

the supporting policies and procedures in the FAR.

(b) *Vision.* All participants in the System are responsible for making acquisition decisions that deliver the best value product or service to the customer. Best value must be viewed from a broad perspective and is achieved by balancing the many competing interests in the System. The result is a system which works better and costs less.

#### 1.102-2 Performance standards.

(a) *Satisfy the customer in terms of cost, quality, and timeliness of the delivered product or service.* (1) The principal customers for the product or service provided by the System are the users and line managers, acting on behalf of the American taxpayer.

(2) The System must be responsive and adaptive to customer needs, concerns, and feedback. Implementation of acquisition policies and procedures, as well as consideration of timeliness, quality and cost throughout the process, must take into account the perspective of the user of the product or service.

(3) When selecting contractors to provide products or perform services the Government will use contractors who have a track record of successful past performance or who demonstrate a current superior ability to perform.

(4) The Government must not hesitate to communicate with the commercial sector as early as possible in the acquisition cycle to help the Government determine the capabilities available in the commercial marketplace. The Government will maximize its use of commercial products and services in meeting Government requirements.

(5) It is the policy of the System to promote competition in the acquisition process.

(6) The System must perform in a timely, high quality, and cost-effective manner.

(7) All members of the Team are required to employ planning as an integral part of the overall process of acquiring products or services. Although advance planning is required, each member of the Team must be flexible in order to accommodate changing or unforeseen mission needs. Planning is a tool for the accomplishment of tasks, and application of its discipline should be commensurate with the size and nature of a given task.

(b) *Minimize administrative operating costs.* (1) In order to ensure that maximum efficiency is obtained, rules, regulations, and policies should be promulgated only when their benefits

clearly exceed the costs of their development, implementation, administration, and enforcement. This applies to internal administrative processes, including reviews, and to rules and procedures applied to the contractor community.

(2) The System must provide uniformity where it contributes to efficiency or where fairness or predictability is essential. The System should also, however, encourage innovation, and local adaptation where uniformity is not essential.

(c) *Conduct business with integrity, fairness, and openness.* (1) An essential consideration in every aspect of the System is maintaining the public's trust. Not only must the System have integrity, but the actions of each member of the Team must reflect integrity, fairness, and openness. The foundation of integrity within the System is a competent, experienced, and well-trained, professional workforce. Accordingly each member of the Team is responsible and accountable for the wise use of public resources as well as acting in a manner which maintains the public's trust. Fairness and openness require open communication among team members, internal and external customers, and the public.

(2) To achieve efficient operations, the System must shift its focus from "risk avoidance" to one of "risk management." The cost to the taxpayer of attempting to eliminate all risk is prohibitive. The Executive Branch will accept and manage the risk associated with empowering local procurement officials to take independent action based on their professional judgment.

(d) *Fulfill public policy objectives.* The System must support the attainment of public policy goals adopted by the Congress and the President. In attaining these goals, and in its overall operations, the process shall ensure the efficient use of public resources.

#### § 1.102-3 Acquisition team.

The purpose of defining the Federal Acquisition Team (Team) in the Guiding Principles is to ensure that participants in the System are identified—beginning with the customer and ending with the contractor of the product or service. By identifying the team members in this manner, teamwork, unity of purpose, and open communication among the members of the Team in sharing the vision and achieving the goal of the System are encouraged. Individual team members will participate in the acquisition process at the appropriate time.

#### § 1.102-4 Role of the acquisition team.

(a) Government members of the Team must be empowered to make acquisition decisions within their areas of responsibility, including selection, negotiation, and administration of contracts consistent with the Guiding Principles. In particular, the contracting officer must have the authority to the maximum extent practicable and consistent with law, to determine the application of rules, regulations, and policies, on a specific contract.

(b) The authority to make decisions and the accountability for the decision made will be delegated to the lowest level within the System, consistent with law.

(c) The Team must be prepared to perform the functions and duties assigned. The Government is committed to provide training, professional development, and other resources necessary for maintaining and improving the knowledge, skills, and abilities for all Government participants on the Team, both with regard to their particular area of responsibility within the System, and their respective role as a team member. The contractor community is encouraged to do likewise.

(d) The System will foster cooperative relationships between the Government and its contractors consistent with its overriding responsibility to the taxpayers.

(e) The FAR outlines procurement policies and procedures that are used by members of the Acquisition Team. If a policy or procedure, or a particular strategy or practice, is in the best interest of the Government and is not specifically addressed in the FAR, nor prohibited by law (statute or case law), Executive order or other regulation, Government members of the Team should not assume it is prohibited. Rather, absence of direction should be interpreted as permitting the Team to innovative and use sound business judgment that is otherwise consistent with law and within the limits of their authority.

[FR Doc. 95-16080 Filed 6-30-95; 8:45 am]

BILLING CODE 6820-EP-M

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

48 CFR Parts 1, 2, 4, 5, 7, 8, 9, 12, 14,  
15, 16, 19, 20, 25, 28, 32, 36, 45, 52, and  
53

[FAC 90-29; FAR Case 91-104; Item II]

RIN 9000-AE46

**Federal Acquisition Regulation;  
Electronic Contracting**

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

**ACTION:** Interim rule with request for  
comment.

**SUMMARY:** The Federal Acquisition  
Regulatory Council (FARC) is issuing an  
interim rule to amend the Federal  
Acquisition Regulation (FAR) to address  
the use of electronic commerce/  
electronic data interchange in  
Government contracting. This regulatory  
action was subject to Office of  
Management and Budget review under  
Executive Order 12866, dated  
September 30, 1993.

**DATES:** *Effective Date:* July 3, 1995.

*Comment Date:* Comments should be  
submitted to the FAR Secretariat at the  
address shown below on or before  
September 1, 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, Attn: Ms. Beverly Fayson,  
Washington, DC 20405. Please cite FAC  
90-29, FAR case 91-104 in all  
correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:**  
Mr. Edward Loeb at (202) 501-4547 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 FAC 90-29 (FAR Case 91-  
104).

**SUPPLEMENTARY INFORMATION:****A. BACKGROUND**

A proposed rule was published in the  
**Federal Register** at 58 FR 69588,  
December 30, 1993. The rule proposed  
amendments to the FAR to remove any  
barriers to the use of electronic data  
interchange in Government contracting.  
Thirty-six comments from ten

respondents were received during the  
public comment period. After  
evaluating the public comments,  
another proposed rule was published  
because significant changes to the rule  
published on December 30, 1993, were  
deemed to be necessary.

A revised proposed rule was  
published in the **Federal Register** at 60  
FR 12384, March 6, 1995. Eighteen  
comments were received in response to  
the proposed rule.

This interim rule and the interim rule  
published elsewhere in this issue under  
FAR case 94-770, Simplified  
Acquisition Procedures/FACENET, are  
interdependent and are meant to be  
considered jointly.

**B. Regulatory Flexibility Act**

This interim rule is 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 it encourages broader use of  
electronic contracting, thereby  
improving industry access to Federal  
contracting opportunities. The  
implementation of Electronic  
Contracting and use of the Federal  
Acquisition Computer Network  
(FACENET) will provide for electronic  
exchange of acquisition information  
between the private sector and the  
Federal Government that will increase  
the opportunities for vendors currently  
doing business with the Government,  
particularly small businesses. It is  
recognized that an initial start-up cost  
will be incurred for the purchase of a  
personal computer, modem, software,  
and telephone lines, estimated to be  
\$1,500. Additionally, it is anticipated  
that most small businesses will  
subscribe to third party value added  
network (VAN) services to facilitate  
their communications with the  
Government's computers. The cost of an  
advance subscription ranges from  
approximately \$30 to \$100 per month,  
depending on the type of services  
obtained. The interim rule does not  
duplicate, overlap, or conflict with any  
other Federal rules. An Initial  
Regulatory Flexibility Analysis (IRFA)  
has been prepared and may be obtained  
from the FAR Secretariat. A copy of the  
IRFA will be submitted to the Chief  
Counsel for Advocacy of the Small  
Business Administration. Comments are  
invited from small businesses and other  
interested parties. Comments from small  
entities concerning the affected FAR  
parts will also be considered in  
accordance with 5 U.S.C. 610. Such  
comments must be submitted separately  
and should cite 5 U.S.C. 601, *et seq.*  
(FAR case 91-104) in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does  
not apply because the interim rule does  
not impose any information collection  
requirements which require the  
approval of the Office of Management  
and Budget under 44 U.S.C. 3501, *et  
seq.*

**D. Determination to Issue an Interim  
Rule**

A determination has been made by  
the Secretary of Defense (DOD), the  
Administrator of General Services  
(GSA), and the Administrator of the  
National Aeronautics and Space  
Administration (NASA) under the  
authority provided by section 22 of the  
Office of Federal Procurement Policy  
Act (41 U.S.C. 418b) to issue this  
regulation as an interim rule.

The Simplified Acquisition Threshold  
Procedures/Federal Acquisition  
Computer Network (SAT/FACNET) rule  
(FAR Case 94-770) and the Electronic  
Contracting (EC) rule (FAR Case 91-104)  
benefit industry and Government by  
enhancing efficiency of contracting in  
an environment of declining personnel  
staffing and resulting increase in  
workload for contracting personnel. The  
rules are linked and require  
simultaneous promulgation. The  
proposed rules were published  
simultaneously in the **Federal Register**  
on March 6, 1995, with the public  
comment period closing on May 5,  
1995. A public meeting was held on  
these rules on April 3, 1995, and no  
substantive comments were presented at  
the meeting.

Section 22 of the Office of Federal  
Procurement Policy Act permits  
issuance of procurement policies,  
regulations, procedures, or forms as  
interim rules prior to consideration of  
public comments when urgent and  
compelling circumstances make it  
impracticable to do otherwise. Urgent  
and compelling reasons exist to make  
these rules effective prior to full  
consideration of public comment.  
Proceeding with these interim rules is  
required to permit the Federal  
Government to cope with the  
fundamental downsizing of its  
acquisition workforce and the large end-  
of-fiscal-year workload, with  
diminished resources. The Federal  
Acquisition Streamlining Act of 1994  
(FASA) and its provisions on SAT/  
FACNET, provide relief from various  
burdens that affect the Government  
acquisition process. For example,  
purchases under the new simplified  
acquisition approach will become far  
less complex than today. Using figures  
from the Department of Defense for

illustrative purposes, large purchase solicitations run 29 pages on the average whereas non-automated small purchases are about 12 pages in length, and automated small purchase solicitations, used by some DoD purchasing activities, are even less, 1 to 2 pages. The beneficial results of implementing these FASA provisions are evidenced further by the time saved in awarding orders under the existing small purchase procedures as opposed to contracts above the small purchase threshold of \$25,000. The current average lead-time for awards below \$25,000 is 26 days, while above \$25,000 the average lead-time is 90 days for sealed bids and 210 days for competitive negotiations. These timeframes will be reduced further by implementation of the simplified acquisition authority in this rule by establishing reasonable timeframes for submission of offers for simplified acquisitions in lieu of a rigid 30 days period. Through use of the simplified acquisition procedures for actions not exceeding \$50,000, the lead-time for approximately 30,000 contracts per year will be reduced to a fraction of the current lead-time. Use of electronic commerce/electronic data interchange capabilities at procurement activities certified to use FACNET will reduce lead-times even further and will increase the number of contracts affected to approximately 45,000, since FACNET users will be able to use the newly authorized simplified acquisition threshold of \$100,000 rather than only \$50,000 where FACNET has not been certified. Use of electronic commerce/electronic data interchange at a DoD test site reduced lead-time to 11 days. Reducing the lead-time will allow the contracting community to be more responsive in spite of the already reduced personnel resources, focus its efforts on more complex procurements, reduce the cost of the procurement process for both Government and industry, and provide better service to the direct users of the acquisition system, and ultimately to the public.

FASA called for its implementation in the FAR by October 1, 1995, or earlier. Due to the time required to fully consider, analyze, and document the analysis of public comments received in response to these proposed rules, it is unlikely that the rules could be published in the FAR, promulgated to procurement personnel and contractors, have procurement personnel and contractors trained, and have the new rules in use by the beginning of the last quarter of the fiscal year. It is essential that these rules be made effective by the beginning of the last quarter of the fiscal

year because of personnel downsizing that has already occurred and that is expected before the end of the fiscal year. Additionally, the workload in the last quarter of the fiscal year is the most demanding of the fiscal year. Introduction of new procedures and processes in the middle of that quarter would be counterproductive to efficiency and would require operations to be suspended while retraining of the workforce is accomplished. Therefore, the regulations in FAC 90-29 must be effective no later than July 3, 1995, to provide the Federal acquisition workforce the labor and cost saving benefits provided by the statute, or they must be delayed until the end of the fiscal year so as not to interfere with acquisition operations. Immediate implementation as an interim rule will permit time for training of the acquisition workforce and FAR acquisition procedures to be fully operational before the final quarter of FY 1995.

Pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to these interim rules and the prior proposed rules will be considered in formulating the final rules.

**List of Subjects in 48 CFR Parts 1, 2, 4, 5, 7, 8, 9, 12, 14, 15, 16, 19, 20, 25, 28, 32, 36, 45, 52, and 53**

Government procurement.

Dated: June 26, 1995.

**C. Allen Olson,**  
*Director, Office of Federal Acquisition Policy.*

Therefore, 48 CFR Parts 1, 2, 4, 5, 7, 8, 9, 12, 14, 15, 16, 19, 20, 25, 28, 32, 36, 45, 52, and 53 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 2, 4, 5, 7, 8, 9, 12, 14, 15, 16, 19, 20, 25, 28, 32, 45, 52, and 53 continues to read as follows:

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

**PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM**

**1.105 [Amended]**

2. Section 1.105 is amended in the FAR segment column by removing entry "14.406" and inserting "14.407" in its place.

**PART 2—DEFINITIONS OF WORDS AND TERMS**

3. Section 2.101 is amended by adding, in alphabetical order, the definitions "In writing" or written" and signature" or "Signature" or "signed" to read as follows:

**2.101 Definitions.**

\* \* \* \* \*

*In writing* or *written* means any worded or numbered expression which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

\* \* \* \* \*

*Signature* or *signed* means the discrete, verifiable symbol of an individual which, when affixed to a writing with the knowledge and consent of the individual, indicates a present intention to authenticate the writing. This includes electronic systems.

\* \* \* \* \*

**PART 4—ADMINISTRATIVE MATTERS**

4. Section 4.101 is revised to read as follows:

**4.101 Contracting officer's signature.**

Only contracting officers shall sign contracts on behalf of the United States. The contracting officer's name and official title shall be typed, stamped, or printed on the contract. The contracting officer normally signs the contract after it has been signed by the contractor. The contracting officer shall ensure that the signer(s) have authority to bind the contractor (see specific requirements in 4.102 of this subpart).

**4.201 [Amended]**

5 & 6. Section 4.201 is amended in paragraph (a) by removing the parenthetical "(see 4.101(b))"; in paragraph (b)(1) by removing the parenthetical "(stamped 'DUPLICATE ORIGINAL,' see 4.101(b))"; and in paragraph (d) by revising the parenthetical "(see 30.601(b))" to read "(see 30.601(b))".

**PART 5—PUBLICIZING CONTRACT ACTIONS**

7. Section 5.101 is amended by adding paragraph (a)(2)(iv) to read as follows:

**5.101 Methods of disseminating information.**

\* \* \* \* \*

(a) \* \* \*

(2) \* \* \*

(iv) Electronic dissemination available to the public at the contracting office may be used to satisfy the public display requirement. Contracting offices utilizing electronic systems for public posting shall periodically publicize the methods for accessing such information.

\* \* \* \* \*

8. Section 5.102(a)(4)(i) is revised to read as follows:

**5.102 availability of solicitations.**

- (a) \* \* \*
- (4) \* \* \*

(i) A copy of the solicitation specifications. In the case of solicitations disseminated by electronic data interchange, solicitations may be furnished directly to the electronic address of the small business concern;

\* \* \* \* \*

(9) Section 5.207 is amended by adding a new paragraph (c)(2)(xvii) to read as follows:

**5.207 Preparation and transmittal of synopses.**

\* \* \* \* \*

- (c) \* \* \*
- (2) \* \* \*

(xvii) If the solicitation will be made available to interested parties through electronic data interchange, provide any information necessary to obtain and respond to the solicitation electronically.

\* \* \* \* \*

**PART 7—ACQUISITION PLANNING**

**7.30 [Amended]**

10. Section 7.304(b)(3) is amended in the first sentence by adding”, or electronic equivalent,” after the word “envelope”.

11. Section 7.306(a)(1)(i) is revised to read as follows:

**7.306 Evaluation.**

\* \* \* \* \*

- (a)(1) \* \* \*

(i) Open the sealed cost comparison on which the cost estimate for Government performance has been entered;

\* \* \* \* \*

**7.307 [Amended]**

12. Section 7.307 is amended in the first sentence of paragraph (b) by removing “14.407–8” and inserting “14.408–8” in its place.

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

13. Section 8.405–2 is amended by revising the first sentence of the introductory text to read as follows:

**8.405–2 Order placement.**

Ordering offices may use Optional Form 347, an agency-prescribed form, or an established electronic communications format to order items from schedules and shall place orders directly with the contractor within the limitations specified in each schedule.

\* \* \*

\* \* \* \* \*

**8.705–3 [Amended]**

14. Section 8.705–3(a) is amended in the first sentence by removing the word “letter” and inserting “written” in its place.

**PART 9—CONTRACTOR QUALIFICATIONS**

**9.206–3 [Amended]**

15. Section 9.206–3(b) is amended in the first sentence by removing “requested copies of the solicitation” and inserting “expressed interest in the acquisition” in its place.

**PART 12—CONTRACT DELIVERY OR PERFORMANCE**

16. Section 12.103(e) is revised to read as follows:

**12.103 Supplies or services.**

\* \* \* \* \*

(e) In invitations for bids, if the delivery schedule is based on the date of the contract, and a bid offers delivery based on the date the contractor receives the contract or notice of award, the contracting officer shall evaluate the bid by adding 5 calendar days (as representing the normal time for arrival through ordinary mail). If the contract or notice of award will be transmitted electronically, (1) the solicitation shall so state; and (2) the contracting officer shall evaluate delivery schedule based on the date of contract receipt or notice of award, by adding one working day. (The term “working day” excludes weekends and U.S. Federal holidays.) If the offered delivery date computed with mailing or transmittal time is later than the delivery date required by the invitation for bids, the bid shall be considered nonresponsive and rejected. If award is made, the delivery date will be the number of days offered in the bid after the contractor actually receives the notice of award.

**PART 14—SEALED BIDDING**

17. Section 14.201–6(e)(1) is revised to read as follows:

**14.201–6 Solicitation provisions.**

\* \* \* \* \*

- (e) \* \* \*

(1) 52.214–9, Failure to Submit Bid, except when using electronic data interchange methods not requiring solicitation mailing lists; and

\* \* \* \* \*

**14.202–1 Bidding time.**

18. Section 14.202–1(b)(6) is amended by removing the word “mailing” and inserting “transmittal” in its place.

19. Section 14.202–2(a)(1) is revised to read as follows:

**14.202–2 Telegraphic bids.**

- (a) \* \* \*

(1) The date for the opening of bids will not allow bidders sufficient time to submit bids in the prescribed format; or

\* \* \* \* \*

20. Section 14.202–8 is added to read as follows:

**14.202–8 Electronic bids.**

In accordance with subpart 4.5, contracting officers may authorize use of electronic commerce for submission of bids. If electronic bids are authorized, the solicitation shall specify the electronic commerce method(s) that bidders may use.

21. Section 14.203–1 is revised to read as follows:

**14.203–1 Transmittal to prospective bidders.**

Invitations for bids or presolicitation notices shall be transmitted as specified in 14.205, and shall be provided to others in accordance with 5.102. When a contracting office is located in the United States, any solicitation sent to a prospective bidder located at a foreign address shall be sent by electronic data interchange or international air mail if security classification permits.

22. Section 14.205–1(a) is revised to read as follows:

**14.205–1 Establishment of lists.**

(a) Solicitation mailing lists shall be established by contracting activities to assure access to adequate sources of supplies and services. This rule need not be followed, however, when (1) the requirements of the contracting office can be obtained through use of simplified acquisition procedures (see part 13), (2) the requirements are nonrecurring, or (3) electronic commerce methods are used which transmit solicitations or presolicitation notices automatically to all interested sources participating in electronic contracting with the purchasing activity. Lists may be established as a central list for use by all contracting offices within the contracting activity, or as local lists maintained by each contracting office.

\* \* \* \* \*

23. Section 14.209(b) is amended by adding a second sentence to read as follows:

**14.209 Cancellation of invitations before opening.**

\* \* \* \* \*

(b) \* \* \* For bids received electronically, the data received shall not be viewed and shall be purged from primary and backup data storage systems.

\* \* \* \* \*

24. Section 14.301 is amended by adding paragraph (e) to read as follows:

**14.301 Responsiveness of bids.**

\* \* \* \* \*

(e) Bids submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

25. Section 14.303 is amended by revising the first sentence of paragraph (a) and adding (c) to read as follows:

**14.303 Modification or withdrawal of bids.**

(a) Bids may be modified or withdrawn by any method authorized by the solicitation, if notice is received in the office designated in the solicitation not later than the exact time set for opening of bids. \* \* \*

\* \* \* \* \*

(c) Upon withdrawal of an electronically transmitted bid, the data received shall not be viewed and shall be purged from primary and backup data storage systems.

26. Section 14.304-1 is amended by removing the word "either" at the end of paragraph (a) introductory text, by removing the word "or" at the end of paragraph (a)(2), by removing the period at the end of paragraph (a)(3) and inserting "; or" in its place, and adding paragraph (a)(4) to read as follows:

**14.304-1 General.**

\* \* \* \* \*

(a) \* \* \*

(4) It was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one working day prior to the date specified for receipt of bids.

\* \* \* \* \*

27. Section 14.401(a) is amended by revising the second sentence to read as follows:

**14.401 Receipt and safeguarding of bids.**

(a) \* \* \* Except as provided in paragraph (b) of this section, the bids shall not be opened or viewed, and shall remain in a locked bid box, a safe, or in a secured, restricted-access electronic bid box. \* \* \*

\* \* \* \* \*

28. Section 14.402-3(a)(1) is revised to read as follows:

**14.402-3 Postponement of openings.**

(a) \* \* \*

(1) The contracting officer has reason to believe that the bids of an important segment of bidders have been delayed in the mails, or in the communications system specified for transmission of bids, for causes beyond their control

and without their fault or negligence (e.g., flood, fire, accident, weather conditions, strikes, or Government equipment blackout or malfunction when bids are due); or

\* \* \* \* \*

**14.406 through 14.408-2 [Redesignated as 14.407 through 14.409-2; new 14.406 added]**

29. Sections 14.406 through 14.406-4; 14.407 through 14.407-8; and 14.408, 14.408-1, and 14.408-2 are redesignated as 14.407 through 14.407-4; 14.408 through 14.408-8; and 14.409, 14.409-1, and 14.409-2, respectively, and a new section 14.406 is added to read as follows:

**14.406 Receipt of an unreadable electronic bid.**

If a bid received at the Government facility by electronic data interchange is unreadable to the degree that conformance to the essential requirements of the invitation for bids cannot be ascertained, the contracting officer immediately shall notify the bidder that the bid will be rejected unless the bidder provides clear and convincing evidence—

- (a) Of the content of the bid as originally submitted; and
- (b) That the unreadable condition of the bid was caused by Government software or hardware error, malfunction, or other Government mishandling.

30. Newly-redesignated section 14.407-2 is amended by adding paragraph (c) to read as follows:

**14.407-2 Apparent clerical mistakes.**

\* \* \* \* \*

(c) Correction of bids submitted by electronic data interchange shall be effected by including in the electronic solicitation file the original bid, the verification request, and the bid verification.

**14.407-1, 14.407-3, 14.407-4, 14.408-6, and 14.409-2 [Amended]**

30a. In addition to the amendments set forth above, newly-redesignated sections 14.407-1 through 14.409-2 are amended by updating the internal references as follows:

Section	Remove	Insert
14.407-1 .....	14.406	14.407
14.407-3 intro. text	14.406-3	14.407-3
	14.406-2	14.407-2
14.407-3(e), (h) & (i) .....	14.406-3	14.407-3
14.407-4(f) .....	14.406-4	14.407-4
14.408-6(c) .....	14.407-6	14.408-6
14.409-2 .....	14.408-1	14.409-1

**PART 15—CONTRACTING BY NEGOTIATION**

31. Section 15.402 is amended by adding paragraph (k) to read as follows:

**15.402 General.**

\* \* \* \* \*

(k) In accordance with subpart 4.5, contracting officers may authorize use of electronic commerce for submission of offers. If electronic offers are authorized, the solicitation shall specify the electronic commerce method(s) that offerors may use.

32. Section 15.407(d)(3) is revised to read as follows:

**15.407 Solicitation provisions.**

\* \* \* \* \*

(d) \* \* \*

(3) Insert in RFP's the provision at 52.215-15, Failure to Submit Offer, except when using electronic data interchange methods not requiring solicitation mailing lists; and

\* \* \* \* \*

33. Section 15.410(b) is revised to read as follows:

**15.410 Amendment of solicitations before closing date.**

\* \* \* \* \*

(b) The contracting officer shall determine if the closing date needs to be changed when amending a solicitation. If the time available before closing is insufficient, prospective offerors or quoters shall be notified by electronic data interchange, telegram, or telephone of an extension of the closing date. Telephonic and telegraphic notices shall be confirmed in the written amendment to the solicitation. The contracting officer shall not award a contract unless any amendments made to an RFP have been issued in sufficient time to be considered by prospective offerors.

\* \* \* \* \*

34. Section 15.412 is amended by revising the heading and adding paragraph (h) to read as follows:

**15.412 Late proposals, modifications, and withdrawals of proposals.**

\* \* \* \* \*

(h) Upon withdrawal of an electronically transmitted proposal, the data received shall not be viewed and shall be purged from primary and backup data storage systems.

35. Section 15.607 is amended by adding paragraph (d) to read as follows:

**15.607 Disclosure of mistakes before award.**

\* \* \* \* \*

(d) If a proposal received at the Government facility in electronic format is unreadable to the degree that

conformance to the essential requirements of the solicitation cannot be ascertained from the document, the contracting officer immediately shall notify the offeror and provide the opportunity for the offeror to submit clear and convincing evidence—

(1) Of the content of the proposal as originally submitted; and

(2) That the unreadable condition of the proposal was caused by Government software or hardware error, malfunction, or other Government mishandling.

**15.607, 15.608, and 15.1005 [Amended]**

36. In addition to the amendments set forth above, sections 15.607, 15.608 and 15.1005 are amended by updating the internal references as follows:

Section	Remove	Insert
15.607(a) .....	14.406	14.407
15.608(c) .....	14.407-3	14.408-3
15.1005 .....	14.406-4	14.407-4

**PART 16—TYPES OF CONTRACTS**

**16.203-2 [Amended]**

37. Section 16.203-2 is amended in the last sentence of the introductory text by removing “14.407-4” and inserting “14.408-4” in its place.

38. Section 16.506(c) is revised to read as follows:

**16.506 Ordering.**

\* \* \* \* \*

(c) Orders may be placed by electronic commerce methods when permitted under the contract.

\* \* \* \* \*

**PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS**

**19.811-2 [Amended]**

39. Section 19.811-2 is amended in the introductory text of paragraph (a) by removing “14.407-1(d)” and inserting “14.408-1(d)” in its place.

**PART 20—LABOR SURPLUS AREA CONCERNS**

**20.104 [Amended]**

40. Section 20.104 is amended in paragraph (f) by removing “14.407-6” and inserting “14.408-6” in its place.

**PART 25—FOREIGN ACQUISITION**

**25.405 [Amended]**

41. Section 25.405 is amended in paragraph (e) by removing “14.408-1(a)(2)” and inserting “14.409-1(a)(2)” in its place.

**PART 28—BONDS AND INSURANCE**

**28.101-4 [Amended]**

42. Section 28.101-4 is amended in paragraph (c)(5) by removing “14.406” and inserting “14.407” in its place.

**PART 32—CONTRACTING FINANCING**

43. Section 32.503-1(b) is revised to read as follows:

**32.503-1 Contractor requests.**

\* \* \* \* \*

(b) Comply with the instructions appropriate to the applicable form, and the contract terms; and

\* \* \* \* \*

**PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**

**36.304 [Amended]**

44. Section 36.304 is amended in the introductory text by removing “14.407” and inserting “14.408” in its place.

**PART 45—GOVERNMENT PROPERTY**

45. Section 45.606-5 is amended by revising paragraphs (b)(3) and (b)(4) to read as follows:

**45.606-5 Instructions for preparing and submitting schedules of contractor inventory.**

\* \* \* \* \*

(b) \* \* \*

(3) The standard inventory schedule forms may be electronically reproduced by contractors pursuant to 53.105, provided no change is made to the name, content or sequence of the data elements. All essential elements of data must be included and the form must be signed.

(4) The appropriate continuation sheet shall be used when more space is needed.

\* \* \* \* \*

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

46. Section 52.212-1 is amended by revising the date in the heading of the clause and the fourth sentence in paragraph (b), and removing “(R 7-104.92(b) 1974 APR)”, “(R 1-1.316-5)” and “(R 1-1316-4(c))” after “(End of clause)” to read as follows:

**52.212-1 Time of Delivery.**

\* \* \* \* \*

**Time of Delivery (Jul 1995)**

\* \* \* \* \*

(b) \* \* \* However, the Government will evaluate an offer that proposes delivery based on the Contractor’s date of receipt of the contract or notice of award by adding (i) five calendar days for delivery of the award

through the ordinary mails, or (ii) one working day if the solicitation states that the contract or notice of award will be transmitted electronically. (The term “working day” excludes weekends and U.S. Federal holidays.) \* \* \*

(End of clause)

\* \* \* \* \*

47. Section 52.212-2 is amended by revising the date in the heading of the clause and the fourth sentence in paragraph (b), and removing “(R 7-104.92(c) 1974 APR)”, “(R 1-1.316-5(c))” and “(R 1-1.316-4(c))” following “(End of clause)” to read as follows:

**52.212-2 Desired and Required Time of Delivery.**

\* \* \* \* \*

**Desired and Required Time of Delivery (Jul 1995)**

\* \* \* \* \*

(b) \* \* \* However, the Government will evaluate an offer that proposes delivery based on the Contractor’s date of receipt of the contract or notice of award by adding (i) five calendar days for delivery of the award through the ordinary mails, or (ii) one working day if the solicitation states that the contract or notice of award will be transmitted electronically. (The term “working day” excludes weekends and U.S. Federal holidays.) \* \* \*

(End of clause)

\* \* \* \* \*

48. Section 52.214-5 is amended by revising the date in the heading of the provision and adding paragraph (d) to read as follows:

**52.214-5 Submission of Bids.**

\* \* \* \* \*

**Submission of Bids (Jul 1995)**

\* \* \* \* \*

(d) Bids submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

49. Section 52.214-7 is amended by revising the date in the provision heading, at the end of paragraph (a)(2) by removing “or”, at the end of paragraph (a)(3) by removing the period and inserting “; or” in its place, and adding paragraph (a)(4) to read as follows:

**52.214-7 Late Submissions, Modifications, and Withdrawals of Bids.**

\* \* \* \* \*

**Late Submissions, Modifications, and Withdrawals of Bids (Jul 1995)**

(a) \* \* \*

(4) Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m., one

working day prior to the date specified for receipt of bids.

\* \* \* \* \*

(End of provision)

50. Section 52.214-9 is amended by revising the introductory text, the date in the heading of the provision, and the second sentence of the provision, and by removing "(R SF 33A, Para 6, 1978 JAN)" after "(End of provision)" to read as follows:

**52.214-9 Failure to Submit Bid.**

As prescribed in 14.201-6(e)(1), insert the following provision in invitations for bids:

**Failure to Submit Bid (Jul 1995)**

\* \* \* Instead, they should advise the issuing office by letter, postcard, or established electronic commerce methods, whether they want to receive future solicitations for similar requirements.\* \* \*

(End of provision)

51. Section 52.214-23 is amended by revising the date in the heading of the provision, at the end of paragraph (a)(3) by removing "or"; redesignating paragraph (a)(4) as (a)(5), and adding a new paragraph (a)(4) to read as follows:

**52.214-23 Late Submissions, Modifications, and Withdrawals of Technical Proposals Under Two-Step Sealed Bidding.**

\* \* \* \* \*

**Late Submissions, Modifications, and Withdrawals of Technical Proposals Under Two-Step Sealed Bidding (Jul 1995)**

(a) \* \* \*

(4) Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one working day prior to the date specified for receipt of technical proposals; or

\* \* \* \* \*

52. Section 52.214-32 is amended by revising the date in the heading of the provision and paragraph (a) to read as follows:

**52.214-32 Late Submissions, Modifications, and Withdrawals of Bids (Overseas).**

\* \* \* \* \*

**Late Submissions, Modifications, and Withdrawals of Bids (Overseas) (Jul 1995)**

(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—

(1) Was sent by mail or, if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or

(2) Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one working day prior to the date specified for receipt of bids. The term "working day" excludes weekends and U.S. Federal holidays.

\* \* \* \* \*

53. Section 52.214-33 is amended by revising the date in the heading of the provision, at the end of paragraph (a)(1) by removing the word "or", redesignating paragraph (a)(2) as (a)(3), and adding a new paragraph (a)(2) to read as follows:

**52.214-33 Late Submissions, Modifications, and Withdrawals of Technical Proposals Under Two-Step Sealed Bidding (Overseas).**

\* \* \* \* \*

**Late Submissions, Modifications, and Withdrawals of Technical Proposals Under Two-Step Sealed Bidding (Overseas) (Jul 1995)**

(a) \* \* \*

(2) Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one working day prior to the date specified for receipt of technical proposals. The term "working day" excludes weekends and U.S. Federal holidays; or

\* \* \* \* \*

54. Section 52.215-9 is amended by revising the date in the provision heading, redesignating paragraph (d) as (e), and adding a new paragraph (d) to read as follows:

**52.215-9 Submission of Offers.**

\* \* \* \* \*

**Submission of Offers (Jul 1995)**

(d) Offers submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

\* \* \* \* \*

55. Section 52.215-10 is amended by revising the introductory text and the date in the provision heading, at the end of (a)(3) by removing the word "or", redesignating paragraph (a)(4) as (a)(5), and adding a new paragraph (a)(4) to read as follows:

**52.215-10 Late Submissions, Modifications, and Withdrawals of Proposals.**

As prescribed in 15.407(c)(6), insert the following provision:

**Late Submissions, Modifications, and Withdrawals of Proposals (Jul 1995)**

(a) \* \* \*

(4) Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one

working day prior to the date specified for receipt of proposals; or

\* \* \* \* \*

56. Section 52.215-15 is revised to read as follows:

**52.215-15 Failure to Submit Offer.**

As prescribed in 15.407(d)(3), insert the following provision:

**Failure to Submit Offer (Jul 1995)**

Recipients of this solicitation not responding with an offer should not return this solicitation, unless it specifies otherwise. Instead, they should advise the issuing office by letter, postcard, or established electronic commerce methods, whether they want to receive future solicitations for similar requirements. If a recipient does not submit an offer and does not notify the issuing office that future solicitations are desired, the recipient's name may be removed from the applicable mailing list.

(End of provision)

57. Section 52.215-36 is amended by revising the date in the provision heading, at the end of paragraph (a)(1) by removing the word "or", redesignating paragraph (a)(2) as (a)(3), and adding a new paragraph (a)(2) to read as follows:

**52.215-36 Late Submissions, Modifications, and Withdrawals of Proposals (Overseas).**

\* \* \* \* \*

**Late Submissions, Modifications, and Withdrawals of Proposals (Overseas) (Jul 1995)**

(a) \* \* \*

(2) Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

\* \* \* \* \*

(End of provision)

**52.223-3 [Amended]**

58. Section 52.223-3, Alternate I, is amended by removing "(NOV 1991)" and inserting "(JUL 1995)" in its place, and in the second sentence of paragraph (i)(1) by removing the word "mail" and inserting "transmit" in its place.

59. Section 52.242-12 is amended by revising the date in the clause heading and the second and third sentences of the clause to read as follows:

**52.242-12 Report of Shipment (REPSHIP).**

\* \* \* \* \*

**Report of Shipment (Repship) (Jul 1995)**

\* \* \* The notice shall be transmitted by rapid means to be received by the consignee transportation officer at least 24 hours before the arrival of the shipment. The Government bill of lading, commercial bill of lading or letter or other document that contains all of

the following shall be addressed and sent promptly to the receiving transportation officer. \* \* \*

\* \* \* \* \*

(End of clause)

60. Section 52.242-13 is amended by revising the date in the clause and the first sentence of the clause to read as follows:

**52.242-13 Bankruptcy.**

\* \* \* \* \*

**Bankruptcy (Jul 1995)**

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. \* \* \*

61. Section 52.247-48 is amended by revising the introductory text, the date in the clause heading, redesignating the introductory text of the clause and paragraphs (a), (b), and (c) as (a) introductory text (a)(1), (a)(2), and (a)(3), respectively, adding new paragraph (b), and removing "(R 7-104.76 1968 JUN)" after "(End of clause)" to read as follows:

**52.247-48 F.o.b. Destination—Evidence of Shipment.**

As prescribed in 47.305-4(c), insert the following clause:

**F.O.B. Destination—Evidence of Shipment (Jul 1995)**

\* \* \* \* \*

(b) Electronic transmission of the information required by paragraph (a) of this clause is acceptable.

(End of clause)

**PART 53—FORMS**

62. Section 53.105 is revised to read as follows:

**53.105 Computer generation.**

(a) Agencies may computer-generate the Standard and Optional Forms prescribed in the FAR without exception approval (see 53.103), provided—

(1) The form is in an electronic format that complies with Federal Information Processing Standard Number 161; or

(2) There is no change to the name, content, or sequence of the data elements, and the form carries the Standard or Optional Form number and edition date.

(b) The forms prescribed by this part may be computer generated by the public. Unless prohibited by agency regulations, forms prescribed by agency FAR supplements may also be computer

generated by the public. Computer generated forms shall either comply with Federal Information Processing Standard Number 161 or shall retain the name, content, or sequence of the data elements, and shall carry the Standard or Optional Form or agency number and edition date (see 53.111).

**53.214 [Amended]**

63. Section 53.214 is amended in paragraph (a) by removing "14.407-1(d)" and inserting "14.408-1(d)(1)" in its place.

[FR Doc. 95-16081 Filed 6-30-95; 8:45 am]

BILLING CODE 6820-EP-M

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 2, 3, 4, 5, 6, 8, 9, 13, 15, 16, 19, 20, 22, 23, 25, 27, 28, 29, 32, 36, 41, 42, 43, 44, 45, 46, 47, 49, 52, and 53**

[FAC 90-29; FAR Case 94-770; Item III]

RIN 9000-AG18

**Federal Acquisition Regulation; Simplified Acquisition Procedures/ FACNET**

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

**ACTION:** Interim rule with request for comment.

**SUMMARY:** This interim rule is issued pursuant to the new simplified acquisition and Federal Acquisition Computer Network (FACNET) requirements of the Federal Acquisition Streamlining Act of 1994 (the Act). This regulatory action was subject to Office of Management and Budget review under Executive Order 12866 dated September 30, 1993.

**DATES:** Effective Date: July 3, 1995.

*Comment Date:* Comments should be submitted to the FAR Secretariat at the address shown below on or before September 1, 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, Attn: Ms. Beverly Fayson, Washington, DC 20405.

Please cite FAC 90-29, FAR case 94-770 in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** Diana Maykowskyj, Team Leader, Simplified Acquisition Procedures/ FACNET Team, on (703) 274-6307 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 FAC 90-29, FAR Case 94-770, Simplified Acquisition Procedures.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103-355 (FASA), provides authorities that streamline the acquisition process and minimize burdensome Government-unique requirements. Major changes in the acquisition process as a result of the Act's implementation include the areas of commercial item acquisition, simplified acquisition procedures, the Truth in Negotiations Act and Federal Acquisition Computer Network (FACNET).

The terms "simplified acquisition" and "Federal Acquisition Computer Network (FACNET)" are defined by FASA. FASA defines the simplified acquisition threshold as \$100,000. It limits use of simplified acquisition procedures by procurement activities not having certified Interim FACNET to procurements not exceeding \$50,000. Use of simplified acquisition procedures is also limited to procurements not exceeding \$50,000 if any agency does not have certified Full FACNET by January 1, 2000.

Review of the law and this implementing rule requires that the difference between the simplified acquisition threshold and the use of simplified acquisition procedures be recognized. The *simplified acquisition threshold* is \$100,000. The authority to use *simplified acquisition procedures* at the \$100,000 level depends on implementation and proper certification of FACNET.

This rule, the vast majority of which was published as a proposed rule in the **Federal Register** at 60 FR 12366, March 6, 1995, incorporates FAR Subpart 4.5 for FACNET information and guidance. FAR Subpart 4.5 provides definitions, certification information, and exemptions in accordance with FASA. FAR case 91-104 ("Electronic Commerce") and this implementation of FASA are interdependent and are meant to be considered jointly. Reviewers are advised that FACNET is not a single electronic system that will be used by