

nonpayment by the Contractor or deficient subcontract performance or nonperformance by a subcontractor.

(k) *Non-recourse for prime contractor interest penalty.* The Contractor's obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a subcontract under paragraph (c) of this clause shall not be construed to be an obligation of the United States for such interest penalty. A cost-reimbursement claim may not include any amount for reimbursement of such interest penalty.
(End of clause)

[FR Doc. 97-6319 Filed 3-14-97; 8:45 am]
BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 33

[FAC 90-46; FAR Case 96-016; Item XI]

RIN 9000-AH38

Federal Acquisition Regulation; Attorneys' Fees in GAO Protests

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify the effective date of the \$150.00 hourly cap on attorneys' fees imposed by Section 1403(b)(2) of the Federal Acquisition Streamlining Act (FASA) of 1994 (Public Law 103-355). The hourly cap on attorneys' fees applies only to those protests filed on or after October 1, 1995. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: May 16, 1997.

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 90-46, FAR case 96-016.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR 33.104 to clarify that the \$150.00 hourly cap on

attorneys' fees applies only to those protests filed on or after the effective date of FASA. Protests filed with the General Accounting Office prior to October 1, 1995, are not subject to the hourly cap on attorneys' fees.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90-46, FAR case 96-016), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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 Part 33

Government procurement.

Dated: March 7, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 33 is amended as set forth below:

PART 33—PROTESTS, DISPUTES, AND APPEALS

1. The authority citation for 48 CFR Part 33 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).

2. Section 33.104 is amended by revising the introductory text of paragraph (h)(3) to read as follows:

33.104 Protests to GAO.

* * * * *

(h) * * *

(3) For protests filed on or after October 1, 1995, 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—

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[FR Doc. 97-6320 Filed 3-14-97; 8:45 am]
BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 44

[FAC 90-46; FAR Case 94-605; Item XII]

RIN 9000-AG75

Federal Acquisition Regulation; Contractors' Purchasing Systems Reviews

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to revise the requirements relating to Contractors' Purchasing Systems Reviews (CPSRs). This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: May 16, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501-3775 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 90-46, FAR case 94-605.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR section 44.302, to (1) add a requirement for the cognizant contract administration agency to determine the need for a CPSR based on, but not limited to, the past performance of the contractor; and volume, complexity, and dollar value of the subcontracting activity, and (2) delete the requirement for a CPSR to be performed initially and at least every 3 years thereafter, for contractors over a certain sales level. In addition, sections 44.303 through 44.307 are amended to conform to the revisions at 44.302.

A proposed rule was published in the Federal Register at 60 FR 66472, December 21, 1995. Three sources submitted public comments. The public comments were considered in the development of the final rule.