

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

2. Add § 39.104 to read as follows:

39.104 Information technology services.

When acquiring information technology services, solicitations must not describe any minimum experience or educational requirement for proposed contractor personnel unless the contracting officer determines that the needs of the agency—

(a) Cannot be met without that requirement; or

(b) Require the use of other than a performance-based contract (see subpart 37.6).

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DEPARTMENT OF DEFENSE

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

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

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration.

This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 97-25 which amends the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 97-25 which precedes this document. These documents are also available via the Internet at <http://www.arnet.gov/far>.

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501-4225. For clarification of content, contact the analyst whose name appears in the table below.

SUPPLEMENTARY INFORMATION:

LIST OF RULES IN FAC 97-25

Item	Subject	FAR case	Analyst
I	Preference for Performance-Based Contracting	2000-307	Wise.
II	Contractor Personnel in the Procurement of Information Technology Services.	2000-609	Nelson.

Item I—Preference for Performance-Based Contracting (FAR Case 2000-307)

This interim rule amends FAR 2.101, Definitions, and 37.102, Policy, to implement section 821 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398). The rule affects contracting officers that buy services by explicitly establishing a preference for performance-based contracts or task orders.

Item II—Contractor Personnel in the Procurement of Information Technology Services (FAR Case 2000-609)

This interim rule adds FAR 39.104 to implement Section 813 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398). Section 813 prohibits the use of minimum experience or education requirements for contractor personnel in solicitations for the acquisition of information technology services, unless—

1. The contracting officer first determines that the needs of the agency cannot be met without such requirement; or

2. The needs of the agency require the use of a type of contract other than a performance-based contract.

Dated: April 27, 2001.

Al Matera,

Director, Acquisition Policy Division.

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