

than cost for commercial work of the contractor or any division, subsidiary or affiliate of the contractor under a common control; and

(2) The item being transferred qualifies for an exception under 15.403-1(b) and the contracting officer has not determined the price to be unreasonable.

(f) When a commercial item under paragraph (e) of this subsection is transferred at a price based on a catalog or market price, the contractor—

(1) Should adjust the price to reflect the quantities being acquired; and

(2) May adjust the price to reflect the actual cost of any modifications necessary because of contract requirements.

#### 31.205-44 [Amended]

■ 5. Amend section 31.205-44 in paragraph (f) by removing “31.205-24.”

[FR Doc. 04-13626 Filed 6-17-04; 8:45 am]

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 8, 11 and 53

[FAC 2001-24; Item X]

#### Federal Acquisition Regulation; Technical Amendment

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

**ACTION:** Final rule.

**SUMMARY:** This document makes amendments to the Federal Acquisition Regulation (FAR) in order to update an address and remove the illustrations of Standard Forms 254 and 255 (which became obsolete on June 8, 2004) from the FAR.

**DATES:** *Effective Date:* June 18, 2004.

**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. Please cite FAC 2001-24, Technical Amendments.

#### List of Subjects in 48 CFR Parts 8, 11 and 53

Government procurement.

Dated: June 10, 2004.

**Ralph J. De Stefano,**

*Acting Director, Acquisition Policy Division.*

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 8, 11 and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 8, 11 and 53 is revised to read as follows:

#### PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

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

##### 8.003 [Amended]

■ 2. Amend section 8.003 in paragraph (d) by removing from the address “Suite 4528” and adding “Suite 3229” in its place.

#### PART 11—DESCRIBING AGENCY NEEDS

##### 11.102 [Amended]

■ 3. Amend section 11.102 by removing “DoD 4120.3-M” each time it appears and adding “DoD 4120.24-M” in its place.

##### 11.202 [Amended]

■ 4. Amend section 11.202 in paragraph (b) by removing “DoD 4120.3-M” and adding “DoD 4120.24-M” in its place.

#### PART 53—FORMS

##### 53.301-254 and 53.301-255 [Removed]

■ 5. Remove sections 53.301-254 and 53.301-255.

[FR Doc. 04-13627 Filed 6-17-04; 8:45 am]

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## DEPARTMENT OF DEFENSE

### 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.

**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. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2001-24 which amend the FAR. An asterisk (\*) next to a rule indicates that a regulatory flexibility analysis has been prepared.

Interested parties may obtain further information regarding these rules by referring to FAC 2001-24 which precedes this document. These documents are also available via the Internet at <http://www.acqnet.gov/far>.

**FOR FURTHER INFORMATION CONTACT:** Laurie Duarte, FAR Secretariat, (202) 501-4225. For clarification of content, contact the analyst whose name appears in the table below.

#### LIST OF RULES IN FAC 2001-24

Item	Subject	FAR Case	Analyst
*I .....	Incentives for Use of Performance-Based Contracting for Services (Interim) .....	2004-004	Wise.
II .....	Definitions Clause .....	2002-013	Parnell.
III .....	Procurement Lists .....	2003-013	Nelson.
IV .....	Determining Official for Employment Provision Compliance—Immigration and Nationality Act (INA).	2004-009	Goral.
*V .....	Federal Supply Schedules Services and Blanket Purchase Agreements (BPAs) ..	1999-603	Nelson.
VI .....	Designated Countries—New European Communities Member States .....	2004-008	Davis.
VII .....	Buy American Act—Nonavailable Articles .....	2003-007	Davis.
VIII .....	Application of Cost Principles and Procedures and Accounting for Unallowable Costs.	2002-006	Loeb.
IX .....	Gains and Losses, Maintenance and Repair Costs, and Material Costs .....	2002-008	Loeb.

## LIST OF RULES IN FAC 2001–24—Continued

Item	Subject	FAR Case	Analyst
X .....	Technical Amendments.		

**Item I—Incentives for Use of Performance-Based Contracting for Services (Interim) (FAR Case 2004–004)**

This interim rule amends the FAR to implement Sections 1431 and 1433 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136). Section 1431 enacts Governmentwide authority to treat performance-based contracts or task orders for services as commercial items if certain conditions are met, and requires agencies to report on performance-based contracts or task orders awarded using this authority. Section 1433 amends the definition of commercial item to add specific performance-based terminology and to conform to the language added by section 1431. Contracting officers will be able to use FAR Part 12, Acquisition of Commercial Items, and Subpart 37.6, Performance-Based Contracting, for non-commercial services and treat these services as commercial services when specific conditions are met. Agencies will be required to report on performance-based contracts or task orders awarded using this authority.

**Item II—Definitions Clause (FAR Case 2002–013)**

FAR 2.201 and the clause at 52.202–1 are revised to clarify the applicability of FAR definitions to solicitation provisions and contract clauses. The list of definitions in 52.202–1 is removed and replaced with policy stating that, when a solicitation provision or contract clause uses a word or term that is defined in the FAR, the word or term has the meaning given in FAR 2.101 at the time the solicitation was issued. Certain exceptions to this policy are listed in FAR 52.202–1.

**Item III—Procurement Lists (FAR Case 2003–013)**

This final rule amends the FAR to clarify that the Javits-Wagner O'Day (JWOD) program becomes a mandatory source of supplies and services when the supplies or services have been added to the Procurement List maintained by the Committee for Purchase from People Who Are Blind or Severely Disabled.

**Item IV—Determining Official for Employment Provision Compliance--Immigration and Nationality Act (INA) (FAR Case 2004–009)**

This final rule amends FAR 9.406–2(b)(2) by revising the responsibility for determining when a contractor is not in compliance with the Immigration and Nationality Act (INA), to include both the Attorney General of the United States and the Secretary of Homeland Security.

This rule implements Executive Order 13286 published March 5, 2003, which amended Section 4 of Executive Order 12989 published February 15, 1996.

Debarring officials may now debar a contractor based on a determination by the Secretary of Homeland Security or the Attorney General of the United States.

**Item V—Federal Supply Schedules Services and Blanket Purchase Agreements (BPAs) (FAR Case 1999–603)**

This final rule amends the FAR in order to incorporate policies and procedures for services under Federal Supply Schedules. The rule—

- Adds a definitions section;
- Adds information regarding the Department of Veterans Affairs delegated authority to establish medical supply schedules;
- Adds language to clarify the differences between an Authorized Federal Supply Schedules (FSS) Pricelist and a FSS publication;
- Adds additional information regarding e-buy, GSA's electronic quote system for the schedules program;
- Clarifies that competition shall not be sought outside the Federal Supply Schedules;
- Adds language to make it clear that the contracting officer placing an order on another agency's behalf is responsible for applying that agency's regulatory and statutory requirements; and that the requiring activity is required to provide information on the applicable regulatory and statutory requirements to the contracting officer;
- Adds new coverage on use of statements of work when acquiring services from the schedules;
- Requires that when an agency awards a task order requiring a statement of work, that if the award is based on other than price (best value),

the contracting officer shall provide a brief explanation of the basis for the award decision to any unsuccessful contractor that requests such information.

- Adds language stating that the performance period of Blanket Purchase Agreement (BPA) established under the schedules program may cross option periods on the base contracts;
- Refines guidance regarding the use of Governmentwide BPAs;
- Adds language to require the ordering activity to document the results of its BPA review;
- Adds language that encourages or reminds agencies that they can seek a price reduction at any time, not just when an order exceeds the maximum order threshold;
- Adds additional language to allow for consideration of socio-economic status when identifying the potential competitors for an order;
- Reinforces documentation requirements generally and adds new guidance addressing the documentation of orders for services and sole source orders;
- Adds new coverage to allow agencies to make payment for oral or written orders by any authorized means, including the Governmentwide commercial purchase card;
- Reserves the ordering procedures for Mandatory Use Schedules section;
- Clarifies the procedures for termination for cause and convenience; and
- Reorganizes and revises the subpart text for ease of use.

**Item VI—Designated Countries New European Communities Member States (FAR Case 2004–008)**

This final rule amends the FAR to implement a determination by the United States Trade Representative (USTR) under the Trade Agreements Act that suppliers from the 10 new member states of the European Communities (EC) (*i.e.*, the European Union) are eligible to participate in U.S. Government procurement under the terms and conditions of the World Trade Organization Government Procurement Agreement (WTO GPA). This means that in acquisitions subject to the WTO GPA, the contracting officer can accept offers of eligible products from Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania,

Malta, Poland, the Slovak Republic, and Slovenia without application of the Buy American Act evaluation factor.

**Item VII—Buy American Act—Nonavailable Articles (FAR Case 2003–007)**

This final rule amends Federal Acquisition Regulation (FAR) 25.104(a) to add certain food and textile items to the list of articles not available from domestic sources in sufficient and reasonably available commercial quantities of a satisfactory quality. This case is based on extensive market research by the Defense Logistics Agency. Unless the contracting officer learns before the time designated for receipt of bids in sealed bidding or final offers in negotiation that an article on the list is available domestically in sufficient and reasonably available quantities of a satisfactory quality, the Buy American Act does not apply to acquisition of these items as end products, and the contracting officer may treat foreign components of the same class or kind as domestic components.

**Item VIII—Application of Cost Principles and Procedures and Accounting for Unallowable Costs (FAR Case 2002–006)**

This final rule amends the Federal Acquisition Regulation (FAR) by revising FAR 31.204, Application of principles and procedures, to improve clarity and structure. The case was initiated as a result of comments and recommendations received from industry and Government representatives during a series of public meetings. This rule is of particular interest to contractors and contracting officers who use cost analysis to price contracts and modifications, and who determine or negotiate reasonable costs in accordance with a clause of a contract, *e.g.*, price revision of fixed-price incentive contracts, terminated contracts, or indirect cost rates.

**Item IX—Gains and Losses, Maintenance and Repair Costs, and Material Costs (FAR Case 2002–008)**

This final rule amends the FAR by deleting the cost principle at FAR 31.205 24, Maintenance and repair costs, because either Cost Accounting Standards (CAS) or Generally Accepted Accounting Practices (GAAP)

adequately address these costs. The rule also revises the cost principles at FAR 31.205–7, Contingencies; FAR 31.205–26, Material costs; and FAR 31.205–44, Training and education costs, by improving clarity and structure, and removing unnecessary and duplicative language.

The case was initiated as a result of comments and recommendations received from industry and Government representatives during a series of public meetings. This rule is of particular interest to contractors and contracting officers who use cost analysis to price contracts and modifications, and who determine or negotiate reasonable costs in accordance with a clause of a contract, *e.g.*, price revision of fixed-price incentive contracts, terminated contracts, or indirect cost rates.

**Item X—Technical Amendments**

This amendment makes editorial changes at 8.003(d), 11.102, and 11.202(b), and removes sections 53.301–254 and 53.301–255.

Dated: June 10, 2004.

**Ralph J. De Stefano,**

*Acting Director, Acquisition Policy Division.*

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