

This is not a significant regulatory action and, therefore, was not subject to 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

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 the rule only applies to the very limited number of contractors that are awarded cost-reimbursement service contracts and that are paid more than 30 days after the agency receives a proper invoice.

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, 32, and 52

Government procurement.

Dated: May 13, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

Interim Rule Adopted as Final Without Change

■ Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR parts 2, 32, and 52 which was published in the **Federal Register** at 66 FR 53485, October 22, 2001, as a final rule without change.

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 4

[FAC 2001-14; FAR Case 2000-304; Item IV]

RIN 9000-AI94

Federal Acquisition Regulation; Electronic Signatures

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 (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify that agencies are permitted to accept electronic signatures and records in connection with Government contracts.

DATES: *Effective Date:* June 23, 2003.

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 Ms. Laura Smith, Procurement Analyst, at (202) 501-7279. Please cite FAC 2001-14, FAR case 2000-304.

SUPPLEMENTARY INFORMATION:

A. Background

On October 21, 1998, the Government Paperwork Elimination Act (Title XVII of Division C of Public Law 105-277) was enacted. On June 30, 2000, the Electronic Signatures in Global and National Commerce Act (E-SIGN) (Pub. L. 106-229) was enacted. These laws eliminate legal barriers to using electronic technology in business transactions, such as the formation and signing of contracts. The Office of Management and Budget (OMB) has issued guidance on both of these laws. See Memorandum M-00-15, "OMB Guidance on Implementing the Electronic Signatures in Global and National Commerce Act," dated September 25, 2000, and Memorandum M-00-10, "OMB Procedures and Guidance on Implementing the Government Paperwork Elimination Act," dated April 25, 2000. These memoranda are available on the OMB Homepage at <http://www.omb.gov>.

This final rule furthers Government participation in electronic commerce when conducting Government procurements by adding a statement at FAR Subpart 4.5, Electronic Commerce in Contracting, clarifying that agencies are permitted to accept electronic signatures and records in connection with Government contracts.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 65698, November 1, 2000. In addition to proposing a policy statement recognizing the use of electronic signatures, the proposed rule would have revised the current FAR definitions of "in writing" and "signature" at FAR 2.101 to clarify that these terms include electronic, in addition to paper, transactions. It also would have made minor changes to the definition of electronic commerce. Twenty-five sources submitted comments in response to the proposed rule. All comments were considered in the development of the final rule.

Several surety companies expressed support for greater use of electronic technologies for the filing of bid, performance, and payment bonds and associated powers of attorney. They noted that such technologies will "streamline the procurement process, reduce costs, and increase efficiency for all trading partners." However, they cautioned that FAR coverage should not result in reliance on a single proprietary system for electronic signatures for the entire Federal government. They further recommended a phase-in period so sureties that are not yet automated have alternative means of transacting with the Government in the near term.

With respect to the choice of technology, the final rule simply states, "agencies may accept electronic signatures and records in connection with Government contracts." The choice of technology for implementing electronic signatures is left to each agency. As for the execution of bonds and powers of attorney, the rule does not require that these documents be submitted electronically, which will allow time for parties to effectively transition to electronic transactions.

One commenter made several recommendations regarding the definitions. In particular, the commenter asserted that—

- A definition for "electronic commerce" is unnecessary and should be removed from the FAR;
- The current FAR definition of "signature" should be replaced by the E-SIGN definition of "electronic signature"; and
- The E-SIGN definition of electronic record should be substituted for the

current and proposed definitions of "in writing," "writing," and "written," because the latter definitions are too narrow. The Councils disagree with the recommended changes to the definitions.

The current FAR definition of "electronic commerce" is consistent with that set forth in section 30 of the Office of Federal Procurement Policy Act. The Councils believe the statutory definition should be reflected in the FAR. At the same time, the Councils recognize the value in evaluating the continued need for, and appropriateness of this definition as electronic commerce continues to become more institutionalized in the Government.

The commenter's proposed definition of electronic signature does not reflect intention to authenticate. This concept is important to contracting-related transactions, electronic or otherwise. As noted in a September 12, 1951, Comptroller General decision (B-104590), courts have held that "a signature consists of the writing of one's name and of the intention that it *authenticate* the instrument, and, therefore, any symbol adopted as one's signature when affixed with his knowledge and consent is a binding and legal signature * * *". This was reiterated in a September 20, 1984, Comptroller General decision (B-216035). Consistent with this reasoning, FAR case 91-104 incorporated the concept of authentication into the definition of "signature." That case established the premise that either hand scribed or other format signatures indicate an intent to authenticate (or be bound).

Similarly, the Councils believe that the proposed definition for "electronic record" is insufficient. The Councils maintain that the definition of "in writing" should reflect the requirement to store because agencies ask for information in writing when they intend to keep it as a record. Therefore, storage, reproduction, and later retrieval are all salient characteristics of a record. After further deliberation and consideration of the public comments regarding the proposed changes to the definitions, the Councils have determined that the current FAR definitions are sufficient and appropriately capture the necessary salient characteristics required of a "writing" and a "signature." Likewise, the Councils concluded that there was no significant value achieved through the proposed change to the definition of "electronic commerce."

Therefore, this final rule makes no changes to the current FAR definitions.

This is not a significant regulatory action and, therefore, was not subject to

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

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 the rule does not change the procedures for award or administration of contracts, but rather, clarifies that the use of electronic signatures and electronic methods are permitted in Government procurement.

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 Part 4

Government procurement.

Dated: May 13, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 4 as set forth below:

PART 4—ADMINISTRATIVE MATTERS

■ 1. The authority citation for 48 CFR part 4 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 4.502 by adding paragraph (d) to read as follows:

4.502 Policy.

* * * * *

(d) Agencies may accept electronic signatures and records in connection with Government contracts.

[FR Doc. 03-12304 Filed 5-22-03; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 8

[FAC 2001-14; FAR Case 2003-001; Item V]

RIN 9000-AJ62

Federal Acquisition Regulation; Increased Federal Prison Industries, Inc. Waiver Threshold

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 (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to increase the blanket waiver threshold for small dollar value purchases from Federal Prison Industries (FPI) by Federal agencies. By increasing this threshold to \$2,500, Federal agencies will not be required to make purchases from FPI of products on FPI's Schedule that are at or below this threshold. Federal agencies, however, may continue to consider and purchase products from FPI that are at or below \$2,500.

DATES: *Effective Date:* May 22, 2003.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before June 23, 2003 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—farcase.2003-001@gsa.gov. Please submit comments only and cite FAC 2001-14, FAR case 2003-001, in all correspondence related to this case.

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 Ms. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 2001-14, FAR case 2003-001.

SUPPLEMENTARY INFORMATION: