

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Parts 33, 39, 42, 50, and 52

[FAR Case 94-730]

RIN 9000-AG38

Federal Acquisition Regulation;
Protests, Disputes, and Appeals

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

ACTION: Proposed rule.

SUMMARY: This proposed rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355) dated October 13, 1994, to implement the requirements for protests and disputes in Government procurement. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: Comments should be submitted on or before March 13, 1995 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4037, Washington, DC 20405. Please cite FAR case 94-730 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Craig Hodge, Protests/Disputes Team Leader at (703) 274-8176 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAR case 94-730, Protests, Disputes, and Appeals.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103-355, provides authorities that streamline the acquisition process and minimize burdensome Government-unique requirements. Major changes that can be expected in the acquisition process as a result of Federal Acquisition Streamlining Act implementation include changes in the areas of Commercial Item Acquisition, Simplified Acquisition Procedures, the Truth in Negotiations Act, and Introduction of the Federal Acquisition Network.

This notice announces proposed FAR revisions developed under FAR Case 94-730, Protests, Disputes, and Appeals. The Act changed the General Accounting Office (GAO) protest procedures, the General Services Board of Contract Appeals (GSBCA) protest procedures, and the alternative dispute resolution (ADR) procedures. This rule reflects those changes to GAO, GSBCA, and ADR procedures that require revisions to the FAR.

In view of expected benefits to Government and industry from the Act, FAR implementation was formulated under an expedited process. The FAR Council is interested in an exchange of ideas and opinions with respect to the regulatory implementation of the Act. For that reason, the FAR Council is conducting a series of public meetings. However, the FAR Council has not scheduled a public meeting on this rule (FAR case 94-730) because of the clarity and non-controversial nature of the rule. If the public believes such a meeting is needed with respect to this rule, a letter requesting a public meeting and outlining the nature of the requested meeting shall be submitted to and received by the FAR Secretariat (see **ADDRESSES** caption) on or before February 9, 1995. The FAR Council will consider such requests in determining whether a public meeting on this rule should be scheduled.

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 among other things, it authorizes a higher reimbursement of attorney costs associated with a GAO or a GSBCA protest to small businesses than may be reimbursed to large businesses. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 94-730), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed 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 Parts 33, 39, 42, 50 and 52

Government procurement.

Dated: December 29, 1994.

Edward C. Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, it is proposed that 48 CFR Parts 33, 39, 42, 50, and 52 be amended as set forth below:

1. The authority citation for 48 CFR Parts 33, 39, 42, 50, 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).

PART 33—PROTESTS, DISPUTES,
AND APPEALS

2. Section 33.101 is amended by adding in alphabetical order the definitions "Day" and "Filed"; and revising the definition "Protest" to read as follows:

33.101 Definitions.

Day, for the purpose of this subpart means a calendar day, unless otherwise specified. In the computation of any period—

(a) The day of the act, event, or default from which the designated period of time begins to run is not included; and

(b) The last day after such act, event, or default is included unless—

(1) Such last day is a Saturday, a Sunday, or a legal holiday; or

(2) In the case of a filing of a paper at any appropriate administrative forum, such last day is a day on which weather or other conditions causes the closing of the forum, in which event the next day that is not a Saturday, Sunday, or legal holiday is included.

Filed means the receipt of any document by an agency before its close of business. Documents received after close of business are considered filed as of the next day. Unless otherwise stated, the agency close of business is presumed to be 4:30 p.m. local time.

* * * * *

Protest, as used in this subpart, means a written objection by an interested party to any of the following:

(a) A solicitation or other request by an agency for offers for a contract for the procurement of property or services.

(b) The cancellation of such a solicitation or other request.

(c) An award or proposed award of such a contract.

(d) A termination or cancellation of an award of such a contract, if the written objection contains an allegation that the termination or cancellation is based in

whole or in part on improprieties concerning the award of the contract.

3. Section 33.102 is amended by revising paragraph (a); redesignating paragraphs (b) and (c) as (c) and (e), respectively, and adding new paragraphs (b) and (d); and revising newly designated paragraphs (e)(2) and (e)(3) to read as follows:

33.102 General.

(a) Contracting officers shall consider all protests and seek legal advice, whether protests are submitted before or after award and whether filed directly with the agency, the General Accounting Office (GAO), or for automatic data processing acquisitions under 40 U.S.C. 759 (ADP contracts), the General Services Board of Contract Appeals (GSBCA or the Board). (See 19.302 for protests of small business status and 22.608-3 for protests involving eligibility under the Walsh-Healey Public Contracts Act.)

(b) If in connection with a protest, the head of an agency determines that a solicitation, proposed award, or award does not comply with the requirements of law or regulation, the head of the agency may—

- (1) Take any action that may have been taken by the Comptroller General in the event of a GAO protest; and
- (2) Pay appropriate costs as stated in section 33.104(h).

(d) *Protest likely after award.* The contracting officer may stay performance of a contract within the time period contained in 33.104(c)(1) if the contracting officer makes a written determination that—

- (1) A protest is likely to be filed; and
- (2) Delay of performance is, under the circumstances, in the best interests of the United States.

(2) May protest to the GAO in accordance with GAO regulations (4 CFR Part 21). An interested party who has filed a protest regarding an ADP procurement with the GAO may not file a protest with the GSBCA with respect to that procurement.

(3) May protest to the GSBCA regarding an award of an ADP contract in accordance with GSBCA Rules of Procedure (48 CFR Chapter 61). An interested party who has filed a protest regarding an ADP procurement with GSBCA (40 U.S.C. 759(f)) may not file a protest with the GAO with respect to that procurement.

4. Section 33.103 is amended in paragraph (b)(1) by removing "or" and inserting "and"; by revising the second and third sentences of (b)(2); by revising the second sentence in paragraph (b)(4);

and by adding paragraph (b)(5) to read as follows:

33.103 Protests to the agency.

(b) * * * In all other cases, protests shall be filed not later than 14 days after the basis of protest is known or should have been known, whichever is earlier. The agency for good cause shown, or where it determines that a protest raises issues significant to the agency's acquisition system, may consider the merits of any protest which is not filed timely.

(4) * * * Failure to substantially comply with any of the above requirements may be grounds for dismissal of the protest.

(5) The agency should furnish a copy of the written protest ruling to the protester by certified mail return receipt requested, or by any other method that provides evidence of receipt.

5. Section 33.104 is amended—
- a. By revising the introductory text;
 - b. By adding a sentence to the end of paragraph (a)(2)(ii);
 - c. By revising the introductory text of paragraph (a)(3)(i);
 - d. In paragraph (a)(3)(ii)(H) by adding a "s" to "allegation";
 - e. By redesignating paragraphs (a)(5) through (a)(7) as (a)(6) through (a)(8), respectively and adding a new paragraph (a)(5);
 - f. By revising the introductory text of newly designated paragraph (a)(6);
 - g. In the third sentence of paragraph (a)(6)(iii) by adding a "s" to "request"; and
 - h. By revising paragraphs (c)(1), and (c)(5); and
 - i. By revising paragraphs (f), (g), and (h).

The revised text reads as follows:

33.104 Protests to GAO.

Procedures for protests at the GAO are found at 4 CFR Part 21 (GAO Bid Protest Regulations). In the event this section conflicts with 4 CFR Part 21, 4 CFR Part 21 governs.

(2) (ii) * * * However, if the protestor has identified sensitive information and requests a protective order, then the contracting officer should obtain a redacted version from the protestor to furnish to other interested parties.

(3)(i) Upon notice that a protest has been filed with the GAO, the contracting officer shall immediately begin compiling the information necessary for a report to the GAO. The agency normally submits a complete report to the GAO within 35 days after the GAO

notifies the agency by telephone that a protest has been filed, or within 20 days after receipt from the GAO of a determination to use the express option, unless the GAO—

(5) When a protest is filed with the GAO, and an actual or prospective offeror so requests, the procuring agency shall establish a protest file and, in accordance with any applicable protective orders, provide actual or prospective offerors reasonable access to the file. However, if the GAO dismisses the protest before the administrative report is submitted then no protest file need be established.

(i) The protest file shall consist of the agency administrative report.

(ii) Information exempt from disclosure under section 552 of title 5, United States Code, or under an applicable protective order, may be redacted from the protest file.

(iii) The protest file shall be made available within a reasonable time after submittal of the agency administrative report.

(6) The GAO may issue protective orders which establish terms, conditions, and restrictions for the provision of any document to an interested party. Protective orders prohibit or restrict the disclosure by the party of procurement sensitive information, trade secrets or other proprietary or confidential research, development or commercial information that is contained in such document. Protective orders do not authorize withholding any documents or information from the United States Congress or an executive agency.

(c) *Protests after award.* (1) When the agency receives notice of a protest from the GAO within 10 days after contract award or within 5 days after a debriefing date offered to the protestor for any debriefing that is required by 15.1003, whichever is later, the contracting officer shall immediately suspend performance or terminate the awarded contract, except as provided in paragraphs (c)(2) and (3) of this section.

(5) When the agency receives notice of a protest filed with the GAO after the dates contained in paragraph (c)(1), the contracting officer need not suspend contract performance or terminate the awarded contract unless the contracting officer believes that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to the Government's interest.

(f) *GAO decision time.* GAO issues its recommendation on a protest within 125 days from the date of filing of the protest with the GAO, or within 65 days under the express option, unless GAO establishes a longer period of time. The GAO attempts to issue its recommendation on an amended protest that adds a new ground of protest within the time limit of the initial protest. If an amended protest cannot be resolved within the initial time limit, the GAO may resolve the amended protest through an express option.

(g) *Notice to GAO.* If the agency has not fully implemented the GAO recommendations with respect to a solicitation for a contract or an award or a proposed award of a contract within 60 days of receiving the GAO recommendations, the head of the contracting activity responsible for that contract shall report such failure to the GAO not later than 5 days after the expiration of the 60 day period. The report shall explain the reasons why the GAO's recommendation exclusive of costs, has not been followed by the agency.

(h) *Award of costs.* (1) If the GAO determines that a solicitation for a contract or a proposed award or an award of a contract does not comply with a statute or regulation, the GAO may recommend that the agency conducting the procurement pay to an appropriate interested party the direct cost, exclusive of profit, of filing and pursuing the protest, including reasonable attorney's fees and consultant and expert witness fees, and bid and proposal preparation costs.

(2) If the GAO recommends the award of costs to an interested party, the agency, in accordance with agency procedures, shall attempt to reach an agreement on the amount of the cost to be paid. If the agency and the interested party are unable to agree on the amount to be paid, GAO may, upon request of the interested party, recommend to the agency the amount of cost that the agency should pay.

(3) No agency shall pay a party, other than a small business concern within the meaning of section 3(a) of the Small Business Act (see 19.001, "Small business concern"), costs under paragraph (h)(2) of this section—

(i) For consultant and expert witness fees that exceed the highest rate of compensation for expert witnesses paid by the Government; or

(ii) For attorneys' fees that exceed \$150 per hour unless the agency determines, based on the recommendation of the Comptroller General on a case by case basis, that an increase in the cost of living or a special

factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee. The cap placed on attorneys' fees for businesses, other than small businesses, constitutes a benchmark as to what constitutes a "reasonable" level for attorneys' fees for small businesses.

(4) A recommended award of costs may be paid by the agency out of funds available to or for the use of the agency for the acquisition of supplies or services. Before paying a recommended award of costs, agency personnel should consult legal counsel. Section 33.104(h) applies to all recommended awards of costs which have not yet been paid.

(5) If the GAO recommends the agency pay costs (as defined under paragraph (h)(1) of this section) and the agency does not promptly pay the costs, the agency shall promptly report to GAO the reasons for the failure to follow the GAO recommendation.

(6) Any costs the contractor receives under this section shall be excluded from all proposals, billings, or claims against the Government and such exclusions should be reflected in the cost agreement.

6. Section 33.105 is amended—

(a) By adding an introductory paragraph;

(b) By revising paragraph (a)(1);

(c) In paragraph (a)(2)(ii) by removing "five" and inserting "three";

(d) By revising the introductory text of paragraph (d)(1);

(e) In paragraph (d)(1)(i) by removing "calendar";

(f) By adding paragraph (d)(4);

(g) In paragraph (e) by removing "45 work" and inserting "65";

(h) By redesignating paragraphs (f) and (g) as (g) and (h) and adding a new paragraph (f);

(i) By revising the new by designated paragraphs (g)(1)(i), and (g)(2);

(j) By adding paragraphs (g)(3) and (g)(4); and

(k) By revising paragraph (h).

The revised text reads as follows:

33.105 Protests to GSBICA.

Procedures for protests at the GSBICA, are found at 48 CFR chapter 61 (GSBICA Rules). In the event this subpart conflicts with 48 CFR Chapter 61, 48 CFR Chapter 61 governs.

(a)(1) Upon request of an interested party in connection with any procurement that is subject to this section (including any such procurement that is subject to delegation of procurement authority), the GSBICA shall review any decision by the contracting officer that is alleged to violate a statute, a regulation, or the conditions of a delegation of

procurement authority. ADP acquisition protests not covered under the Federal Property and Administrative Services Act (40 U.S.C. 759) may not be heard by the GSBICA, but may be heard by the agency, the courts, or GAO. A protester shall furnish a copy of its complete protest to the official and location designated in the solicitation, or in the absence of such a designation to the contracting officer, on the same day the protest is filed with the GSBICA. Any request for a hearing on either a suspension of procurement authority or on the merits shall be in the protest.

(d)(1) If a protest contains a timely request for a suspension of procurement authority, the Board will hold a hearing. A timely request for suspension of procurement authority is one that is filed before award, within 10 days of award, or within five days of the offered debriefing, when the debriefing is required by 15.1003, whichever is later. The Board suspends the procurement authority unless the agency establishes that—

(4) A suspension shall not preclude the agency concerned from continuing the procurement process up to but not including the award of the contract unless the Board determines such action is not in the best interests of the United States.

(f) Any agreement that provides for the dismissal of a protest and involves a direct or indirect expenditure of appropriated funds shall be made part of the public record (subject to any protective order considered appropriate by the Board) before dismissal of the protest. If an agency is party to a settlement agreement, the submission of the agreement to the Board shall include a memorandum, signed by the contracting officer concerned, that describes in detail the procurement, the grounds for protest, the Government's position regarding the grounds for protest, the terms of the settlement, and the agency's position regarding the propriety of the award or proposed award of the contract at issue in the protest.

(g) * * *

(1) * * *

(i) Filing and pursuing the protest, including reasonable attorney consultant, and expert witness fees, studies, analyses, tests; and

* * * * *

(2) Costs awarded under paragraph (g)(1) of this section or payments of amounts due under settlement agreements shall be paid out in

accordance with the procedures provided in 31 U.S.C. 1304 (the Permanent Indefinite Judgment Fund). The agency concerned shall reimburse that fund out of funds available for the procurement.

(3) No agency shall pay a party, other than a small business concern within the meaning of section 3(a) of the Small Business Act (see 19.001, "Small business concern"), costs under paragraph (g)(1) of this section—

(i) For consultant and expert witness fees that exceed the highest rate of compensation for expert witnesses paid by the Government; or

(ii) For attorneys' fees that exceed \$150 per hour unless the Board determines, on a case by case basis, that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee. The cap placed on attorneys' fees for businesses, other than small businesses, constitutes a benchmark as to what constitutes a "reasonable" level for attorneys' fees for small businesses.

(4) Within 30 days after receipt by the agency of an application for cost, the agency may file an answer.

(h) The GSBCA's final decision may be appealed by the agency or by any interested party, including any intervening interested parties, as set forth in the Contract Disputes Act.

7. Section 33.106 is amended by revising paragraph (a) to read as follows:

33.106 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 52.233-2, Service of Protest, in solicitations for other than simplified acquisitions.

* * * * *

8. Section 33.201 is amended by revising the definition "Alternate means of dispute resolution"; and in the definition "Claim" by removing the amount "\$50,000" and inserting "\$100,000".

33.201 Definitions.

Alternate dispute resolution (ADR) means any procedure or combination of procedures voluntarily used to resolve issues in controversy without the need to resort to litigation. These procedures include, but are not limited to, assisted settlement negotiations, conciliation, facilitation, mediation, fact-finding, minitrials, and arbitration.

* * * * *

9. Section 33.206 is revised to read as follows:

33.206 Initiation of a claim.

(a) Contractor claims shall be submitted, in writing, to the contracting officer for a decision within 6 years after the contractor knew or should have known the facts and circumstances giving rise to the issue in controversy unless a shorter time period has been agreed to. This 6 year time period does not apply to contracts in existence as of October 13, 1994, that contain a clause requiring submittal of a claim earlier than 6 years after accrual of the claim. The contracting officer shall document the contract file with evidence of the date of receipt of any submission from the contractor deemed to be a claim by the contracting officer.

(b) The contracting officer shall issue a written decision on any Government claim initiated against a contractor within 6 years after accrual of the claim. The 6 year period shall not apply to a Government claim against a contractor that is based on a claim by the contractor involving fraud.

33.207 [Amended]

10. Section 33.207 is amended in paragraph (a)(1) by removing "\$50,000" and inserting "\$100,000".

33.208 [Amended]

11. Section 33.208 is amended in paragraph (c) by removing "as defined in 33.201,".

12. Section 33.211 is amended in paragraph (a)(4)(v) by removing the amounts "\$10,000" and "\$50,000" and inserting "\$50,000" and "\$100,000", respectively; in paragraphs (c)(1), (c)(2) and (e) by removing the amounts "\$50,000" and inserting "\$100,000"; and by revising paragraph (f) to read as follows:

33.211 Contracting officer's decision.

* * * * *

(f) In the event of undue delay by the contracting officer in rendering a decision on a claim, the contractor may request the tribunal concerned to direct the contracting officer to issue a decision in a specified time period determined by the tribunal.

* * * * *

13. Section 33.214 is amended by redesignating paragraphs (b) through (d) as (c) through (e) and adding a new paragraph (b) to read as follows:

33.214 Alternative dispute resolution (ADR).

* * * * *

(b) If the contracting officer rejects a request for ADR from a small business contractor, the contracting officer shall provide the contractor written explanation citing one or more of the

conditions in 5 U.S.C. 572(b) or such other specific reasons that ADR procedures are inappropriate for the resolution of the dispute. In any case where a contractor rejects a request of an agency for ADR proceedings, the contractor shall inform the agency in writing of the contractor's specific reasons for rejecting the request.

* * * * *

PART 39—ACQUISITION OF INFORMATION RESOURCES

14. Section 39.002 is amended by redesignating paragraph (b) as (c) and adding a new paragraph (b) to read as follows:

39.002 Delegations of procurement authority.

* * * * *

(b) The Administrator of the General Services Administration, or the appropriate official of any agency authorized to issue a redelegation of procurement authority (DPA) for any procurement initiated or contract award executed without the requisite DPA. If the Administrator or other appropriate agency official issues a DPA, the originally executed contract may be ratified by the contracting agency. Preaward procurement actions taken prior to obtaining a DPA do not need to be reaccomplished.

* * * * *

15. Subpart 42.15 is added to read as follows:

Subpart 42.15—Small Business Contract Administration

42.1501 General.

The contracting officer shall make every reasonable effort to respond in writing within 30 days to any written request to the contracting officer from a small business concern with respect to a contract administration matter. In the event the contracting officer cannot respond to the request within the 30 day period, the contracting officer shall, within such period, transmit to the contractor a written notification of the specific date the contracting officer expects to respond. This provision shall not apply to a request for a contracting officer decision under the Contract Disputes Act of 1978 (41 U.S.C. 601-613).

PART 50—EXTRAORDINARY CONTRACTUAL ACTIONS

50.303 [Redesignated as 50.303-1]

16. Section 50.303 is redesignated as 50.303-1 and a new 50.303 heading is added to read as follows:

50.303 Contract adjustment.

* * * * *

17. Section 50.303-2 is added to read as follows:

50.303-2 Contractor certification.

A contractor seeking a contract adjustment that exceeds the simplified acquisition threshold shall, at the time the request is submitted, submit a certification by a person authorized to certify the request on behalf of the contractor that (a) the request is made in good faith and (b) the supporting data are accurate and complete to the best of that person's knowledge and belief.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

18. Section 52.233-1 is amended by revising the date of the clause, the third sentence in paragraph (c), and paragraph (d)(1); in paragraph (d)(2)(i)(A) and (e) by removing "\$50,000" each place it occurs and inserting "\$100,000"; and by revising paragraph (g) to read as follows:

52.233-1 Disputes.

* * * * *

Disputes (Date)

* * * * *

(c) * * * However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph (d)(2) of this clause. * * *

(d)(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

* * * * *

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use ADR. If the Contractor refuses an offer for alternative disputes resolution, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the request. When using arbitration conducted pursuant to 5 U.S.C. 575-580, or when using any other ADR technique that the agency elects to handle in accordance with the ADRA, any claim, regardless of amount, shall be accompanied by the certification described in subparagraph (d)(2)(iii) of this clause, and executed in accordance with subparagraph (d)(3) of this clause.

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19. Section 52.233-2 is amended by revising the date of the clause; and adding paragraph (c) to read as follows:

52.233-2 Service of Protest.

* * * * *

Service of Protest (Date)

* * * * *

(c) In this procurement, you may not protest to the GSBCA because of the nature of the supplies being procured. (Contracting Officer shall strike the word "not" where the GSBCA is a correct forum.)

(End of provision)

20. Section 52.233-3 is amended by revising the date of the clause; and in paragraph (a) by revising the first sentence to read as follows:

52.233-3 Protest after Award.

* * * * *

Protest After Award (Date)

* * * * *

(a) Upon receipt of a notice of protest (as defined in 33.101 of the FAR) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. * * *

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[FR Doc. 95-482 Filed 1-9-95; 8:45 am]

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