

the FAR Secretariat (VRS) at General Services Administration, 18th & F Streets NW., room 4037, Washington, DC 20405.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: February 15, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR parts 25 and 52, which was published at 57 FR 20372, May 12, 1992 (FAC 90-11, Item II), is adopted as a final rule without change.

The authority citation for 48 CFR parts 25 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

[FR Doc. 94-4391 Filed 3-9-94; 8:45 am]

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48 CFR Part 25

[FAC 90-20; FAR Case 92-47; Item XI]

Federal Acquisition Regulation; Examination of Records

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to state that the requirement to notify Congress when the Examination of Records clause is omitted from a contract with a foreign contractor, does not apply to the Department of Defense.

EFFECTIVE DATE: May 9, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Peter O'Such at (202) 501-1759 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building,

Washington, DC 20405 (202) 501-4755. Please cite FAC 90-20, FAR case 92-47.

SUPPLEMENTARY INFORMATION:

A. Background

Section 1301(9) of the Fiscal Year 1991 DOD Authorization Act amends section 2312 of title 10, United States Code, repealing the requirement for the Department of Defense to notify Congress when the authority to omit the Examination of Records clause is exercised.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90-20, FAR case 92-47), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or 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.*

List of Subjects in 48 CFR Part 25

Government procurement.

Dated: February 15, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 25 is amended as set forth below:

PART 25—FOREIGN ACQUISITION

1. The authority citation for 4 CFR part 25 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 25.901 is amended by revising paragraph (c) to read as follows:

25.901 Omission of examination of records clause.

* * * * *

(c) *Conditions for omission.* (1) The contracting officer may omit the clause at 52.215-1, Examination of Records by Comptroller General, from contracts with foreign contractors—

(i) If the agency head determines, with the concurrence of the Comptroller General or a designee, the omission of the clause will serve the public interest; or

(ii) If the contractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its books, documents, papers, or records available for examination, and the agency head determines, after taking into account the price and availability of the property or services from domestic sources, that omission of the clause best serves the public interest.

(2) When a determination under subparagraph (c)(1)(ii) of this section is the basis for omission of the clause at 52.215-1, Examination of Records by Comptroller General, the agency head shall forward a written report to the Congress explaining the reasons for the determination; except that this requirement is not applicable to the Department of Defense

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[FR Doc. 94-4392 Filed 3-9-94; 8:45 am]

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48 CFR Part 31

[FAC 90-20; FAR Case 93-302; Item XII]

RIN 9000-AF42

Federal Acquisition Regulation; Independent Research and Development and Bid and Proposal Costs

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) by inserting a date certain with regard to waiving the limitation on the maximum allowable amount of independent research and development and bid and proposal costs for a major contractor in order to ensure that the amount determined to be allowable for such contractor is at least equal to what would have been allowed prior to the enactment of the National Defense Authorization Act for Fiscal Years 1992 and 1993.

EFFECTIVE DATE: May 9, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-20, FAR Case 93-302.

SUPPLEMENTARY INFORMATION:

A. Background

This rule implements section 1052 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484) which amended 10 U.S.C. 2372(e)(1) concerning waiver of the limitation on total maximum allowable amount of independent research and development and bid and proposal (IR&D/B&P) costs. Section 2372(e)(1) of title 10 was originally added by section 802 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190), which was enacted December 5, 1991. Section 1052 then amended 10 U.S.C. 2372(e)(1) by removing the phrase that begins with "on the day before" and ends at the semicolon, and inserted, in lieu thereof, the phrase "on December 4, 1991."

The rule inserts a date certain with regard to the FAR provision for waiving the limitation on the maximum allowable amount of IR&D/B&P costs for a major contractor in order to ensure that the amount determined to be allowable for such contractor is at least equal to what would have been allowed prior to the enactment of Public Law 102-190 on December 5, 1991. The phrase "prior to the enactment of Public Law 102-190" is removed from FAR 31.205-18(c)(2)(iii) (A) and replaced with the phrase "on December 4, 1991."

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for comments is not required. Therefore, the Regulatory Flexibility act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90-20, FAR case 93-302), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or 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.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: February 15, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 31 is amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR part 31 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).

31.205-18 [Amended]

2. Section 31.205-18(c)(2)(iii)(A) is amended by removing the words "prior to enactment of Public Law 102-190" and inserting in its place "on December 4, 1991".

[FR Doc. 94-4393 Filed 3-9-94; 8:45 am]

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48 CFR Parts 32 and 52

[FAC 90-20; FAR case 92-46; Item XIII]

RIN 9000-AF41

Federal Acquisition Regulation; Prompt Payment Overseas

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

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to reflect a decision by the Armed Services Board of Contract Appeals that the Prompt Payment Act applies to overseas contracts.

DATES: Effective Date: March 10, 1994. Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before May 9, 1994, 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 4037, Attn: Ms. Beverly Fayson, Washington, DC 20405.

Please cite FAC 90-20, FAR case 92-46 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy F. Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-20, FAR case 92-46.

SUPPLEMENTARY INFORMATION:

A. Background

On January 13, 1992, the Armed Services Board of Contract Appeals

(ASBCA), in *Held & Francke Baukittengesellschaft* (ASBCA Nos. 42463 and 42464), held that FAR 32.901 improperly excluded applicability of the Prompt Payment Act (31 U.S.C. 3901, *et seq.*) to contracts awarded to foreign contractors for work performed outside the United States. As a result of the ASBCA decision, the Councils have agreed on an interim rule which, in effect, makes the Government liable for payment of interest and interest penalties under the Act for contracts with foreign contractors for work performed or supplies delivered overseas.

Section 32.901 and the clauses at 52.232-25, 52.232-26, and 52.232-27 are amended to remove the statements that no interest penalty will be paid on contracts awarded to foreign vendors outside the United States for work performed outside the United States and to remove the definition of "foreign vendor" from the clauses.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies, but the interim rule will not significantly impact a substantial number of small entities within the meaning of the Act. The rule only applies to contracts with foreign contractors for work performed overseas by extending the Government's liability to pay interest and penalties under the Prompt Payment Act to such entities. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610; however, such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90-20, FAR case 91-46), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the amendments to the FAR do not impose recordkeeping or 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

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) that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is

necessary because it is essential that uniform guidance on application of the board decision be issued in the FAR.

List of Subjects in 48 CFR Parts 32 and 52

Government procurement.

Dated: February 15, 1994.

Albert A. Vicchiolla,
Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 32 and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 32 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 32—CONTRACT FINANCING

2. Section 32.901 is revised to read as follows:

32.901 Applicability.

This subpart applies to all Government contracts (including small purchases as defined in subpart 13.1), except contracts with payment terms and late payment penalties established by other governmental authority (e.g., tariffs).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.232-25 [Amended]

3. Section 52.232-25 is amended in the clause heading by removing "(SEP 1992)" and inserting "(MAR 1994)" in its place; removing the last sentence of the introductory text of the clause and the last sentence of the introductory text of paragraph (a)(5) of the clause.

52.232-26 [Amended]

4. Section 52.232-26 is amended in the clause heading by removing "(APR 1989)" and inserting "(MAR 1994)" in its place; removing the last sentence of the introductory text of the clause and the last sentence of the introductory text in paragraph (a)(4) of the clause.

52.232-27 [Amended]

5. Section 52.232-27 is amended in the clause heading by removing "(APR 1989)" and inserting "(MAR 1994)" in its place; removing the last sentence of the introductory text of the clause and the last sentence of the introductory text in paragraph (a)(3) of the clause.

[FR Doc. 94-4394 Filed 3-9-94; 8:45 am]

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48 CFR Parts 33, 42, and 52

[FAC 90-20; FAR Case 92-301/91-62; Item XIV]

RIN 9000-AF35/9000-AE96

Federal Acquisition Regulation; Federal Courts Administration Act

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

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule revising the claim certification procedures and the Alternative Means of Dispute Resolution (ADR) procedures in the FAR. The rule also implements subsection 907(a) of the Federal Courts Administration Act of 1992 and further revises existing ADR coverage. Accordingly, the interim rule published as FAR case 91-62, Item III, in the Federal Register at 56 FR 67412, December 30, 1991, concerning Alternative Dispute Resolution, is hereby closed and superseded by this rule.

DATES: Effective date: March 10, 1994, except (FAR) 48 CFR 33.201, 33.207(c), (e), and (f), 33.208, and 33.211(e) which are effective as of October 29, 1992.

Applicability dates: The revisions to FAR 33.201 (definition of "defective certification"), 33.207(e) and (f), and 33.211(e) are applicable with respect to all claims filed before, on, or after October 29, 1992. However, these revisions do not apply to claims that were the subject of an appeal to an agency board of contract appeals or a suit filed in the United States Claims Court prior to October 29, 1992, unless the claim is dismissed without prejudice and is subsequently refiled. Section 33.207(c) is applicable to those certifications executed more than 60 days after publication of this rule in the Federal Register. For certifications executed prior to that date, the reference to 33.207(c) in the revised 33.210 definition of "defective certification" shall be deemed to be a reference to prior 33.207(a). **Comment date:** Comments should be submitted to the FAR Secretariat at the address shown below on or before May 9, 1994 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 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405.

Please cite FAC 90-20, FAR case 92-301 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT:

Mr. Jack O'Neill at (202) 501-3856 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4035, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-20, FAR case 92-301.

SUPPLEMENTARY INFORMATION:

A. Background

Subsection 907(a) of the Federal Courts Administration Act of 1992 (Pub. L. 102-572) requires that the person certifying a claim under the Contract Disputes Act (CDA) (41 U.S.C. 601-613) be duly authorized to bind the contractor; specifies the conditions under which a contracting officer does not have to issue a final decision; provides that certifications are not jurisdictional; and provides for payment of interest from the date of initial receipt of the claim or enactment of Public Law 102-572, whichever is later. Public Law 102-572 was enacted on October 29, 1992. This rule revises FAR 33.201, 33.207, 33.208, 33.211, and the clause at 52.233-1, and further revises ADR coverage at 33.202, 33.204, 33.210, 33.214, and 42.302.

B. Regulatory Flexibility Act

The interim revisions may have a significant beneficial 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 they simplify existing policies and procedures for the certification of claims submitted by contractors and are intended to reduce the need for costly litigation which has arisen under the existing regulations. Moreover, the regulatory impact on small entities flows directly from subsection 907(a) of the Federal Courts Administration Act of 1992 (Pub. L. 102-572) which serves as the basis for this interim rule. Comments are invited. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAR Case 92-301), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors,