

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2 and 4

[FAR Case 2000-304]

RIN 9000-A194

Federal Acquisition Regulation; Electronic Signatures

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

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to clarify and encourage the use of electronic signatures in Federal procurement.

DATES: Interested parties should submit comments in writing on or before January 2, 2001 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVRs), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: farcase.2000-304@gsa.gov.

Please submit comments only and cite FAR case 2000-304 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Ralph De Stefano, Procurement Analyst, at (202) 501-1758. Please cite FAR case 2000-304.

SUPPLEMENTARY INFORMATION:

A. Background

On October 21, 1998, the Government Paperwork Elimination Act (Title XVII of Division C of Public Law 105-277) was enacted. On June 30, 2000, the Electronic Signatures in Global and National Commerce Act (Pub. L. 106-229) was enacted. These laws eliminate legal barriers to using electronic technology in business transactions, such as the formation and signing of contracts.

The proposed rule furthers Government participation in electronic commerce when conducting Federal procurements by—

1. Revising the definitions of “in writing” and “signature” at FAR 2.101 to clarify that these terms include electronic, in addition to paper, transactions; and

2. Adding a policy statement at FAR Subpart 4.5, Electronic Commerce in Contracting, to encourage agencies to use electronic commerce, such as electronic signature, in the transaction of Federal procurements.

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 Councils do not expect this proposed rule to 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 this rule does not change procedures for award or administration of contracts, but, rather, only clarifies and encourages the use of electronic commerce for Federal procurement. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 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. (FAR case 2000-304), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed 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 2 and 4

Government procurement.

Dated: October 26, 2000.

Al Matera,

Acting Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 2 and 4 be amended as set forth below:

1. The authority citation for 48 CFR parts 2 and 4 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 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by revising the definitions “Electronic commerce”, “In writing”, and “Signature” to read as follows:

2.101 Definitions

* * * * *

Electronic commerce means business transactions accomplished by electronic techniques such as electronic mail or messaging, World Wide Web technology, electronic bulletin boards, purchase cards, electronic funds transfer, or electronic data interchange.

* * * * *

In writing or written means any expression of information in words, numbers, or other symbols, including electronic expressions, that can be read, reproduced, and stored.

* * * * *

Signature or signed means the discrete, verifiable symbol of an individual that, when attached to or logically associated with a written contract or other record with the knowledge and consent of the individual, indicates a present intention to authenticate the contract or other record. This includes an electronic signature made by electronic sound, symbols, or process.

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PART 4—ADMINISTRATIVE MATTERS

3. Amend section 4.502 by adding paragraph (d) to read as follows:

4.502 Policy

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(d) As required by the Government Paperwork Elimination Act (GPEA) (Title XVII of Division C of Public Law 105-277), by October 21, 2003, agencies must allow individuals or entities the option to submit information or transact with the agency electronically when practicable. The GPEA requirement includes execution of contracts and associated records using electronic signatures of the offeror or contractor and the agency.

[FR Doc. 00-27964 Filed 10-31-00; 8:45 am]

BILLING CODE 6820-EP-U