

any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or Federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards Act.

(d) *Payrolls and basic records.* (1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

(e) *Subcontracts.* The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts exceeding \$100,000 and require subcontractors to include these provisions in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

(End of clause)

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 12 and 52

[FAC 97-19; FAR Case 1998-605; Item IV]

RIN 9000-A136

#### Federal Acquisition Regulation; Service Contract Act, Commercial Item Subcontracts

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

**ACTION:** Final rule.

**SUMMARY:** The Federal Acquisition Streamlining Act of 1994 (FASA) required the Federal Acquisition Regulatory Council (FAR Council) to include a list of laws that are inapplicable to subcontracts for the procurement of commercial items in the Federal Acquisition Regulation (FAR). The list was implemented and included the Service Contract Act (SCA). The FAR Council has reconsidered this issue and is removing the SCA from the list of laws inapplicable to subcontracts for commercial items.

**EFFECTIVE DATE:** August 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 Ms. Linda Klein at (202) 501-3775. Please cite FAC 97-19, FAR case 1998-605.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Section 8003(b) of FASA required the FAR Council to include in the FAR a list of existing provisions of law that are inapplicable to subcontracts for commercial items. FASA defined those laws to be any provision of law, as determined by the FAR Council, that sets forth policies, provisions, requirements, or restrictions for the procurement of property or services, except those that provided for criminal or civil penalties or were specifically by law made applicable to contracts for the procurement of commercial items. In implementing this section of FASA, the FAR Council included the SCA on the list of laws inapplicable to commercial subcontracts in the final FAR rule (60 FR 48231, September 18, 1995).

In the period since publication of the FAR rule, the FAR Council, in consultation with the Department of Labor (DoL), has concluded that it is not in the best interest of the Government to retain the SCA on the list of laws that are inapplicable to all subcontracts for commercial items. The FAR Council agrees that any exemption from the coverage of the SCA for subcontracts for the acquisition of commercial items or components should be accomplished under the Secretary of Labor's authority in the SCA.

The FAR Council has forwarded recommendations to the Secretary of Labor for consideration in formulating a proposed rule regarding exemptions from coverage under the SCA for commercial items. When the proposal is finalized, DoL will publish the proposed rule, to be issued under the Secretary's authority, in the **Federal Register** for

public comment. Following the completion of that rulemaking, the FAR will be amended accordingly.

With respect to other labor laws, the Walsh-Healey Act and the certification and contract clause requirements of the Contract Work Hours and Safety Standards Act were made inapplicable to commercial item contracts by the September 18, 1995, FAR final rule referenced above. However, the Walsh-Healey Act and the Contract Work Hours and Safety Standards Act provide statutory exemptions for purchases in the open market. The listing of these statutes in the FAR with respect to their inapplicability to commercial item contracts was designed to reflect the existing statutory open market exemptions.

This is not a significant regulatory action and, therefore, was not subject to 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 parts 12 and 52 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 97-19, FAR case 1998-605), 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 Parts 12 and 52

Government procurement.

Dated: July 19, 2000.

**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****12.504 [Amended]**

2. Amend section 12.504 by removing paragraph (a)(7) and redesignating paragraphs (a)(8) through (a)(12) as (a)(7) through (a)(11), respectively.

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

3. Amend section 52.212–5 by revising the clause date to read “(AUG 2000)”; in paragraph (e)(3) by removing “and”; in paragraph (e)(4) by removing the period at the end and adding “; and”; and by adding paragraph (e)(5) to read as follows:

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

\* \* \* \* \*

(e) \* \* \*

(5) 52.222–41, Service Contract Act of 1965, As Amended (41 U.S.C. 351, *et seq.*).

\* \* \* \* \*

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**DEPARTMENT OF DEFENSE****GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Part 19**

[FAC 97–19; FAR Case 1999–012; Item V]

RIN 9000–A164

**Federal Acquisition Regulation; Small Business Competitiveness Demonstration Program**

**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 implement the Office of Federal Procurement Policy (OFPP) and Small Business Administration (SBA) final policy directive to provide updated guidance on the Small Business Competitiveness Demonstration Program.

**DATES:** *Effective Date:* July 26, 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 Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 97–19, FAR case 1999–012.

**SUPPLEMENTARY INFORMATION:****A. Background**

This final rule amends FAR Part 19 to provide updated guidance regarding the Small Business Competitiveness Demonstration Program (Program). The Program was originally established in 1988 by Title VII of Public Law 100–656, as amended, and subsequently implemented in the FAR. As statutory amendments were made to the Program, OFPP issued conforming modifications to its policy directive. With the enactment of Public Law 105–135, the Small Business Reauthorization Act of 1997, the Program was made permanent. The OFPP and SBA published a joint final policy directive on the Program in the *Federal Register* at 64 FR 29693, June 2, 1999. DoD, GSA, and NASA published a FAR interim rule in the *Federal Register* at 65 FR 16274, March 27, 2000. The Councils considered all comments in the development of the final rule. The Councils have agreed to convert the interim rule to a final rule without change.

This is not a significant regulatory action and, therefore, was not subject to 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 merely makes ministerial changes to the existing language and does not change existing policy.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act (Pub. L. 104–13) 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 19**

Government procurement.

Dated: July 19, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

**Interim Rule Adopted as Final Without Change**

Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR part 19, which was published in the *Federal Register* at 65 FR 16274, March 27, 2000, as a final rule without change.

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

[FR Doc. 00–18672 Filed 7–25–00; 8:45 am]

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**DEPARTMENT OF DEFENSE****GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 28 and 52**

[FAC 97–19; FAR Case 1999–302; Item VI]

RIN 9000–A160

**Federal Acquisition Regulation; Construction Industry Payment Protection Act of 1999**

**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 implement the Construction Industry Payment Protection (CIPP) Act of 1999. The CIPP Act amends the Miller Act to provide that the amount of a payment bond must equal the total amount payable by the terms of the contract, unless the contracting officer determines that a payment bond in that amount is impractical. The final rule also provides enhanced payment protection for Government contracts not subject to the Miller Act.

**DATES:** *Effective Date:* July 26, 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,