

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Federal Acquisition Circular 90-41]

Federal Acquisition Regulation; Introduction of Miscellaneous Amendments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules.

SUMMARY: This document serves to introduce and relate together the interim and final rule documents which follow and which comprise Federal Acquisition Circular (FAC) 90-41. The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to issue FAC 90-41 to amend the Federal Acquisition Regulation (FAR) to implement changes in the following subject areas. A companion document, the Small

Entities Compliance Guide, follows this FAC and may be located on the Internet at <http://www.gsa.gov/far/compliance>.

Item	Subject	FAR case	Analyst
I	Information Technology Management Reform Act of 1996	96-319	O'Neill.
II	Compliance with Immigration and Nationality Act Provisions	96-320	DeStefano.
III	Federal Acquisition and Community Right-to-Know	95-305	DeStefano.
IV	Restrictions on Certain Foreign Purchases	95-303	O'Such.
V	Legal Proceedings Costs	93-010	Olson.

DATES: For effective dates and comment dates, see individual documents which appear elsewhere in this separate part.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in relation to each FAR case or subject area. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC, 20405 (202) 501-4755. Please cite FAC 90-41 and FAR case number(s).

SUPPLEMENTARY INFORMATION: Federal Acquisition Circular 90-41 amends the FAR as specified below:

CASE SUMMARIES

For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Item I—Information Technology Management Reform Act of 1996 (FAR Case 96-319)

This interim rule implements the Information Technology Management Reform Act (ITMRA) of 1996 (Division E of Public Law 104-106). ITMRA seeks to improve Federal information management and to facilitate acquisition of state-of-the-art information technology that is critical for improving the efficiency and effectiveness of Government operations. Under ITMRA, each executive agency is authorized to acquire information technology, including entering into contracts that provide for multi-agency acquisitions of information technology in accordance with guidance issued by the Office of

Management and Budget. This interim rule also contains certain policies and procedures from the Federal Information Resources Management Regulation (FIRMR). The changes to the FAR include (1) addition of a definition of "information technology" at 2.101; (2) relocation of the definition of "major system" from 34.001 to 2.101; (3) addition of a new Subpart 8.9, Financial Management Systems Software (FMSS) Mandatory Multiple Award Schedule (MAS) Contracts Program; (4) revision of Part 39, Acquisition of Information Technology; (5) addition of a new clause at 52.239-1, Privacy or Security Safeguards; and (6) various conforming amendments in other parts of the FAR.

Item II—Compliance with Immigration and Nationality Act Provisions (FAR Case 96-320)

This interim rule amends FAR 9.406 to implement Executive Order 12989 of February 13, 1996, Economy and Efficiency in Government Procurement Through Compliance with Certain Immigration and Nationality Act Provisions. The Executive Order provides that a contractor may be debarred upon a determination by the Attorney General that the contractor is not in compliance with the employment provisions of the Immigration and Nationality Act.

Item III—Federal Acquisition and Community Right-to-Know (FAR Case 95-305)

The interim rule published in FAC 90-34 is revised and finalized. The rule

implements Executive Order 12969, Federal Acquisition and Community Right-to-Know, which requires that Government contractors report in a public manner on toxic chemicals released into the environment. The final rule differs from the interim rule in that it amends FAR Subpart 23.9, the provision at 52.223-13, and the clause at 52.223-14 to clarify that (1) an offeror must submit a Certification of Toxic Chemical Release Reporting regarding only those facilities that it owns or operates, and (2) a contractor must file a Toxic Chemical Release Inventory Form with the Environmental Protection Agency only for its facilities that are subject to the reporting requirements of the Emergency Planning and Community Right-to-Know Act of 1986.

Item IV—Restrictions on Certain Foreign Purchases (FAR Case 95-303)

This final rule amends FAR Subpart 25.7 and the clause at 52.225-11 to (1) implement Executive Order 12959, Prohibiting Certain Transactions with Respect to Iran, and (2) reflect the regulations of the Department of the Treasury, Office of Foreign Assets Control (31 CFR Chapter V). Iran and Libya are added to the list of sources from which procurement is restricted; Vietnam, Cambodia, and South Africa are removed from the list.

Item V—Legal Proceedings Costs (FAR Case 93-010)

This final rule amends FAR 31.205-47 to make the costs of pre- or post-award protests unallowable. An

exception to this requirement is made for costs incurred to defend against a protest, if the costs are incurred pursuant to a written request from the contracting officer.

Dated: August 2, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Federal Acquisition Circular

August 8, 1996; Number 90-41

Federal Acquisition Circular (FAC) 90-41 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

FAR case 96-320 is effective August 8, 1996. FAR cases 93-010, 95-303, and 95-305 are effective October 7, 1996. Far Case 96-319 is effective August 8, 1996, and applies to all information technology solicitations issued on or after August 8, 1996.

Dated: July 29, 1996.

Eleanor R. Spector,

Director, Defense Procurement.

Dated: July 23, 1996.

Edward C. Loeb,

Acting Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Tom Luedtke,

Deputy Associate Administrator for Procurement, National Aeronautics and Space Administration.

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DEPARTMENT OF DEFENSE

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 5, 7, 8, 9, 12, 15, 16, 17, 19, 22, 32, 33, 34, 37, 38, 39, 45, 46, 51, 52, and 53

[FAC 90-41, FAR Case 96-319, Item I]

RIN 9000-AHXX

Federal Acquisition Regulation; Information Technology Management Reform Act of 1996 (ITMRA)

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

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense

Acquisition Regulations Council have agreed to an interim rule amending the Federal Acquisition Regulation (FAR) to provide for a simplified, clear, and understandable process for acquiring information technology (IT) that addresses the management of risk. This interim rule implements the Information Technology Management Reform Act (ITMRA), Division E of Public Law 104-106, dated February 10, 1996. The interim rule also incorporates the recommendations of the Federal Information Resources Management Regulation (FIRMR) Transition Committee, relocating those provisions of the FIRMR, which were recommended for retention, in the FAR. This regulatory action was not subject to Office of Management and Budget (OMB) review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

DATES: Effective Date: August 8, 1996.

Applicability: This regulation applies to all IT solicitations issued on or after August 8, 1996. The General Services Board of Contract Appeals (GSBCA) will not accept any protest received on or after August 8, 1996.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before October 7, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405.

Please cite FAC 90-41, FAR case 96-319 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501-3856 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 90-41, FAR case 96-319.

SUPPLEMENTARY INFORMATION:

A. Background

Federal information systems are critical to every American. The efficiency and effectiveness of the Federal Government is dependent upon the effective use of information. The Information Technology Management Reform Act (ITMRA) of 1996 seeks to improve Federal information management and to facilitate Federal Government acquisition of state-of-the-art IT that is critical for improving the efficiency and effectiveness of Federal Government operations.

Under ITMRA, each executive agency is authorized to acquire IT, including entering into contracts that provide for multi-agency acquisitions of IT in accordance with guidance issued by OMB. The Chief Information Officer (CIO) of each agency is responsible for the IT programs of the agency. The Director of OMB is responsible for improving the acquisition, use, and disposal of IT by the Federal Government. The development and use of best practices in the acquisition of IT will be encouraged. Additionally, the Director will monitor the effectiveness of, and compliance with, directives issued under ITMRA. The Director will also coordinate the development and review of policy by the Administrator, Office of Information and Regulatory Affairs, with the Office of Federal Procurement Policy.

In light of the passage of ITMRA, and the recognition by the CIO Council that a new regulatory framework is necessary to effect the tenor and tenets of the ITMRA, the FIRMR Transition Committee reviewed the FIRMR (41 CFR Chapter 201) and made recommendations as to provisions of the FIRMR that should be included in the FAR. The language resulting from those recommendations is included in this interim rule.

This interim rule implements ITMRA, the recommendations of the FIRMR Transition Committee, and the goals of transforming acquisition of IT into a results-oriented procurement system which ensures responsibility and accountability of Federal agencies in the use of IT in support of agency missions.

Section 5202 of ITMRA encourages agency heads to use modular contracting or incremental acquisition when acquiring a major information technology system. A proposed rule giving guidance to contracting officers on use of this technique will be developed after publication of this interim rule. Regulation drafters will work closely with industry and contracting agencies to ensure that the proposed rule provides guidance to agencies using this technique.

B. Regulatory Flexibility Act

This rule is expected to have a significant beneficial impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule simplifies and streamlines procedures for the acquisition of information technology. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy of the Small Business