

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 address title to residual material and certain liability provisions concerning performance-based payments. 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.

EFFECTIVE DATE: May 16, 1997.

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 4035, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 90-46, FAR case 96-005.

SUPPLEMENTARY INFORMATION:

A. Background

The clause at 52.232-32, Performance-Based Payments, addresses a method of contract financing, and was printed in Federal Acquisition Circular 90-33, and published in the Federal Register at 60 FR 49707, September 26, 1995. Paragraph (f), Title, of the clause was intended to be functionally equivalent to paragraph (d) of FAR clause 52.232-16, Progress Payments, which addresses another type of contract financing. However, the topics of title to residual material and liability for Government-furnished property acquired under the contract, addressed in paragraphs (d) (6) and (7) of the Progress Payments clause, were inadvertently omitted from the Performance-Based Payments clause. This rule amends FAR 52.232-32 by adding paragraphs (f) (6) and (7) to address these topics.

A proposed rule was published in the Federal Register at 61 FR 47798, September 10, 1996. Two sources submitted public comments. All comments were considered in developing the final rule.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are

awarded on a competitive basis, and, therefore, do not use the performance-based method of contract financing.

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 Part 52

Government procurement.

Dated: March 7, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 52 amended as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR Part 42 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 52.232-32 is amended by revising the clause date; redesignating the heading of paragraph (f)(1) as the heading of paragraph (f), and adding new paragraphs (f) (6) and (7) to read as follows:

52.232-32 Performance-Based Payments.

* * * * *

PERFORMANCE-BASED PAYMENTS (MAY 1997)

* * * * *

(f) *Title.* * * *

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(6) When the Contractor completes all of the obligations under this contract, including liquidation of all performance-based payments, title shall vest in the Contractor for all property (or the proceeds thereof) not—

(i) Delivered to, and accepted by, the Government under this contract; or

(ii) Incorporated in supplies delivered to, and accepted by, the Government under this contract and to which title is vested in the Government under this clause.

(7) The terms of this contract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this clause.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 13 and 52

[FAC 90-46; Item XIV]

Federal Acquisition Regulation; Technical Corrections

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

ACTION: Corrections.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are issuing corrections to documents previously published in the Federal Register.

EFFECTIVE DATE: May 16, 1997.

FOR FURTHER INFORMATION CONTACT: FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 90-46, Technical Corrections.

Corrections

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.602 [Corrected]

1. At 62 FR 266, January 2, 1997, in the third column, 13.602 is corrected in the introductory text of paragraph (a) by removing from the parenthetical "section 4202 of the Clinger-Cohen Act" and inserting "10 U.S.C. 2304 or 41 U.S.C. 253".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2. At 61 FR 67408, December 20, 1996, in the first column of page 67422, amendatory instruction 15 is corrected to read as follows:

52.219-18 [Amended]

15. 52.219-18 is amended by removing Alternate II and redesignating Alternate III as Alternate II; and by revising the date of the newly designated Alternate II to read as follows:

52.219-18 Notification of Competition Limited to Eligible 8(a) Concerns.

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Alternate II (DEC 1996). * * *

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52.214-5, 52.214-7, 52.214-23, 52.214-32, 52.214-33, 52.215-9, 52.215-10, 52.215-36, 52.216-7, 52.216-8, 52.216-9, 52.216-10, and 52.216-13 [Corrected]

3. At 61 FR 69286, December 31, 1996, remove the clause date "(FEB 1997)" and insert "(MAR 1997)" in the following sections:

(a) On page 69293, in the middle and third columns, sections 52.214-5, 52.214-7, 52.214-23, 52.214-32, and 52.214-33;

(b) On page 69294, in the first and second columns, sections 52.215-9, 52.215-10, and 52.215-36;

(c) On page 69296, in all three columns, sections 52.216-7, 52.216-8, 52.216-9, 52.216-10, and 52.216-13; and

(d) On page 69297, in the first column, Alternate I.

Dated: March 7, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

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GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

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

ACTION: Small entity compliance guide notice.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration as the Federal Acquisition Regulation (FAR) Council. This *Small Entity*

Compliance Guide has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 90-46 which amend the FAR. The rules marked with an asterisk (*) are those for which a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Further information regarding these rules may be obtained by referring to FAC 90-46 which precedes this notice. This document may be obtained from the Internet at <http://www.gsa.gov/far/SECG>.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, FAR Secretariat, (202) 501-4755.

LIST OF RULES IN FAC 90-46

Item	Subject	FAR Case	Analyst
I	Gratuities	96-300	Linfield.
II	* Electronic Contracting	91-104	DeStefano.
III	* Office of Federal Procurement Policy Letter 93-1, Management Oversight of Service Contracting	94-008	O'Neill
IV	Performance Incentives for Fixed-Price Contracts	93-603	DeStefano.
V	* Environmentally Preferable Products (Interim)	92-054B	Linfield.
VI	Buy American Act—Construction (Grimberg Decision)	91-119	Linfield.
VII	Collection of Historically Black Colleges and Universities/Minority Institutions Award Data	95-306	Klein.
VIII	Allowability of Foreign Selling Costs	95-021	DeStefano.
IX	Independent Research and Development/Bid and Proposal Costs in Cooperative Agreements	95-024	Olson.
X	* Prompt Payment	91-091	Olson.
XI	Attorneys' Fees in GAO Protests	96-016	O'Neill.
XII	Contractors' Purchasing Systems Reviews	94-605	Klein.
XIII	Performance-Based Payments	96-005	Olson.

Item I—Gratuities (FAR Case 96-300)

The interim rule published as Item III of Federal Acquisition Circular (FAC) 90-40 is converted to a final rule without change. The rule amended FAR 3.202 and 52.203-3 to exempt solicitations and contracts which do not exceed the simplified acquisition threshold from the prescribed use of the "Gratuities" clause.

Item II—Electronic Contracting (FAR Case 91-104)

The interim rule published as Item II of FAC 90-29 is converted to a final rule with amendments in Parts 5, 14, 15, and 52. The rule facilitates the use of electronic data interchange in Government contracting and complements the rule published as Item II of FAC 90-40 pertaining to the Federal Acquisition Computer Network.

Item III—Office of Federal Procurement Policy Letter 93-1, Management Oversight of Service Contracting (FAR Case 94-008)

This final rule amends FAR 37.000 and 37.102, and adds a new Subpart 37.5, to implement OFPP Policy Letter 93-1, Management Oversight of Service Contracting. The policy letter provides Governmentwide guiding principles which are intended to improve the acquisition, management, and administration of service contracts. This rule also amends FAR 9.505-3 and 35.017-2 to remove references to OMB Circular A-120, Guidelines for the Use of Advisory and Assistance Services, which was rescinded by OMB on November 19, 1993.

Item IV—Performance Incentives for Fixed-Price Contracts (FAR Case 93-603)

This final rule amends FAR Parts 16 and 52 to permit the use of award-fee provisions as performance incentives in fixed-price contracts.

Item V—Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements (FAR Case 92-054B)

This interim rule adds a new FAR Subpart 23.10, and a new clause at 52.223-5 to implement Executive Order (E.O.) 12856 of August 3, 1993, Federal Compliance with Right-To-Know Laws and Pollution Prevention Requirements. The E.O. requires that a contract performed on a Federal facility shall provide that the contractor supply information on its use of certain hazardous or toxic substances in the