

simplified acquisition threshold, but not exceeding \$5,000,000. This rule also makes plain language editorial revisions.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### 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, the Councils will consider comments from small entities concerning the affected FAR subpart in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97-15, FAR case 99-304), in correspondence.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that 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 13

Government procurement.

Dated: December 20, 1999.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA amend 48 CFR part 13 as set forth below:

### PART 13—SIMPLIFIED ACQUISITION PROCEDURES

1. The authority citation for 48 CFR part 13 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. Amend section 13.500 in paragraph (b) by removing “shall” and adding “must” in its place; and by revising paragraph (d) to read as follows:

#### 13.500 General.

\* \* \* \* \*

(d) The authority to issue solicitations under this subpart expires on January 1, 2002. Contracting officers may award contracts after the expiration of this authority for solicitations issued before the expiration of the authority.

3. Amend section 13.501 in the introductory text of paragraphs (a)(1) and (b) by removing “shall” and adding “must” in their place; and by revising paragraph (a)(2)(ii) to read as follows:

#### 13.501 Special documentation requirements.

(a) \* \* \*

(2) \* \* \*

(ii) For a proposed contract exceeding \$500,000, the competition advocate for the procuring activity, designated pursuant to 6.501, or an official described in 6.304(a)(3) or (a)(4) must approve the justification and approval. This authority is not delegable.

\* \* \* \* \*

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 16, 48, and 52

[FAC 97-15; FAR Case 98-017; Item IX]

RIN 9000-AI35

#### Federal Acquisition Regulation; Review of Award Fee Determinations (Burnside-Ott)

**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 (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR). The amendment implements rulings of the United States Court of Appeals and the United States Court of Federal Claims. The rulings are that the Contract Disputes Act applies to all disputes arising under Government contracts, unless a more specific statute provides for other remedies.

**DATES:** Effective Date: February 25, 2000.

**Applicability Date:** The FAR, as amended by this rule, is applicable to solicitations issued on or after February 25, 2000.

**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. Ralph De Stefano, Procurement Analyst, at (202) 501-1758. Please cite FAC 97-15, FAR case 98-017.

**SUPPLEMENTARY INFORMATION:**

### A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 64 FR 24472, May 6, 1999, and received no comments. This final rule amends the FAR to implement the rulings of the United States Court of Appeals in *Burnside-Ott Aviation Training Center v. Dalton, Secretary of the Navy*, 107 F.3d 854 (Fed. Cir. 1997) and of the United States Court of Federal Claims in *Rig Masters, Inc. v. The United States*, 42 (Fed. Cl. 369 (1998)). The rulings are that the Contract Disputes Act applies to all disputes arising under Government contracts, unless a more specific statute provides for other remedies. The rule amends FAR 16.405-2(a) by deleting the statement that award-fee determinations are not subject to the disputes clause of the contract and inserting a statement that such determinations and the methodology for determining award fee are unilateral decisions made solely at the discretion of the Government. In addition, the rule amends—

(a) FAR 16.406 to conform with the newly revised 16.405-2(a);

(b) FAR Part 48 to—

(1) Remove references to the Contract Disputes Act;

(2) State that certain unilateral decisions are made solely at the discretion of the Government; and

(3) Insert a statement that the contracting officer's determination of the duration of the sharing period and the contractor's sharing rate is one such decision;

(c) The clauses at 52.248-1 and 52.248-3 to conform with the newly revised Part 48; and

(d) The clauses at 52.219-10, 52.219-26, and 52.226-1 to remove exemptions to the Contract Disputes Act. Also, we made editorial revisions to all affected sections for plain language purposes.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### 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 implements court rulings relating to a statute that has been in effect since 1979. This final rule retains the government's unilateral decision

authority in these matters. Therefore, we have not performed a Regulatory Flexibility Analysis. We did not receive any comments regarding this determination as a result of publication of the proposed rule in the **Federal Register** at 64 FR 24472, May 6, 1999.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that 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 16, 48, and 52**

Government procurement.

Dated: December 20, 1999.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA amend 48 CFR Parts 16, 48, and 52 as set forth below:

1. The authority citation for 48 CFR Parts 16, 48, 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 16—TYPES OF CONTRACTS**

2. Amend section 16.405–2 by revising the last sentence of paragraph (a) to read as follows:

**16.405–2 Cost-plus-award-fee contracts.**

(a) \* \* \* This determination and the methodology for determining the award fee are unilateral decisions made solely at the discretion of the Government.

\* \* \* \* \*

3. Amend section 16.406 in paragraphs (a), (b), and the introductory text of paragraph (e) by removing “The contracting officer shall insert” and adding “Insert” in their place; and by revising paragraph (e)(3) to read as follows:

**16.406 Contract clauses.**

\* \* \* \* \*

(e) \* \* \*

(3) Expressly provides that the award amount and the award-fee determination methodology are unilateral decisions made solely at the discretion of the Government.

**PART 48—VALUE ENGINEERING**

4. Amend section 48.103 by revising the introductory text of paragraph (c); and by adding a new paragraph (c)(4) to read as follows:

**48.103 Processing value engineering change proposals.**

\* \* \* \* \*

(c) The following Government decisions are unilateral decisions made solely at the discretion of the Government:

\* \* \* \* \*

(4) The contracting officer’s determination of the duration of the sharing period and the contractor’s sharing rate.

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

5. Amend section 52.219–10 by revising the date of the clause; in the first sentence of paragraph (b) by adding “*Contracting Officer to*” following the opening bracket; and by revising the last sentence of paragraph (b) to read as follows:

**52.219–10 Incentive Subcontracting Program.**

\* \* \* \* \*

INCENTIVE SUBCONTRACTING PROGRAM (FEB 2000)

\* \* \* \* \*

(b) \* \* \* Determinations under this paragraph are unilateral decisions made solely at the discretion of the Government.

\* \* \* \* \*

6. Amend section 52.219–26 by revising the date of the clause and the last sentence of paragraph (b) to read as follows:

**52.219–26 Small Disadvantaged Business Participation Program—Incentive Subcontracting.**

\* \* \* \* \*

SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM—INCENTIVE SUBCONTRACTING (FEB 2000)

\* \* \* \* \*

(b) \* \* \* Determinations under this paragraph are unilateral decisions made solely at the discretion of the Government.

\* \* \* \* \*

7. Amend section 52.226–1 by revising the date of the clause and paragraph (d) to read as follows:

**52.226–1 Utilization of Indian Organizations and Indian-Owned Economic Enterprises.**

\* \* \* \* \*

UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES (FEB 2000)

\* \* \* \* \*

(d) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the amount paid to the subcontractor. The Contracting Officer will seek funding in accordance with agency procedures.

(End of clause)

8. Amend section 52.248–1—  
 a. By revising the date of the clause;  
 b. In paragraphs (e)(1) and (e)(2), by removing “shall” each time it is used (3 times and 1 time, respectively) and adding “will” in its place;  
 c. By revising the last sentence of paragraph (e)(3);  
 d. By revising paragraph (j); and  
 e. In Alternate II, by revising the date and adding a sentence to the end of paragraph (a) to read as follows:

**52.248–1 Value Engineering.**

\* \* \* \* \*

VALUE ENGINEERING (FEB 2000)

\* \* \* \* \*

(e) \* \* \*  
 (3) \* \* \* The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Contracting Officer.

\* \* \* \* \*

(j) *Collateral savings.* If a VECP is accepted, the Contracting Officer will increase the instant contract amount, as specified in paragraph (h)(5) of this clause, by a rate from 20 to 100 percent, as determined by the Contracting Officer, of any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset. However, the Contractor’s share of collateral savings will not exceed the contract’s firm-fixed-price, target price, target cost, or estimated cost, at the time the VECP is accepted, or \$100,000, whichever is greater. The Contracting Officer will be the sole determiner of the amount of collateral savings.

\* \* \* \* \*

Alternate II (Feb 2000). \* \* \*  
 (a) \* \* \* The decision on which rate applies is a unilateral decision made solely at the discretion of the Government.

\* \* \* \* \*

9. Amend section 52.248–3 by revising the date of the clause; in paragraphs (e)(1) and (e)(2) by removing “shall” each time it is used (3 times and 1 time, respectively) and adding “will” in its place; and by revising the last sentence of paragraph (e)(3) and paragraph (g) to read as follows:

**52.248–3 Value Engineering—Construction.**

\* \* \* \* \*

VALUE ENGINEERING—CONSTRUCTION (FEB 2000)

\* \* \* \* \*

(e) \* \* \*  
 (3) \* \* \* The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Contracting Officer.

\* \* \* \* \*

(g) *Collateral savings.* If a VECP is accepted, the Contracting Officer will increase the instant contract amount by 20

percent of any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset. However, the Contractor's share of collateral savings will not exceed the contract's firm-fixed-price or estimated cost, at the time the VECP is accepted, or \$100,000, whichever is greater. The Contracting Officer is the sole determiner of the amount of collateral savings.

\* \* \* \* \*

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## DEPARTMENT OF DEFENSE

### General Services Administration

### National Aeronautics and Space Administration

### 48 CFR Part 52

[FAC 97-15; FAR Case 99-600; Item X]

RIN 9000-AI38

### Federal Acquisition Regulation; Nondisplacement of Qualified Workers—Commercial Items

**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 (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to add the clause, Nondisplacement of Qualified Workers, to the list of clauses the contracting officer may, when applicable, incorporate by reference in the clause concerning contractor terms and conditions required to implement statutes or executive orders—commercial items.

**DATES:** *Effective Date:* February 25, 2000.

*Applicability Date:* The FAR, as amended by this rule, is applicable to solicitations issued on or after February 25, 2000.

**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. Jack O'Neill, Procurement Analyst, at (202) 501-3856. Please cite FAC 97-15, FAR case 99-600.

**SUPPLEMENTARY INFORMATION:**

### A. Background

Executive Order 12933 was signed October 20, 1994, by President Clinton and published in the **Federal Register** on October 24, 1994. To obtain public comment and assist in development of implementing regulations, the Department of Labor (DoL) invited comments through a notice of proposed rulemaking in the **Federal Register** at 60 FR 36756, July 18, 1995. The final DoL rule was published in the **Federal Register** at 62 FR 28175, May 22, 1997. DoD, GSA, and NASA published an interim FAR rule implementing DoL's rule under FAR case 94-610 (FAC 97-01, 62 FR 44802, August 22, 1997).

During consideration of the public comments submitted in response to the interim rule, the Councils identified this additional issue and proposed change. The Councils considered this additional change significant enough to warrant additional public comments. The Councils received no public comments in response to the proposed rule published in the **Federal Register** at 64 FR 32738, June 17, 1999. This final rule amends the FAR clause at 52.212-5(c) to add the clause 52.222-50, Nondisplacement of Qualified Workers, to the list of clauses that the contracting officer may incorporate by reference when applicable.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### 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 only identifies the FAR clause at 52.222-50, Nondisplacement of Qualified Workers, as appropriate for incorporation by reference in certain service contracts when determined so by the contracting officer.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that 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 52

Government procurement.

Dated: December 20, 1999.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA amend 48 CFR part 52 as set forth below:

### PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 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).

2. Amend section 52.212-5 by revising the date of the clause; by removing from the parenthetical following the introductory text of paragraphs (b) and (c) the parentheses and adding brackets in their place; and by adding paragraph (c)(6) to read as follows:

#### 52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

\* \* \* \* \*

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (FEB 2000)

\* \* \* \* \*

(c) \* \* \*

\_\_\_\_ (6) 52.222-50, Nondisplacement of Qualified Workers (Executive Order 12933).

\* \* \* \* \*

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Parts 2, 5, 14, 15, 19, 32, 33, 36, 42, and 52

[FAC 97-15; Item XI]

### Federal Acquisition Regulation; Technical Amendments

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

**ACTION:** Technical amendments.

**SUMMARY:** This document makes amendments to the Federal Acquisition Regulation in order to update references and make editorial changes.

**EFFECTIVE DATE:** December 27, 1999.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS