combination of the following:

(a) The issuance or use of a policy, procedure, practice, solicitation provision, contract clause, or method pertaining to the acquisition, management or use of Federal information processing resources that is inconsistent with the FIRMR.

(b) The omission or modification of any policy, procedure, practice, solicitation provision or contract clause required by the FIRMR.

(c) The authorization of lesser or greater limitations on the delegation, use, or application of any policy, procedure, solictation provision, or contract clause prescribed by the FIRMR, except that this does not preclude an agency from setting delegation thresholds at more restrictive levels than those established by the FIRMR.

Federal information processing (FIP) resources means automatic data processing equipment (ADPE) as defined in Public Law 99–500 (40 U.S.C. 759(a)(2)), and set out in paragraphs (a) and (b) of this definition.

(a) Any equipment or interconnected system or subsystems of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange,

transmission, or reception, of data or information—

(1) By a Federal agency, or

(2) Under a contract with a Federal agency which—

(i) Requires the use of such equipment, or

(ii) Requires the performance of a service or the furnishing of a product which is performed or produced making significant use of such equipment.

(b) Such term includes—

(1) Computers;

(2) Ancillary equipment;

(3) Software, firmware, and similar procedures;

(4) Services, including support services; and

(5) Related resources as defined by regulations issued by the Administrator for General Services.

(c) The term, FIP resources, includes FIP equipment, software, services, support services, maintenance, related supplies, and systems. These terms are limited by paragraphs (a) and (b) of the definition of FIP resources and are defined as follows:

(d) *FIP equipment* means any equipment or interconnected system or subsystems of equipment used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information.

(e) *FIP maintenance* means those examination, testing, repair, or part replacement functions performed on FIP equipment or software.

(f) *FIP related supplies* means any consumable item designed specifically for use with FIP equipment, software, services, or support services.

(g) *FIP services* means any service, other than FIP support services, performed or furnished by using FIP equipment or software.

(h) *FIP software* means any software, including firmware, specifically designed to make use of and extend the capabilities of FIP equipment.

(i) *FIP support services* means any commercial nonpersonal services, including FIP maintenance, used in support of FIP equipment, software or services.

(j) *FIP system* means any organized combination of FIP equipment, software, services, support services, or related supplies.

Lowest overall cost means the least expenditure of funds over the system life, price and other factors considered, including, but not necessarily limited to—

(a) Prices for the FIP resources;

(b) The present value adjustment, if used; and

(c) The identifiable and quantifiable costs—

(1) Directly related to the acquisition and use of the FIP resources;

(2) Of conducting the contract action; and

(3) Of other administrative efforts directly related to the acquisition process.

Most advantageous alternative means the alternative that provides the greatest value to the Government over the system life in terms of price or cost, quality, performance, and any other relevant factors.

Outdated FIP equipment means any FIP equipment over e' ht years old, based on the initial commercial installation date of that model of equipment, and that is no longer in current production.

Radar equipment means any radio detection device that provides information on range, azimuth, or elevation of objects.

Radio equipment means any equipment or interconnected system or subsystem of equipment (both transmission and reception) that is used to communicate over a distance by modulating and radiating electromagnetic waves in space without artificial guide. This does not include such items as microwave, satellite, or cellular telephone equipment.

Sonar equipment means an apparatus that detects the presence and location of a submerged object by means of sonic, subsonic, or supersonic waves reflected back to it from the object.

Specific make and model specification means a description of the Government's requirement for FIP resources that is so restrictive that only a particular manufacturer's products will satisfy the Government's needs, regardless of the number of suppliers that may be able to furnish that manufacturer's products.

System life means a projection of the time period that begins with the installation of the FIP resource and ends when the agency's need for that resource has terminated.

Television equipment means any equipment (both transmission and reception) used for the conversion of transient visual images into electrical signals that can be transmitted by radio or wire to distant receivers where the signals can be reconverted to the original visual images. This does not include such items as monitors for computers or computer terminals or video conferencing equipment.

Subparts 201-39.3 and 201-39.4—[Reserved]

Subpart 201-30.5—Publicizing Contract Actions

§ 201-39.500 Scope of subpart.

This subpart prescribes the unique policies and procedures for publicizing contract actions when acquiring FIP resources using the GSA nonmandatory schedule contracts.

§ 201-39.501 Synopses of proposed contract actions.

§ 201-39.501-1 Policies.

(a) The contracting officer shall publicize the intent to place an order against a GSA nonmandatory contract by following the procedures of § 201-39.501-3 and FAR subpart 5.2.

(b) The contracting officer shall not use the exception to synopsizing set forth at FAR 5.202(a)(11) when using GSA nonmandatory schedule contracts to acquire FIP resources.

§ 201-39.501-2 Exceptions.

(a) The contracting officer need not publicize the intent to place an order against a GSA nonmandatory contract when—

(1) The total value of the order is $50,000 or less; or

(2) The order is for FIP resources that were previously specifically synopsized on a system life basis in a Commerce Business Daily (CBD) notice of intent i n accordance with § 201-39.501-3 and FAF subpart 5.2.

(b) The contracting officer is not required to publish a second notice of a proposed contract action in accordance with FAR 5.203(a) when—

(1) A solicitation is being issued in accordance with § 201-39.603-3(b)(2)(iii); and

(2) The requirement was the subject of a previous CBD synopsis of intent accomplished in accordance with the procedures set forth in § 201-39.501-3 and FAR subpart 5.2.

§ 201-39.501-3 Procedures.

The contracting officer shall use the following procedures when publicizing the intent to place an order against a GSA nonmandatory schedule contract:

(a) Before placing an order for FIP resources against a GSA nonmandatory schedule contract, the contracting officer shall furnish a synopsis to the CBD in accordance with FAR 5.207 and this § 201-39.501.

(b) Notwithstanding FAR 5.203(c), the synopsis shall be published in the CBD at least 15 calendar days before placing the order. In calculating the 15 calendar days for synopsizing, the first day shall be the actual date the synopsis appears in the CBD.

(c) Format Item 17 (DESCRIPTION) of the standard synopsis format in FAR 5.207 shall contain a description of the intended contract action to the extent necessary to obtain information to permit the analysis required by § 201-39.803. As a minimum, Format Item 17 shall contain the following information:

(1) An identification of the specific nonmandatory schedule contract intended to be used.

(2) A description of the resources to be ordered, including, as applicable—

(i) The make and model of any FIP equipment to be ordered or maintained;

(ii) The name, functional description, and operating environment of any FIP software to be ordered;

(iii) The quantities, dates required, and period of performance;

(iv) The system life; and

(v) The type of support to be ordered.

(3) A request for pricing data.

(4) The following statement: "All responses from responsible sources will be fully considered. As a result of analyzing responses to this synopsis of intent, the contracting officer may determine that a solicitation will be issued. If a solicitation is issued, no additional synopsis will be published. Any such solicitation will be issued to the intended schedule vendor and all firms that respond to this synopsis of intent or otherwise request a copy of the soliciation."

Subpart 201-39.6—Competition Requirements

§ 201-39.600 Scope of subpart.

This subpart prescribes policies and procedures applicable to—

(a) The acquisition of FIP resources using specific make and model specifications; and

(b) The use of follow-on contracts to perpetuate outdated FIP equipment.

§ 201-39.601 Specific make and model specifications.

§ 201-39.601-1 Policy.

An acquisition that uses a specific make and model specification does not provide for full and open competition and must be justified and approved in accordance with FAR 6.303 and 6.304.

§ 201-39.601-2 Exception.

Subsection 201-39.601-1 does not apply when an order for FIP resources is placed against a GSA nonmandatory schedule contract and—

(a) The statement of work or requirements documentation prepared by the technical and requirements personnel describes the requirements with other than a specific make and model specification, notwithstanding the fact that when the synopsis appears in the Commerce Business Daily (CBD) and the order is placed, a specific make and model is cited; and

(b) The procedures of § 201-39.803 regarding use of GSA nonmandatory schedule contracts are followed.

§ 201-39.601-3 Authority.

When the FIP resources required to meet the needs of an agency can be satisfied only through the use of a specific make and model specification, the statutory authority to be cited in FAR 6.303-2(a)(4), in lieu of any statutory authority cited in accordance with FAR 6.302, is: 40 U.S.C. 759(g), as amended.

§ 201-39.602 Outdated FIP equipment.

§ 201-39.602-1 Policy.

The justification requirements of FAR 6.302-1(a)(2)(ii) shall not be used to perpetuate any contract for outdated FIP equipment or for FIP equipment to be used with FIP software that requires general redesign to satisfy mission needs.

§ 201-39.602-2 Exception.

An exception to § 201-39.602-1 may be invoked if the agency's DSO determines that such action will be in the Government's best interest.

Subpart 201-39.7—[Reserved]

Subpart 201-39.8—Required Sources of Supplies and Services

§ 201-39.800 Scope of subpart.

This subpart prescribes the policies and procedures applicable to the acquistion of FIP resources using GSA mandatory and nonmandatory sources of supply.

§ 201-39.801 Ordering FIP resources from Federal Supply Schedules.

§ 201-39.801-1 General.

GSA directs and manages both the Federal Supply Schedules program and the GSA nonmandatory schedule contracts for FIP resources. While most FIP resources available under these programs are covered by the GSA nonmandatory schedule contracts for FIP resources, the Federal Supply Schedules also contain some resources that fall within the definition of FIP resources. Use of the Federal Supply Schedules program is covered by FAR 8.4 and use of the GSA nonmandatory schedule contracts for FIP resources is covered by this subpart 201-39.8.

§ 201-39.801-2 Policy.

The procedures of FAR 8.4 shall be followed when an order for FIP resources is placed against a GSA Federal Supply Schedule.

§ 201-39.802 Purchase of telephones and services (POTS) contracts.

§ 201-39.802-1 General.

(a) GSA has established POTS contracts to provide telecommunications supplies and services, including purchase, installation, maintenance, repair, deinstallation, and relocation of both contractor-provided and Government-owned telephone equipment, at locations throughout the country.

(b) Use of the POTS contracts is mandatory for supplies and services within the scope of the POTS contract at some locations (buildings or building complexes) where GSA operates or manages the telecommunications system or service.

(c) Federal agencies may obtain information and assistance concerning the use of POTS contracts from: General Services Administration, Technical Contract Management Division (KVT), 18th and F Streets, NW., Washington, DC 20405.

§ 201-39.802-2 Policies.

(a) Federal agencies at locations where a POTS contract is mandatory shall use the POTS contract to acquire supplies and services that are within the scope of the contract.

(b) Federal agencies at locations where POTS contracts are not mandatory may use POTS contracts to satisfy requirements when—

(1) The requirements are within the scope of the POTS contract; and

(2) The contracting officer determines that placing an order under the POTS contract is the most advanatageous alternative.

(c) Use of the POTS contracts is a competitive procedure when—

(1) It results in the most advanatageous alternative to meet the needs of the Government; and

(2) The procedures of this section are followed.

§ 201-39.802-3 Procedures.

(a) The contracting officer shall determine whether mandatory use of the POTS contracts applies by contacting GSA at the address shown in §201-39.802-1(c).

(b) The contracting officer's determination required by § 201-39.802-2(b) shall, as a minimum, be supported by an analysis of prices or an examination of the market. The GSA nonmandatory schedule contracts for FIP resources should be included in this analysis process.

(c) The requirements of subpart 201-39.5 and FAR part 5 do not apply when an order is issued under a POTS contract and the procedures of this section are followed.

§ 201-39.803 GSA nonmandatory schedule contracts for FIP resources.

§ 201-39.803-1 General.

(a) GSA nonmandatory schedule contracts for FIP resources, managed by GSA's Information Resources Management Service provide Federal agencies with a simplified process for obtaining these resources. GSA awards such contracts to many different vendors and each contract establishes terms, conditions, and prices for stated periods of time. These contracts are not part of the Federal Supply Service (FSS) Schedule program covered in FAR support 8.4 and they are not mandatory sources of supply.

(b) Agencies should use GSA nonmandatory schedule contracts for FIP resources when the contracting officer determines that placing an order under a GSA nonmandatory schedule contract would result in a lower overall cost than other contracting methods, such as issuing a solicitation, using small purchase procedures, using a nonmandatory agency contract, or using other nonmandatory GSA programs.

§ 201-39.803-2 Policy.

Use of GSA nonmandatory schedule contracts is a competitive procedure when—

(a) It results in the lowest overall cost alternative to meet the needs of the Government; and

(b) The procedures of this section are followed.

§ 201-39.803-3 Procedures.

(a) Prior to selecting a GSA nonmandatory schedule contract and placing an order or, if applicable, publishing a synopsis of intent to place an order, the agency shall—

(1) Justify any restrictive requirement (e.g., an "all or none" requirement or a requirement for "only new" equipment); and

(2) Consider the offerings of a reasonable number of nonmandatory schedule contractors.

(b) The contracting officer shall consider all responses received as a result of the CBD notice and then determine whether to order from a GSA nonmandatory schedule contract or issue a solicitation. Accordingly, the contracting officer shall take one of the following actions:

(1) When no responses are received, document the contract file with the results of the CBD synopsis and an analysis indicating that an order placed against the synopsized nonmandatory schedule contract provides the lowest overall cost alternative to meet the Government's needs.

(2) When a response to the CBD notice is received from either a responsible vendor that does not have a GSA nonmandatory schedule contract or a GSA nonmandatory schedule contractor (expressing an interest either on or off schedule) for items that may meet the user's requirement, the contracting officer shall take one of the following actions:

(i) Document the contract file with an analysis indicating that the respondent's items would not meet the requirements o. that the synopsized GSA nonmandatory schedule contract items provides the lowest overall cost alternative to meet the

Government's needs and place an order against the synopsized CSA nonmandatory schedule contract;

(ii) Document the contract file with an analysis indicating that a responding contractor's GSA nonmandatory schedule contract offering provides the lowest overall cost alternative to meet the Government's needs and place an order against that GSA nonmandatory schedule contract; or

(iii) Document the contract file with an analysis indicating that ordering from a GSA nonmandatory schedule contract may not result in the lowest overall cost alternative to meet the Government's needs. In this case, the contracting officer may elect to issue a solicitation. In such cases, the contracting officer shall take the following actions:

(A) Ensure that the solicitation contains terms and conditions substantially the same as those of the GSA solicitation for nonmandatory schedule contracts that resulted in the synopsized schedule contract; and

(B) Provide the solicitation to those potential offerors responding to the CBD synopsis of intent; the vendor whose GSA nonmandatory schedule contract was the subject of the synopsis; and any other potential offerors that specifically express an interest.

(c) If the contracting officer places an order in accordance with § 201–39.803–3(b)(2)(i) or (b)(2)(ii), the contracting officer shall promptly provide written notification of award to the synopsized schedule vendor and to all parties responding in writing to the CBD notice.

(d) Requirements or orders shall not be fragmented in order to circumvent the applicable MOL.

§ 201–39.804 Financial Management Systems Software (FMSS) Mandatory Multiple Award Schedule (MAS) Contracts Program.

§ 201–39.804–1 General.

(a) The Office of Management and Budget (OMB) has established a Governmentwide financial management systems software program. To help agencies implement this program, GSA has established the mandatory FMSS MAS contracts program.

(b) Federal agencies may obtain information and assistance concerning the use of the FMSS MAS contracts program from: General Services Administration, ADP Systems Procurement Branch (KECP), FMSS Contracting Officer, 18th and F Streets, NW., Washington, DC 20405.

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

§ 201–39.804–2 Policy.

Executive agencies shall use the FMSS MAS contracts program for the acquisition of commercial software for primary accounting systems and for the acquisition of services and support related to the implementation of such software.

§ 201–39.804–3 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 § 201–39.804–1(b).

(3) If a waiver is obtained from GSA, a deviation from the FIRMR is not required.

§ 201–39.804–4 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 GSA at the address in § 201–39.804–1(b) and to OMB at the following address: Office of Management and Budget, Chief Financial Officer, 725 17th Street, NW., room 10235, Washington, DC 20503.

(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 at the address shown in subparagraph (b) of this section and to GSA at the address in § 201–39.804–1(b).

Subpart 201–39.9—[Reserved]

Subpart 201–39.10—Specifications, Standards, and other Purchase Descriptions

§ 201–39.1000 Scope of subpart.

This subpart prescribes policies and procedures for using specifications, standards, and other purchase descriptions in acquiring FIP resources.

§ 201–39.1001 Security and privacy specifications.

§ 201–39.1001–1 Security specifications.

Specifications for security of FIP resources shall include, as appropriate:

(a) Agency rules of conduct that a contractor shall be required to follow.

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

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

(d) The security standards applicable to the contract.

(e) A description of the test methods, procedures, criteria, and inspection system necessary to verify and monitor the operation of the safeguards during contract performance and to discover and counter any new threats or hazards.

(f) A description of the procedures for periodically assessing the security risks involved.

(g) A description of the personnel security requirements.

(h) Consistent with the guidelines for Federal computer security training issued by the National Institute of Standards and Technology (NIST) and regulations issued by the Office of Personnel Management (OPM), a description of the security training that the contractor is required to provide to its employees.

(i) Consistent with the guidelines issued by the Office of Management and Budget (OMB) in OMB Bulletin 88–16, a description of the plan the contractor must develop or follow to provide for the security and privacy of FIP resources the contractor is required to operate.

§ 201–39.1001–2 Privacy specifications.

(a) *Applicability.* This subsection is applicable to executive agencies that are subject to the Privacy Act of 1974 (5 U.S.C. 552a).

(b) *Procedures.* Specifications for the design, development, or operation of a system of records using commercial FIP services or support services shall include the following:

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

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

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

(4) 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.

§ 201–39.1001–3 Contract clause.

The contracting officer shall insert a clause substantially the same as the clause at § 201–39.5205–5, Privacy or Security Safeguards, in solicitations and contracts—

(a) Requiring security of FIP resources.

(b) For the design, development, or operation of a system of records using commercial FIP services or support services.

§ 201-39.1002 Federal standards.

§ 201-39.1002-1 General.

GSA publishes a handbook titled "Federal ADP and Telecommunications Standards Index" providing guidance to agencies on the use of Federal standards. The index also provides optional terminology that may be used to incorporate standards in solicitations and a "Standards Checklist" that can be included in the solicitation to incorporate applicable Federal standards. Copies of the index can be purchased from: U.S. Government Printing Office, Superintendent of Documents, Washington, DC 20402.

§ 201-39.1002-2 Policy.

The contracting officer shall include in solicitations terminology to incorporate each standard that is applicable to the FIP resources being acquired.

§ 201-39.1002-3 Procedures.

The contracting officer shall use one or a combination of the following methods to implement standards in solicitations:

(a) Include inthe solicitation the full text of the terminology contained in the index for each applicable standard.

(b) Incorporate in the solicitation the applicable terminology by reference to the index.

(c) For each applicable standard, include the full text of the terminology as developed by the agency.

§ 201-39.1002-4 Solicitation provision.

If any of the terminology to incorporate standards in solicitations is incorporated by reference, the contracting officer shall insert in the solicitation the provision at § 201-39.5202-2, Availability of the "Federal ADP and Telecommunications Standards Index."

§ 201-39.1003 Specifications for outdated FIP equipment.

The contracting officer shall not include specifications for outdated FIP equipment in a solicitation unless—

(a) The agency's DSO determines that such action will be in the Government's best interest; or

(b) A determination has been made in accordance with § 201-39.602.

Subparts 201-39.11 and 201-39.12 — [Reserved]

Subpart 201-39.13—Small Purchase and Other Simplified Purchase Procedures

§ 201-39.1300 Scope of subpart.

This subpart prescribes policies and procedures for acquiring from commercial sources FIP resources whose aggregate amount does not exceed the small purchase threshold of FAR part 13.

§ 201-39.1301 Policy.

When requirements for FIP resources are to be satisfied through the use of GSA sources of supply as set forth in subpart 201-39.8, the policies and procedures of FAR part 13 do not apply.

Subpart 201-39.14—Sealed Bidding

§ 201-39.1400 Scope of subpart.

This subpart prescribes policies and procedures governing contracting for FIP resources by sealed bidding.

§ 201-39.1401 General.

This subpart requires the contracting officer to select the bid that is most advantageous to the Government considering options, acquisition methods, present value discount factors, and other price-related factors. Therefore, contracting officers should consider the factors associated with each acquisition of FIP resources in order to select the method of contracting that will best accommodate this requirement.

§ 201-39.1402 Price-related factors.

§ 201-39.1402-1 Policies.

(a) In addition to the bid price for the basic and all optional quantities and contract periods and optional FIP resources; and the price-related factors set forth in FAR 14.201-8, sealed bid solicitations for FIP resources shall be structured to require consideration of the following factors, as applicable, in order to determine which bid is most advantageous to the Government.

(1) Support and in-house costs over the system life for installing, operating, and disposing, where quantifiable and when these costs may differ based on offers received.

(2) Any costs of conversion that can be stated in dollars, as well as other costs directly related to converting from installed to augmentation or replacement FIP resources. However, the costs associated with the following shall not be included:

(i) Conversion of existing software and data bases that are to be redesigned regardless of whether or not augmentation or replacement FIP resources are acquired.

(ii) Purging duplicate or obsolete software, data bases, and files.

(iii) Development of documentation for existing application software.

(iv) Improvements in management and operating procedures.

(b) When the timing of payments is expected to vary among the alternatives being considered, all prices and costs shall be adjusted to present value, and the results shall be applied in determining the bid most advantageous to the Government. Agencies should follow the guidance in OMB Circular A-104 regarding present value calculations.

§ 201-39.1402-2 Exception.

Agencies are permitted to award on the basis of the lowest offered purchase price when—

(a) The only acquisition method to be used is purchase;

(b) The purchase price of each item being acquired does not exceed $25,000; and

(c) The total purchase price of all the FIP resources to be included in the contract does not exceed $300,000.

§ 201-39.1403 Solicitation.

(a) The solicitation shall state the means of evaluating all acquisition methods included in the solicitation.

(b) If a present-value adjustment is to be used, the solicitation shall state the methodology and discount rate that will be applied in the evaluation process.

§ 201-39.1404 Award.

The contracting officer shall not award a contract providing for the delivery of outdated FIP equipment unless—

(a) The agency's DSO determines that such action will be in the Government's best interest; or

(b) A determination has been made in accordance with § 201-39.602 or § 201-39.1003.

Subpart 201-39.15—Contracting By Negotiation

§ 201-39.1500 Scope of subpart.

This subpart prescribes policies and procedures governing contracting for FIP resources by negotiation.

§ 201.39-1501 Evaluation factors.

§ 201-39.1501-1 Policies.

(a) In addition to the factors set forth in FAR 15.605, the contracting officer shall evaluate total cost, including the following factors:

(1) All prices for FIP resources including the basic and optional quantities, basic and optional contract periods, and optional FIP resources.

(2) Other support and in-house costs over the system life for installing, operating, and disposing, where quantifiable and when these costs may differ based on offers received.

(3) Any costs of conversion that can be stated in dollars, as well as other costs directly related to converting from installed to augmentation or replacement FIP resources. However, the costs associated with the following shall not be included:

(i) Conversion of existing software and data bases that are to be redesigned regardless of whether or not augmentation or replacement FIP resources are acquired.

(ii) Purging duplicate or obsolete software, data bases, and files.

(iii) Development of documentation for existing application software.

(iv) Improvements in management and operating procedures.

(b) When the timing of payments is expected to vary among the alternatives being considered, agencies shall adjust all prices and costs to present value and apply the results in source selection. Agencies should follow the guidance in OMB Circular A-104 regarding present value calculations.

§ 201-39.1501-2 Exception.

Agencies are permitted to award on the basis of the lowest offered purchase price when—

(a) The only acquisition method being solicited is purchase;

(b) The purchase price of each item being acquired does not exceed $25,000; and

(c) The total purchase price of all of the FIP resources to be included in the contract does not exceed $300,000.

§ 201-39.1502 Solicitation.

(a) The solicitation shall state the means of evaluating all acquisition methods included in the solicitation.

(b) If a present-value adjustment is to be used, the solicitation shall state the methodology and discount rate that will be applied in the evaluation process.

§ 201-39.1503 Award.

The contracting officer shall not award a contract providing for the delivery of outdated FIP equipment unless—

(a) The agency's DSO determines that such action will be in the Government's best interest; or

(b) A determination has been made in accordance with § 201-39.602 or § 201-39.1003.

Subpart 201-39.16—[Reserved]

Subpart 201-39.17—Special Contracting Methods

§ 201-39.1700 Scope of subpart.

This subpart prescribes policies asnd procedures for using options in acquiring FIP resources.

§ 201-39.1701 Options.

§ 201-39.1701-1 General.

The use of options may be appropriate in FIP resources acquisitions because—

(a) The FIRMR requires agencies to determine a system life for each FIP resource requirement and to evaluate costs over the system life;

(b) Funding is normally not available at the time of award for the entire system life; and

(c) Soliciting and evaluating optional quantities, optional contract periods, and optional FIP resources can be an effective method to achieve competition for the options and to prevent the possibility of a contractor "buying-in."

§ 201-39.1701-2 Applicability.

Except as set forth below, the policies and procedures of FAR subpart 17.2 shall apply to the acquisition of FIP resources, notwithstanding the language in FAR 17.200.

§ 201-39.1701-3 Policy.

Notwithstanding the language in FAR 17.202, a contract for FIP resources with options to extend the contract period of performance, or to acquire additional quantities or optional FIP resources may be used when—

(a) The Government has requirements for the acquistiion of FIP resources extending beyond the basic contract period;

(b) Funds are not available for the entire system life, but a reasonable certainty exists that they will be available in the future; or

(c) Competition for the additional periods, quantities or optional FIP resources is impracticable once the contract is awarded.

§ 201-39.1701-4 Contracts.

Notwithstanding the language in FAR 17.204(e), the total of the basic and option periods for contracts not subject to the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), as amended, may exceed 5 years (see FAR 22.10). However, statutes applicable to various classes of contracts may place additional restrictions on the length of contracts.

§ 201-39.1701-5 Documentation.

Any justifications and approvals or determinations and findings required by subpart 201-39.6 or FAR part 6 shall specify both the basic requirement and all options.

§ 201-39.1701-6 Evaluation.

Notwithstanding the language in FAR 17.206, the contracting officer shall consider all options in the award evaluation.

§ 201-39.1701-7 [Reserved]

§ 201-39.1701-8 Solicitation provision and contract clauses.

In lieu of the solicitation provisions and contract clauses prescriptions set forth in FAR 17.208, the contracting officer shall insert the following in solicitations and contracts for FIP resources that contain options—

(a) A provision substantially the same as the provision at § 201-39.5204-4, Evaluation of Options-FIP Resources, in the solicitation;

(b) A clause substantially the same as the clause at FAR 52.217-6, Option for Increased Quantity, in the solicitation and contract; and

(c) A clause substantially the same as the clause at FAR 52.217-9, Option to Extend the Term of the Contract, in the solicitation and contract.

Subparts 201-39.18 through 201-39.32—[Reserved]

Subpart 201-39.33—Protests, Disputes, and Appeals

§ 201-39.3300 Scope of subpart.

This subpart prescribes policies and procedures applicable to protests concerning FIP resource acquisitions filed with the GSA Board of Contract Appeals (GSBCA).

§ 201-39.3301 General.

Under Public Law 98-369, as amended (40 U.S.C. 759(f)), the GSBCA is authorized to hear and decide protests by interested parties involving acquisitions of FIP resources by Federal agencies subject to section 111 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759), including acquisitions subject to GSA delegations of procurement authority.

§ 201-39.3302 Applicability.

This subpart is applicable to all Federal agencies.

§ 201-39.3303 Policy.

All Federal agencies shall follow the GSBCA "Rules of Procedure" in 48 CFR chapter 61.

§ 201-39.3304 Procedures.

§ 201-39.3304-1 Protest notice.

Within 1 working day after receiving a copy of the protest, the contracting officer shall give oral or written notice of the protest to: General Services Administration, Acquisition Evaluation and Analysis Branch (KMAD), 18th and F Streets NW., Washington, DC 20405, telephone (202) 501-4305 or FTS 241-4305.

§ 201-39.3304-2 GSA participation.

In delegating procurement authority for FIP resources to Federal agencies, GSA has the right to intervention in any protest case involving any Federal agency.

Subparts 201-39.34 through 201-39.43—[Reserved]

Subpart 201-39.44—Subcontracting Policies and Procedures

§ 201-39.4400 Scope of subpart.

This subpart prescribes policies and procedures applicable when subcontracting includes FIP resources.

§ 201-39.4401 Policy.

In addition to the policies and procedures set forth in FAR 44.202-2, the contracting officer responsible for consent shall make a written determination for the file that competition was obtained for FIP resources or that the absence of competition is properly justified.

Subpart 201-39.45—Government Property

§ 201-39.4500 Scope of subpart.

This subpart prescribes policies and procedures for providing Government FIP resources to contractors.

§ 201-39.4501 Dedicated FIP equipment or software in FIP services contracts.

§ 201-39.4501-1 General.

When an offeror proposes the dedicated use of FIP equipment or software in performing a FIP service, it means that the offeror is proposing to use that resource exclusively in providing that service. When this is the case, it can sometimes be more advantageous to the Government to provide the FIP equipment or software to the offeror as Government-furnished property.

§ 201-39.4501-2 Policy.

When a solicitation requires or allows an offeror to propose the dedicated use of FIP equipment or software in performing a FIP service, the contracting officer shall ensure that the solicitation—

(a) Reserves the right for the Government to furnish the dedicated items to the offeror;

(b) Requires the offeror to price the use of the dedicated items on a specific line-item basis; and

(c) Requires the offeror to specify the interface requirements between the offeror's system and the dedicated items.

Subpart 201-39.46—Quality Assurance

§ 201-39.4600 Scope of subpart.

This subpart prescribes the use of a contract clause for limiting contractor liability for loss of or damage to property of the Government.

§ 201-39.4601 Contract clause.

The contracting officer shall insert the clause at § 201-39.5202-6, Warranty Exclusion and Limitation of Damages, in solicitations and contracts for FIP resources, unless the contracting officer determines that a higher degree of protection is in the best interest of the Government.

Subparts 201-39.47 through 201-39.51—[Reserved]

Subpart 201-39.52—Solicitation Provisions and Contract Clauses

§ 201-39.5200 Scope of subpart.

This subpart—

(a) Gives instructions for using provisions and clauses in solicitations and contracts for FIP resources; and

(b) Sets forth the solicitation provisions and contract clauses prescribed by this part 201-39.

§ 201-39.5201 [Reserved]

§ 201-39.5202 Texts of provisions and clauses.

§ 201-39.5202-1 FIRMR Applicability.

As prescribed in § 201-39.101-3(c), insert a clause substantially the same as the following in solicitations and contracts:

FIRMR Applicability (Oct 90 FIRMR)

This solicitation/contract requires the use or delivery of Federal information processing resources but the agency has determined that FIRMR part 201-39 does not apply based on the exception set forth in § 201-39.101-3(b)*

(End of clause)

*Insert the specific sub-paragraph number(s) of the applicable exception.

§ 201-39.5202-2 Availability of the "Federal ADP and Telecommunications Standards Index."

As prescribed in § 201-39.1002-4, insert the following provision in the solicitation:

Availability of the "Federal ADP and Telecommunications Standards Index" (Oct 90 FIRMR)

Copies of the "Federal ADP and Telecommunications Standards Index" can be purchased from the U.S. Government Printing Office, Superintendent of Documents, Washington, DC 20402.

(End of provision)

§ 201-39.5202-3 Procurement authority.

As prescribed in § 201-39.106-4, insert a clause substantially the same as the following in solicitations and contracts:

Procurement Authority (Oct 90 FIRMR)

This acquisition is being conducted under *delegation of GSA's exclusive procurement authority for FIP resources.

The specific GSA DPA case number is**

(End of provision)

*Insert one of the following phrases:

(1) "the regulatory;"

(2) "a specific agency;"

(3) "a specific acquisition."

**Insert one of the following:

(1) If the acquisition is being conducted under the regulatory delegation, insert "not applicable."

(2) If the acquisition is being conducted under a specific agency delegation or a specific acquisition delegation, insert the case number as provided in GSA's letter delegating the specific procurement authority (e.g., KMA-88-9999).

§ 201-39.5202-4 Evaluation of options—FIP resources.

As prescribed in § 201-39.1701-8(a), insert a provision substantially the same as the following in the solicitation:

Evaluation of Options—FIP Resources (Oct 90 FIRMR)

(a) The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. These prices will be adjusted by the applicable discount factors shown in* of the solicitation. Evaluation of options will not obligate the Government to exercise the options. Offers containing any changes for failure to exercise any option will be rejected.

(b) Selection of an offer will be made on the basis of the most advantageous alternative to the Government provided that the contract prices reasonably represent the value of bona fide requirements for each fiscal year. This determination with respect to contract prices will be made after consideration of such factors as commercial or catalog prices for short-term leases, offeror system startup expenses, multiyear price protection, assured system life availability of equipment, software, and vendor support. If a determination is made that an offer does not meet the criteria, that offer cannot be accepted for award.

(End of provision)

*Insert one of the following:

(1) If a present-value adjustment is being used, indicate the location in the solicitation where any applicable discount factors and contemplated payment schedule are specified; or

(2) If a present-value adjustment is not being used, insert "Not Applicable."

§ 201-39.5202-5 Privacy or security safeguards.

As prescribed in § 201-39.1001-3, insert a clause substantially the same as the following clause in solicitations and contracts:

Privacy or Security Safeguards (Oct 90 FIRMR)

(a) The details of any safeguards the contractor may design or develop under this contract are the property of the Government and shall not be published or disclosed in any manner without the contracting officer's express written consent.

(b) The details of any safeguards that may be revealed to the contractor by the Government in the course of performance under this contract shall not be published or disclosed in any manner without the contracting officer's express written consent.

(c) The Government shall be afforded full, free, and uninhibited access to all facilities, installations, technical capabilities, operations, documentation, records, and data bases for the purpose of carrying out a program of inspection to ensure continued efficacy and efficiency of safeguards against threats and hazards to data security, integrity, and confidentiality.

(d) 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. Mutual agreement shall then be reached on changes or corrections to existing safeguards or institution of new safeguards, with final determination of appropriateness being made by the Government. The Government's liability is limited to an equitable adjustment of cost for such changes or corrections, and the Government shall not be liable for claims of loss of business, damage to reputation, or damages of any other kind arising from discovery of new or unanticipated threats or hazards, or any public or private disclosure thereof.

(End of clause)

§ 201-39.5202-6 Warranty exclusion and limitation of damages.

As prescribed in § 201-39.4601, insert the following clause in solicitations and contracts.

Warranty Exclusion and Limitation of Damages (Oct 90 FIRMR)

Except as expressly set forth in writing in this agreement and except for the implied warranty of merchantability, there are no warranties expressed or implied.

In no event will the contractor be liable to the Government for consequential damages as defined in the Uniform Commercial Code, section 2-715, in effect in the District of Columbia as of January 1, 1973, i.e.—

Consequential damages resulting from the seller's breach include—

(a) Any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) Injury to person or property proximately resulting from any breach of warranty.

(End of clause)

Subpart 201-39.53—[Reserved]

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.203-8 [Amended]

18. Section 52.203-8 is amended following paragraph (b)(4) of the clause by inserting blank lines for the signature and name requested by the bracketed text.

52.203-9 [Amended]

19. Section 52.203-9 is amended following paragraph (c)(3) of the clause

by inserting blank lines for the signature and name requested by the bracketed text.

20. Section 52.209–6 is revised to read as follows:

52.209–6 Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.

As prescribed in 9.409(b), insert the following clause:

PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUN 1991)

(a) The Government suspends or debars Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of the small purchase limitation at FAR 13.000 with a Contractor that has been debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed the small purchase limitation at FAR 13.000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Procurement Programs). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Procurement Programs.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Procurement Programs.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(End of Clause)

21. Section 52.215–39 is added to read as follows:

52.215–39 Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB).

As prescribed in 15.804–8(f), insert the following clause:

REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS OTHER THAN PENSIONS (PRB) (JUL 1991)

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate or reduce a PRB plan. If PRB fund assets revert, or inure, to the Contractor or are constructively received by it under a plan termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as required by FAR 31.205–6(o)(4). The Contractor shall include the substance of this clause in all subcontracts under this contract which meet the applicability requirements of FAR 15.804–8(f). The resulting adjustment to prior years' PRB costs will be determined and applied in accordance with FAR 31.205–6(o).

(End of clause)

22. Section 52.216–7 is amended by revising the date in the heading of the clause and the first sentence in paragraph (b)(2) to read as follows:

52.216–7 Allowable Cost and Payment.

* * * * *

ALLOWABLE COST AND PAYMENT (JUL 1991)

(b) * * *

(2) Contractor contributions to any pension or other postretirement benefit, profit-sharing or employee stock ownership plan funds that are paid quarterly or more often may be included in indirect costs for payment purposes: *Provided*, That the Contractor pays the contribution to the fund within 30 days after the close of the period covered. * * *

* * * * *

52.219–19 [Amended]

23. Section 52.219–19 is amended in the clause title by removing the words "(JAN 1991)" and inserting in their place "(JUL 1991)"; in paragraph (b) by removing the word "clause" and inserting in its place "provision".

52.219–21 [Amended]

24. Section 52.219–21 is amended in the clause title by removing the words "(JAN 1991)" and inserting in their place "(JUL 1991)"; in the parenthetical of the first paragraph by removing the word "clause" and inserting in its place "provision"; and in the table, in the second column, in the third entry, in the clause removing the amount "$2,000,002" and inserting in its place "$2,000,001".

52.220–1 [Amended]

25. Section 52.220–1 is amended in the first line of the paragraph by removing the word "clause" and inserting in its place "provision"; at the end of the clause by removing the words "(End of clause)" and inserting in their place "(End of provision)"; and removing the derivation line following "(End of provision)".

52.220–3 [Amended]

26. Section 52.220–3 is amended in the introductory paragraph by inserting a colon after the word "clause" and removing the remainder of the sentence.

27. Section 52.232–16 is amended by removing from the clause heading the date "(AUG 1987)" and inserting in its place "(JUL 1991)" and revising the introductory text of paragraph (a)(2)(iii) of the clause to read as follows:

52.232–16 Progress Payments.

* * * * *

PROGRESS PAYMENTS (JUL 1991)

* * * * *

(a) * * *

(2) * * *

(iii) Accrued costs of Contractor contributions under employee pension or other postretirement benefit, profit sharing, and stock ownership plans shall be excluded until actually paid unless—

* * * * *

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