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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 1, 11, 23, and 52**

[FAC 97-04; FAR Case 92-054B; Item II]

RIN 9000-AH39

**Federal Acquisition Regulation; Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements**

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

**ACTION:** Interim rule adopted as final with changes.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to adopt as final, with changes, the interim rule published in the **Federal Register** at 62 FR 12690, March 17, 1997, as Item V of Federal Acquisition Circular 90-46. The rule amends the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 12856 of August 3, 1993, "Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements". This regulatory action was not subject to Office of Management and Budget (OMB) review under E.O. 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

**EFFECTIVE DATE:** April 24, 1998.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Paul

Linfield, Procurement Analyst, at (202) 501-1757. Please cite FAC 97-04, FAR case 92-054B.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

An interim rule with request for public comment was published on March 17, 1997 (62 FR 12690), to implement E.O. 12856 of August 3, 1993, "Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements". E.O. 12856 requires that Federal facilities comply with the planning and reporting requirements of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101-13109) and the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA) (42 U.S.C. 11001-11050). As a result of the one public comment received in response to the interim rule, FAR 23.1004(b) and 52.223-5(b) have been revised to clarify the obligations of Federal facilities to comply with the reporting and emergency planning requirements of the PPA and the EPCRA.

**B. Regulatory Flexibility Act**

A Final Regulatory Flexibility Analysis (FRFA) has been prepared and will be provided to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat. The analysis is summarized as follows:

No comments were received in response to the Initial Regulatory Flexibility Analysis.

The rule will apply to all contractors that use certain hazardous or toxic substances in the performance of contracts on a Federal facility. It is estimated that there are approximately 6,100 small business contractors to which the rule will apply. Such contractors must provide any information necessary to enable the Federal facility to fulfill its reporting requirements under EPCRA, PPA, and E.O. 12856. The information collection would be prepared by contractor employees using records that the contractor is required to maintain under existing law and regulation. No special professional skills are needed for preparation of the required information.

There are no known alternatives which would accomplish the objectives of the PPA, EPCRA, and E.O. 12856. The rule implements an explicit requirement of E.O. 12856 to provide a contract clause to collect information on the use of specific substances from certain contractors. Any alternative to the final rule that lessens the burden on small entities would fail to comply with E.O. 12856.

**C. Paperwork Reduction Act**

The final rule imposes no new information collection requirements that

require approval of OMB under 44 U.S.C. 3501, *et seq.* The information collection requirements imposed by the interim rule have been approved by OMB through May 31, 2000, under OMB Control Number 9000-0147.

**List of Subjects in 48 CFR Parts 1, 11, 23, and 52**

Government procurement.

Dated: February 13, 1998.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

**Interim Rule Adopted as Final With Changes**

Accordingly, the interim rule amending 48 CFR Parts 23 and 52, which was published at 62 FR 12696, March 17, 1997, is adopted as a final rule with the following changes:

1. The authority citation for 48 CFR Parts 1, 11, 23, 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 1—FEDERAL ACQUISITION REGULATIONS SYSTEM**

2. Section 1.106 is amended in the table following the introductory paragraph by adding the following entry:

**1.106 OMB approval under the Paperwork Reduction Act.**

*	*	*	*	*
	FAR segment		OMB Control No.	
*	*	*	*	*
52.223-5	.....		9000-0147	
*	*	*	*	*

**PART 11—DESCRIBING AGENCY NEEDS**

**11.001 [Amended]**

3. Section 11.001 is amended by removing the definition of "New".

**PART 23—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE**

**23.1004 [Amended]**

4. Section 23.1004 is amended at the end of paragraph (b) by removing the period and inserting " , and other agency obligations under E.O. 12856."

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

**52.213-4 [Amended]**

5. Section 52.213-4 is amended by revising the date of the clause to read "(APR 1998)"; and in paragraph (b)(1)(vii) of the clause by revising "(MAR 1997)" to read "(APR 1998)".

6. Section 52.223-5 is amended by revising the clause date and paragraph (b) to read as follows:

**52.223-5 Pollution Prevention and Right-to-Know Information.**

\* \* \* \* \*

Pollution Prevention and Right-to-Know Information (Apr 1998)

\* \* \* \* \*

(b) The Contractor shall provide all information needed by the Federal facility to comply with the emergency planning reporting requirements of Section 302 of EPCRA; the emergency notice requirements of Section 304 of EPCRA; the list of Material Safety Data Sheets required by Section 311 of EPCRA; the emergency and hazardous chemical inventory forms of Section 312 of EPCRA; the toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA; and the toxic chemical reduction goals requirements of Section 3-302 of Executive Order 12856. (End of clause)

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 4 and 52**

[FAC 97-04; FAR Case 97-601; Item III]

RIN 9000-AH92

**Federal Acquisition Regulation; Review of Procurement Integrity Clauses**

**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 application of procurement integrity requirements to contracts for commercial items. 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.

**EFFECTIVE DATE:** April 24, 1998.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Paul Linfield, Procurement Analyst, at (202) 501-1757. Please cite FAC 97-04, FAR case 97-601.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Prior to its amendment by the Clinger-Cohen Act of 1996 (Public Law 104-106), Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) required that the FAR prescribe a contract clause specifying appropriate contractual penalties for procurement integrity violations. The resulting clause is FAR 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity. A reference to this clause was included in the clause at FAR 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items. The final rule published in the **Federal Register** at 62 FR 226, January 2, 1997, as FAR case 96-314, Item I of FAC 90-45, implemented the Clinger-Cohen amendments to 41 U.S.C. 423, but did not revise the contract clauses applicable to contracts for commercial items.

Upon subsequent review, the Councils have determined that 41 U.S.C. 423, as amended, no longer requires that a contract clause specify administrative remedies for procurement integrity violations. Therefore, this rule amends FAR 52.212-5 to remove the reference therein to FAR 52.203-10. However, since contracts for commercial items are not exempt from the procurement integrity prohibitions at 41 U.S.C. 423, the clause at FAR 52.212-4 is amended to add 41 U.S.C. 423 to the list of applicable laws.

The rule also amends FAR 4.803 to remove the obsolete requirement to maintain a record of persons having access to proprietary or source selection information.

**B. Regulatory Flexibility Act**

This 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 comment is not required. However, comments from small entities concerning the affected FAR subparts

will 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.* (FAC 97-04, FAR Case 97-601), 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 OMB under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Parts 4 and 52**

Government procurement.

Dated: February 13, 1998.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, 48 CFR Parts 4 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 4 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 4—ADMINISTRATIVE MATTERS**

**4.803 [Amended]**

2. Section 4.803 is amended by removing paragraph (a)(42).

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

3. Section 52.212-4 is amended by revising the date of the clause and paragraph (r) to read as follows:

**52.212-4 Contract Terms and Conditions—Commercial Items.**

\* \* \* \* \*

Contract Terms and Conditions—Commercial Items (Apr 1998)

\* \* \* \* \*

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327, *et seq.*, Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

\* \* \* \* \*

**52.212-5 [Amended]**

4. Section 52.212-5 is amended by revising the date of the clause to read