

16.404) and cost-reimbursement incentive contracts (see 16.405). * * *

(d) Award-fee contracts are a type of incentive contract.

16.402-1 [Amended]

6. Section 16.402-1 is amended in paragraph (b) by removing "16.404-2" and inserting "16.405-2".

16.404 and 16.405 [Redesignated as 16.405 and 16.406]

7. Sections 16.404 and 16.405 are redesignated as 16.405 and 16.406, respectively.

8. A new section 16.404 is added to read as follows:

16.404 Fixed-price contracts with award fees.

(a) Award-fee provisions may be used in fixed-price contracts when the Government wishes to motivate a contractor and other incentives cannot be used because contractor performance cannot be measured objectively. Such contracts shall—

(1) Establish a fixed price (including normal profit) for the effort. This price will be paid for satisfactory contract performance. Award fee earned (if any) will be paid in addition to that fixed price; and

(2) Provide for periodic evaluation of the contractor's performance against an award-fee plan.

(b) A solicitation contemplating award of a fixed-price contract with award fee shall not be issued unless the following conditions exist:

(1) The administrative costs of conducting award-fee evaluations are not expected to exceed the expected benefits;

(2) Procedures have been established for conducting the award-fee evaluation;

(3) The award-fee board has been established; and

(4) An individual above the level of the contracting officer approved the fixed-price-award-fee incentive.

16.404-1 and 16.404-2 [Redesignated as 16.405-1 and 16.405-2].

9. Sections 16.404-1 and 16.404-2 are redesignated as 16.405-1 and 16.405-2, respectively.

10.-11. The newly designated section 16.406 is amended by revising the introductory text of paragraph (e) to read as follows:

16.406 Contract clauses.

* * * * *

(e) The contracting officer shall insert an appropriate award-fee clause in solicitations and contracts when an award-fee contract is contemplated, provided that the clause—

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

12. Section 52.216-16 is amended by revising the introductory paragraph, and Alternate I introductory text to read as follows:

52.216-16 Incentive Price Revision—Firm Target.

As prescribed in 16.406(a), insert the following clause:

* * * * *

Alternate I (APR 1984). As prescribed in 16.406(a), add the following paragraph (o) to the basic clause:

* * * * *

13. Section 52.216-17 is amended by revising the introductory paragraph, and Alternate I introductory text to read as follows:

52.216-17 Incentive Price Revision Successive Targets.

As prescribed in 16.406(b), insert the following clause:

* * * * *

Alternate I (APR 1984). As prescribed in 16.406(b), add the following paragraph (q) to the basic clause:

* * * * *

[FR Doc. 97-6313 Filed 3-14-97; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 23 and 52

[FAC 90-46; FAR Case 92-054B; Item V]
RIN 9000-AH39

Federal Acquisition Regulation; Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements

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

ACTION: Interim rule with request for comments.

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 implement Executive Order 12856 of August 3, 1993, "Federal Compliance with Right-To-Know Laws and Pollution Prevention Requirements." This Executive order requires that Federal facilities comply with the planning and

reporting requirements of the Pollution Prevention Act of 1990 (42 U.S.C. 13101-13109), and the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001-11050). This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

DATES: Effective Date: March 17, 1997.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before May 16, 1997, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 18th & F Streets, NW., Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405.

E-Mail comments submitted over the Internet should be addressed to:

92-054B@www.ARNET.gov

Please cite FAC 90-46, FAR case 92-054B in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Linfield at (202) 501-1757 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 90-46, FAR case 92-054B.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule implements Executive Order 12856 of August 3, 1993, "Federal Compliance with Right-To-Know Laws and Pollution Prevention Requirements." The Executive Order requires that Federal facilities comply with the planning and reporting requirements of the Pollution Prevention Act of 1990 (PPA) and the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA).

The amendments at FAR Parts 23 and 52 require that contracts to be performed on a Federal facility provide for the contractor to supply to the Federal agency all information the Federal agency deems necessary to comply with the reporting requirements of the PPA and EPCRA.

B. Regulatory Flexibility Act

This interim rule may 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 this rule will apply to any contractor that uses certain hazardous or

toxic substances in the performance of a contract at a Federal facility. It is estimated that approximately 50 percent of these contracts are performed by small entities. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subparts also 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 90-46, FAR case 92-054B), in correspondence. The IRFA is summarized as follows:

This interim rule implements the requirements of Executive Order 12856 of August 3, 1993, "Federal Compliance with Right-To-Know Laws and Pollution Prevention Requirements." The Executive order requires that Federal facilities comply with the planning and reporting requirements of the Pollution Prevention Act of 1990 (PPA) and the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). The Executive order also requires that contracts to be performed on a Federal facility provide for the contractor to supply to the Federal agency all information the Federal agency deems necessary to comply with these reporting requirements. The objective of this rule is to enable Federal facilities to comply with the planning and reporting requirements of PPA and EPCRA by requiring contractors who perform contracts on such facilities to provide information on their use of certain substances in the performance of the contracts.

This interim rule will apply to all contractors that use certain hazardous or toxic substances in the performance of contracts on a Federal facility. We estimate that there are approximately 7,250 small business contractors to which the rule will apply. Such contractors must provide any information necessary to enable the Federal facility to fulfill its reporting requirements under EPCRA, PPA, and Executive order 12856. The information collection would be prepared by contractor employees using records that the contractor is required to maintain under existing law and regulation. No special professional skills are needed for preparation of the required information.

C. Paperwork Reduction Act

The Paperwork Reduction Act is deemed to apply because the final rule contains information collection requirements. Accordingly, a request for approval of a new information collection requirement has been submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Public comments concerning this request were invited through a Federal Register notice published on January 13, 1997.

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 urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because Executive Order 12856, Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements, required implementation and incorporation of its policies into the FAR by August 3, 1995. However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 23 and 52

Government procurement.

Dated: March 7, 1997.

Edward C. Loeb

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 23 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 23 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 23—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

2. Subpart 23.10, consisting of sections 23.1001 through 23.1005, is added to read as follows:

Subpart 23.10—Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements

Sec.

- 23.1001 Purpose.
- 23.1002 Applicability.
- 23.1003 Definition.
- 23.1004 Requirements.
- 23.1005 Contract clause.

23.1001 Purpose.

This subpart implements requirements of Executive Order (E.O.) 12856 of August 3, 1993, Federal Compliance with Right-To-Know Laws and Pollution Prevention Requirements.

23.1002 Applicability.

The requirements of this subpart apply to facilities owned or operated by a Federal agency except those facilities located outside the several states of the

United States, the District of Columbia, and the Commonwealth of Puerto Rico.

23.1003 Definition.

Federal agency, as used in this subpart, means an executive agency (see 2.101).

23.1004 Requirements.

(a) E.O. 12856 requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA)(42 U.S.C. 11001-11050) and the Pollution Prevention Act of 1990 (PPA)(42 U.S.C. 13101-13109).

(b) Pursuant to Section 1-104 of E.O. 12856, and any agency implementing procedures, every new contract that provides for performance on a Federal facility shall require the contractor to provide information necessary for the Federal agency to comply with the emergency planning and toxic release reporting requirements of EPCRA and PPA.

23.1005 Contract clause.

The contracting officer shall insert the clause at 52.223-5, Pollution Prevention and Right-to-Know Information, in all solicitations and contracts that provide for performance, in whole or in part, on a Federal facility.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.223-5 is added to read as follows:

52.223-5 Pollution Prevention and Right-to-Know Information.

As prescribed in 23.1005, insert the following clause:

Pollution Prevention and Right-to-Know Information (March 1997)

(a) Executive Order 12856 of August 3, 1993, requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001-11050) and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101-13109).

(b) The Contractor shall provide all information needed by the Federal facility to comply with the emergency planning reporting requirements of Section 302 of EPCRA, the emergency notice requirements of Section 304 of EPCRA, the list of Material Data Safety Sheets required by Section 311 of EPCRA, the emergency and hazardous chemical inventory forms of Section 312 of EPCRA, and the toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA. (End of clause)

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