

(a) The clause date and paragraphs (a), (b), (c) introductory text, (c)(2) introductory text, (c)(2)(ii)(B), and (d);

(b) Following paragraph (e) in the "Irrevocable Letter of Credit", paragraphs 1, 2, 4, and 6; and

(c) Following paragraph (f) in the ILC confirmation, paragraphs 3, 4(a), and 6. The revised sections read as follows:

52.228-14 Irrevocable Letter of Credit.

* * * * *

Irrevocable Letter of Credit (Oct 1997)

(a) "Irrevocable letter of credit" (ILC), as used in this clause, means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon presentation by the Government (the beneficiary) of a written demand therefor. Neither the financial institution nor the offeror/Contractor can revoke or condition the letter of credit.

(b) If the offeror intends to use an ILC in lieu of a bid bond, or to secure other types of bonds such as performance and payment bonds, the letter of credit and letter of confirmation formats in paragraphs (e) and (f) of this clause shall be used.

(c) The letter of credit shall be irrevocable, shall require presentation of no document other than a written demand and the ILC (including confirming letter, if any), shall be issued/confirmed by an acceptable federally insured financial institution as provided in paragraph (d) of this clause, and—

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(2) If used as an alternative to corporate or individual sureties as security for a performance or payment bond, the offeror/Contractor may submit an ILC with an initial expiration date estimated to cover the entire period for which financial security is required or may submit an ILC with an initial expiration date that is a minimum period of one year from the date of issuance. The ILC shall provide that, unless the issuer provides the beneficiary written notice of non-renewal at least 60 days in advance of the current expiration date, the ILC is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the period of required coverage is completed and the Contracting Officer provides the financial institution with a written statement waiving the right to payment. The period of required coverage shall be:

* * * * *

(ii) * * *

(B) For performance bonds only, until completion of any warranty period.

(d) Only federally insured financial institutions rated investment grade or higher shall issue or confirm the ILC. The offeror/Contractor shall provide the Contracting Officer a credit rating that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC. Unless the financial institution issuing the ILC had letter of credit business of at least \$25 million in the past year, ILCs over \$5 million must be confirmed by another acceptable financial

institution that had letter of credit business of at least \$25 million in the past year.

(e) * * *

1. We hereby establish this irrevocable and transferable Letter of Credit in your favor for one or more drawings up to United States \$_____. This Letter of Credit is payable at [issuing financial institution's and, if any, confirming financial institution's] office at [issuing financial institution's address and, if any, confirming financial institution's address] and expires with our close of business on _____, or any automatically extended expiration date.

2. We hereby undertake to honor your or the transferee's sight draft(s) drawn on the issuing or, if any, the confirming financial institution, for all or any part of this credit if presented with this Letter of Credit and confirmation, if any, at the office specified in paragraph 1 of this Letter of Credit on or before the expiration date or any automatically extended expiration date.

* * * * *

4. This Letter of Credit is transferable. Transfers and assignments of proceeds are to be effected without charge to either the beneficiary or the transferee/assignee of proceeds. Such transfer or assignment shall be only at the written direction of the Government (the beneficiary) in a form satisfactory to the issuing financial institution and the confirming financial institution, if any.

* * * * *

6. If this credit expires during an interruption of business of this financial institution as described in Article 17 of the UCP, the financial institution specifically agrees to effect payment if this credit is drawn against within 30 days after the resumption of our business.

(f) * * *

3. We hereby undertake to honor sight draft(s) drawn under and presented with the Letter of Credit and this Confirmation at our offices as specified herein.

4. * * *

(a) At least 60 days prior to any such expiration date, we shall notify the Contracting Officer, or the transferee and the issuing financial institution, by registered mail or other receipted means of delivery, that we elect not to consider this confirmation extended for any such additional period; or

* * * * *

6. If this confirmation expires during an interruption of business of this financial institution as described in Article 17 of the UCP, we specifically agree to effect payment if this credit is drawn against within 30 days after the resumption of our business.

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(End of clause)

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1 and 31

[FAC 97-01; FAR Case 96-010; Item IV]

RIN 9000-AH41

Federal Acquisition Regulation; Automatic Data Processing Equipment Leasing Costs

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

ACTION: Interim rule adopted as final.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to convert the interim rule published as Item I of Federal Acquisition Circular 90-44 on December 31, 1996, to a final rule without change. The rule amends the Federal Acquisition Regulation (FAR) to remove the cost principle on automatic data processing equipment (ADPE) leasing costs. 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 October 21, 1997.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson, Procurement Analyst, at (202) 501-3221. Please cite FAC 97-01, FAR case 96-010.

SUPPLEMENTARY INFORMATION:

A. Background

An interim rule was published on December 31, 1996 (61 FR 69287). The interim rule deleted the ADPE definition at FAR 31.001, the cost principle at FAR 31.205-2, Automatic data processing equipment leasing costs, and references to the term ADPE found elsewhere in FAR Part 31. The interim rule is converted to a final rule without change.

Public comments were received from one source. The 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 fixed-price basis and do not require application of the cost principle contained in this rule.

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.* The interim rule deleted a reporting and recordkeeping requirement at FAR 31.205-2 under OMB Control Number 9000-0072.

List of Subjects in 48 CFR Parts 1 and 31

Government procurement.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR Parts 1 and 31 which was published at 61 FR 69287, December 31, 1996, is adopted as a final rule without change.

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

Dated: August 7, 1997

Edward C. Loeb,

Director, Federal Acquisition Policy Division.
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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 10, 11, 13, 15, 23, 36,
42, and 52

[FAC 97-01; FAR Case 92-054A; Item V]

RIN 9000-AG40

Federal Acquisition Regulation; Environmentally Sound Products

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

ACTION: Interim rule adopted as final with changes.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to adopt as final, with changes, the interim rule published as Item II of Federal Acquisition Circular 90-27 on May 31, 1995. The rule amends the Federal Acquisition Regulation (FAR) to incorporate policies for the acquisition of environmentally preferable and energy-efficient products and services. 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.

DATE: Effective October 21, 1997.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501-1758. Please cite FAC 97-01, FAR case 92-054A.

SUPPLEMENTARY INFORMATION:

A. Background

An interim rule was published in the **Federal Register** at 60 FR 28494, May 31, 1995. Ninety comments were received from 18 respondents.

The Councils' analysis of those comments resulted in revisions to the rule to: revise the definitions of "new" and "reconditioned" at 11.001 and in the clause at 52.211-5; delete the definitions of "material" and "other than new" at 11.001 and in the clause at 52.211-5; add Executive Order No. 12909 of March 8, 1994, to the list of statutory authorities at 11.002; clarify the policy on acceptability of used, reconditioned, or remanufactured supplies, and former Government surplus property proposed for use under a contract; delete the definition of "source reduction" at 15.601; delete all requirements related to "agency designated items" in Subpart 23.4; add a definition of "pollution prevention" at 23.703; streamline the clauses at 52.211-5 through 52.211-7 by combining their requirements into the clause at 52.211-5; eliminate the solicitation provision at 52.223-8; and streamline the clause at 52.223-9.

B. Regulatory Flexibility Act

A Final Regulatory Flexibility Analysis (FRFA) has been performed. A copy of the FRFA may be obtained from the FAR Secretariat. The FRFA is summarized as follows:

This action is being taken to implement the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901, *et seq.*), as amended; Executive Order 12873, Federal Acquisition, Recycling, and Waste Prevention; Executive Order 12902, Energy Efficiency and Water Conservation at Federal Facilities; and Office of Federal Procurement Policy (OFPP) Policy Letter 92-4, Procurement of Environmentally-Sound and Energy-Efficient Products and Services.

The objective of this rule is to amend the FAR to clearly reflect the Government's preference for the acquisition of environmentally-sound and energy-efficient products and services and to establish an affirmative procurement program favoring items containing the maximum practicable content of recovered materials. The rule also implements policies for procurement of items for which the Environmental Protection Agency (EPA) has designated minimum recovered material content.

We received no public comments which specifically addressed the Initial Regulatory Flexibility Analysis.

The final rule's policies regarding acceptable new and used materials apply to all small and large entities that perform or propose to perform Government contracts. No statistics are maintained on the number of offerors that propose used, reconditioned, or remanufactured materials for use under Government contracts.

The requirements for minimum recovered material content for EPA-designated items apply to all entities that supply such items, with a value exceeding \$10,000 per year, to the Government. However, the final rule exempts procurements under the simplified acquisition threshold of \$100,000 from recovered material content reporting requirements. Based on Fiscal Year 1995 Governmentwide procurement statistics for Federal Supply/Service Codes which comprise EPA-designated items, we estimate that the Federal Government receives approximately 20,875 covered proposals per year from small entities, and awards approximately 2,280 covered contracts per year to small entities.

Several reporting requirements were streamlined or eliminated in this final rule. Certifications of recovered material content are now required only in response to solicitations which are for, or which specify the use of, EPA-designated items. Such certifications are no longer required on an annual basis and are required only under contracts which exceed the simplified acquisition threshold.

Reporting requirements related to agency-designated items have been eliminated.

We considered elimination of the requirement that an offeror notify the contracting officer when the offeror proposes the use of used, remanufactured, or reconditioned supplies. However, we determined that use of such supplies under many contracts might be unacceptable. The notification requirement will allow contracting officers to continue to decide on a case-by-case basis whether to permit use of such supplies.