

“(Apr 1998)” and removing and reserving paragraph (b)(2).

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 9 and 19

[FAC 97-04; FAR Case 96-002; Item IV]

RIN 9000-AH66

Federal Acquisition Regulation; Certificate of Competency

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

ACTION: Interim rule adopted as final with a minor change.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to adopt as final, with one change, the interim rule published in the **Federal Register** at 62 FR 44819, August 22, 1997, as Item IX of Federal Acquisition Circular 97-01. This final rule amends the Federal Acquisition Regulation (FAR) to implement revisions made to the Small Business Administration's regulations covering the procurement assistance programs. This regulatory action was not subject to Office of Management and Budget 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 Ms. Victoria Moss, Procurement Analyst, at (202) 501-4764. Please cite FAC 97-04, FAR case 96-002.

SUPPLEMENTARY INFORMATION:

A. Background

The interim rule amended FAR Parts 9 and 19 to comply with revisions made to the Small Business Administration's (SBA) procurement assistance programs contained in 13 CFR Part 125 and published at 61 FR 3310, January 31, 1996. The rule increased the threshold over which contracting officers may appeal the award of a certificate of

competency (COC) from \$25,000 to \$100,000; updated the names of SBA offices involved in processing COCs; implemented the requirement that compliance with the limitations on subcontracting be considered an element of responsibility; and removed language implementing Section 305 of Pub. L. 103-403, as Section 305 has expired.

No public comments were received in response to the interim FAR rule. The interim FAR rule is being converted to a final rule with a minor change to provide a more precise reference to SBA regulations.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not 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 the rule does not impose any new requirements on contractors, large or small. The Small Business Administration has certified that the revisions to 13 CFR Part 125 being implemented by this rule will not have a significant economic impact on a substantial number of small entities.

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 Parts 9 and 19

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final With A Minor Change

Accordingly, the interim rule amending 48 CFR Parts 9 and 19, which was published at 62 FR 44819, August 22, 1997, is adopted as a final rule with the following change:

PART 19—SMALL BUSINESS PROGRAMS

1. The authority citation for 48 CFR Part 19 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).

19.302 [Amended]

2. Section 19.302 is amended in the introductory text of paragraph (d) by removing the reference “13 CFR 121.10” and inserting “13 CFR 121.1004”.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12 and 52

[FAC 97-04; FAR Case 97-020; Item V]

RIN 9000-AH89

Federal Acquisition Regulation; Applicability of Cost Accounting Standards (CAS) Coverage

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 criteria for application of Cost Accounting Standards (CAS) to negotiated Government contracts. 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 Ms. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 97-04, FAR case 97-020.

SUPPLEMENTARY INFORMATION:

A. Background

On June 6, 1997, the CAS Board published a final rule, Applicability of CAS Coverage, in the **Federal Register** (62 FR 31294). The CAS rule implemented Section 4205 of Public Law 104-106, the Clinger-Cohen Act, by exempting contracts and subcontracts for the acquisition of commercial items from CAS requirements when these contracts and subcontracts are firm-

fixed-price or fixed-price with economic price adjustment (provided that the price adjustment is not based on actual costs incurred).

This final rule amends FAR Subpart 12.2, Special Requirements for the Acquisition of Commercial Items, and the clauses at 52.230-2, Cost Accounting Standards, and 52.230-3, Disclosure and Consistency of Cost Accounting Practices, to conform the FAR to the revised CAS.

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 comments 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 97-020), 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 12 and 52

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 12 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 12 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 12—ACQUISITION OF COMMERCIAL ITEMS

2. Section 12.214 is revised to read as follows:

12.214 Cost Accounting Standards.

Cost Accounting Standards (CAS) do not apply to contracts and subcontracts for the acquisition of commercial items when these contracts and subcontracts are firm-fixed-price or fixed-price with economic price adjustment (provided that the price adjustment is not based on actual costs incurred). See 48 CFR 30.201-1 for CAS applicability to fixed-price with economic price adjustment contracts and subcontracts for

commercial items when the price adjustment is based on actual costs incurred. When CAS applies, the contracting officer shall insert the appropriate provisions and clauses as prescribed in 48 CFR 30.201.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.230-2 is amended by revising the clause date and paragraph (d) to read as follows:

52.230-2 Cost Accounting Standards.

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Cost Accounting Standards (Apr 1998)

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(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of \$500,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1. (End of clause)

4. Section 52.230-3 is amended by revising the clause date and paragraphs (d)(1), (2) and (3) to read as follows:

52.230-3 Disclosure and Consistency of Cost Accounting Practices.

* * * * *

Disclosure and Consistency of Cost Accounting Practices (Apr 1998)

* * * * *

(d) * * *

(1) If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted.

(2) This requirement shall apply only to negotiated subcontracts in excess of \$500,000.

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt

from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1. (End of clause)

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 15 and 52

[FAC 97-04; FAR Case 97-029; Item VI]

RIN 9000-AH83

Federal Acquisition Regulation; OMB Circular No. A-133

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 implement revisions to Office of Management and Budget (OMB) Circular No. A-133, published as a final rule in the **Federal Register** at 62 FR 35277, June 30, 1997. This regulatory action was not subject to 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. Jeremy Olson at (202) 501-3221. Please cite FAC 97-04, FAR case 97-029.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR 15.209 and the associated clause at FAR 52.215-2, Audits and Records—Negotiation, Alternate II, to implement revisions to OMB Circular No. A-133. The circular has a new title, "Audits of States, Local Governments, and Non-Profit Organizations", and now addresses audits of State and local Governments as well as audits of institutions of higher learning and other nonprofit organizations.