

## DEPARTMENT OF DEFENSE

GENERAL SERVICES  
ADMINISTRATIONNATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION

## 48 CFR Parts 2 and 52

[FAR Case 98-304]

RIN 9000-A141

Federal Acquisition Regulation;  
Commercial Items—Nongovernmental  
Purposes

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

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to implement Section 803(a)(2)(D) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 by revising the definition of "commercial item" to provide specific guidance on the meaning and appropriate application of the term "purposes other than government purposes" at 41 U.S.C. 403(12)(A).

**DATES:** Comments should be submitted on or before September 27, 1999 to be considered in the formulation of a final rule.

**ADDRESSES:** Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRs), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Address e-mail comments submitted via the Internet to: farcase.98-304@gsa.gov.

Please cite FAR case 98-304 in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501-4764. Please cite FAR case 98-304.

## SUPPLEMENTARY INFORMATION:

## A. Background

This proposed rule amends the definition of "commercial item" at FAR 2.101 and the definition in the clause at FAR 52.202-1, DEFINITION, to provide specific guidance on the meaning and appropriate application of the term "purposes other than government purposes" at 41 U.S.C. 403(12)(A). This change implements Section 803(a)(2)(D) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261). Section 803(a)(2)(D), effective upon enactment, requires that the FAR be revised to provide this specific guidance.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

## B. Regulatory Flexibility Act

This proposed rule is not expected to 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 merely clarifies existing language and does not change existing policy. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subparts will be considered in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 98-304), in correspondence.

## C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that 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 2 and 52

Government procurement.

Dated: July 22, 1999.

**Edward C. Loeb,**

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR parts 2 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 2 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).

2. In section 2.101(b), revise paragraph (a) of the definition "Commercial item" to read as follows:

## PART 2—DEFINITION OF WORDS AND TERMS

## 2.101 Definitions.

\* \* \* \* \*

(b) \* \* \*

\* \* \* \* \*

*Commercial item* means—

(a) Any item, other than real property, that—

(1) Has been sold, leased, or licensed to the general public (or has been offered for sale, lease, or license to the general public, with a likelihood that the offer will be accepted within a reasonable time); and

(2) Is of a type customarily used by the general public for purposes other than the performance of work for a Government entity.

\* \* \* \* \*

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. In section 52.202-1, revise the date of the clause and paragraph (c)(1) to read as follows:

## 52.202-1 Definitions.

\* \* \* \* \*

Definitions (Date)

\* \* \* \* \*

(c) *Commercial item* means—

(1) Any item, other than real property, that—

(i) Has been sold, leased, or licensed to the general public (or has been offered for sale, lease, or license to the general public, with a likelihood that the offer will be accepted within a reasonable time); and

(ii) Is of a type customarily used by the general public for purposes other than the performance of work for a Government entity.

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[FR Doc. 99-19097 Filed 7-26-99; 8:45 am]

BILLING CODE 6820-EP-P