

(5) Installation services, maintenance services, repair services, training services, and other services if—

(i) Such services are procured for support of an item referred to in paragraph (c)(1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and

(ii) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed. For purposes of these services—

(i) *Catalog price* means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

(ii) *Market prices* means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

* * * * *

52.212-4 [Amended]

8. Amend section 52.212-4 by revising the date in the clause heading to read "(Dec 2001)"; and by removing "or implied" from paragraph (p).

[FR Doc. 01-26297 Filed 10-19-01; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 32 and 52

[FAC 2001-01; FAR Case 2000-308; Item III]

RIN 9000-AJ17

Federal Acquisition Regulation; Prompt Payment Under Cost-Reimbursement Contracts for Services

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

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to require agencies to pay an interest penalty whenever they make an interim payment under a cost-reimbursement contract for services more than 30 days after the agency receives a proper invoice from the contractor.

DATES: *Effective Date:* October 22, 2001.

Applicability Date: This amendment is applicable to solicitations issued and contracts awarded on or after October 22, 2001. Any cost reimbursement solicitations issued or contracts awarded for services on or after December 15, 2000, but prior to October 22, 2001 must be amended/modified to incorporate the new Alternate I to 52.232-25. In no event may agencies pay late payment penalty interest for any delay in payment that occurred prior to December 15, 2000.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before December 21, 2001 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405. Submit electronic comments via the Internet to: farcase.2000-308@gsa.gov

Please submit comments only and cite FAC 2001-01, FAR case 2000-308, in all correspondence related to this case.

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 2001-01, FAR case 2000-308.

SUPPLEMENTARY INFORMATION:

A. Background

This FAR amendment implements changes in the Office of Management and Budget's (OMB) Prompt Payment Act regulations at 5 CFR part 1315 that implemented Section 1010 of the National Defense Authorization Act for Fiscal Year 2001. Those changes were published by OMB as an interim final rule and became effective on December 15, 2000 (65 FR 78403). Section 1010 requires agencies to pay an interest penalty, in accordance with regulations

issued, whenever an interim payment under a cost-reimbursement contract for services is paid more than 30 days after the agency receives a proper invoice from a contractor. The Act does not permit payment of late payment interest penalty for any period prior to December 15, 2000.

This FAR amendment eliminates the prior policy and contract clause prohibitions on payment of late payment penalty interest for late interim finance payments under cost reimbursement contracts for services. It adds new policy and a contract clause, Alternate I to 52.232-25, to provide for those penalty payments. The policy and clause apply to all covered contracts awarded on or after December 15, 2000. OMB's regulation states that agencies, at their discretion, may apply the revisions made by Section 1010 to interim payment requests received under cost-reimbursement contracts for services awarded prior to December 15, 2000. Accordingly, agencies may apply the FAR changes made by this rule to contracts awarded prior to December 15, 2000, at their discretion provided no late payment interest penalty is paid for any period prior to December 15, 2000.

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 interim rule is not expected 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 the number of small entities receiving awards of cost-reimbursement contracts for services is very low compared to the number of fixed-price-type contracts awarded. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. 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.* (FAC 2001-01, FAR case 2000-308), 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.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the amendments to the controlling regulation issued by OMB (5 CFR part 1315, 65 FR 78403) became effective on December 15, 2000. (Section 1010 of the National Defense Authorization Act for Fiscal Year 2001, which required OMB to issue the regulation, was effective December 15, 2000.) This amendment to the FAR is necessary to enable agencies to comply with OMB's interim final rule in the most effective and consistent manner possible.

Pursuant to Public Law 98-577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule. In addition, this interim rule will be revised, as necessary, to reflect any changes OMB may make to its regulations in promulgating a final rule.

List of Subjects in 48 CFR Parts 2, 32 and 52

Government procurement.

Dated: October 12, 2001.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 32 and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 32 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 2—DEFINITIONS OF WORDS AND TERMS

2.101 [Amended]

2. In section 2.101, amend the definition "Proper invoice" by removing "32.905(e)" and adding "32.905(f)" in its place.

PART 32—CONTRACT FINANCING

3. Amend section 32.902 in the definition "Contract financing payment" by revising the second sentence; revising the definition "Invoice payment"; and in the definition "Receiving report" by removing "32.905(f)" and adding

"32.905(g)" in its place. The revised text reads as follows:

32.902 Definitions.

* * * Contract financing payments include advance payments, progress payments based on cost under the clause at 52.232-16, Progress Payments, progress payments based on a percentage or stage of completion (see 32.102(e)(1)) other than those made under the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, or the clause at 52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts, and interim payments on cost-type contracts other than contracts for services. * * *

Invoice payment means a Government disbursement of monies to a contractor under a contract or other authorization for supplies or services accepted by the Government.

(1) This includes payments for partial deliveries that have been accepted by the Government and final cost or fee payments where amounts owed have been settled between the Government and the contractor.

(2) For purposes of this subpart, invoice payments also include all payments made under the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, the clause at 52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts, or the clause at 52.232-25, Prompt Payment, when Alternate I is used for interim payments on cost-reimbursement contracts for services.

(3) Invoice payments do not include contract financing payments.

4. Amend section 32.905 by—
a. Removing from the introductory text of paragraph (a) "paragraphs (b), (c), and (d)" and adding "paragraphs (b) through (e)" in its place;

b. Redesignating paragraphs (e) through (j) as (f) through (k), respectively, and adding a new paragraph (e);

c. Revising the introductory text of newly designated paragraph (f); and

d. Revising the first sentence of the introductory text of newly designated paragraph (g) to read as follows:

32.905 Invoice payments.

(e) *Cost-reimbursement contracts for services.* For purposes of computing late payment interest penalties that may apply, the due date for making interim payments on cost-reimbursement contracts for services is 30 days after the date of receipt of a proper invoice.

(f) *Content of invoices.* A proper invoice must include the items listed in paragraphs (f)(1) through (f)(8) of this section, except for interim payments on cost-reimbursement contracts for services. An interim payment request under a cost-reimbursement contract for services constitutes a proper invoice for purposes of this subpart if it includes all the information required by the contract. If the invoice does not comply with these requirements, it will be returned within 7 days after the date the designated billing office received the invoice (3 days on contracts for meat, meat food products, or fish; 5 days on contracts for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils), with a statement of the reasons why it is not a proper invoice. If such notice is not timely, then an adjusted due date for the purpose of determining an interest penalty, if any, will be established in accordance with 32.907-1(b):

(g) *Authorization to pay.* All invoice payments, with the exception of interim payments on cost-reimbursement contracts for services, must be supported by a receiving report or any other Government documentation authorizing payment. * * *

5. Amend section 32.907-1 by adding paragraph (a)(5); and in paragraphs (b)(1) and (b)(2) by removing "32.905(e)" and adding "32.905(f)" in its place. The added text reads as follows:

32.907-1 Late invoice payment.

(a) * * *

(5) In the case of interim payments on cost-reimbursement contracts for services, when payment is made more than 30 days after the designated billing office receives a proper invoice.

6. Amend section 32.908 by adding paragraph (c)(4) to read as follows:

32.908 Contract clauses.

(c) * * *

(4) If the contract is a cost-reimbursement contract for services, use the clause with its Alternate I.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Amend section 52.232-25 by adding Alternate I to read as follows:

52.232-25 Prompt Payment.

Alternate I (Oct 2001). As prescribed in 32.908(c)(4), add the following paragraph (d) to the basic clause:

(d) *Invoices for interim payments.* For interim payments under this cost-reimbursement contract for services—

(1) Paragraphs (a)(2), (a)(3), (a)(4)(ii), (a)(4)(iii), and (a)(5)(i) do not apply;

(2) For purposes of computing late payment interest penalties that may apply, the due date for payment is the 30th day after the designated billing office receives a proper invoice; and

(3) The Contractor shall submit invoices for interim payments in accordance with paragraph (a) of FAR 52.216-7, Allowable Cost and Payment. If the invoice does not comply with contract requirements, it will be returned within 7 days after the date the designated billing office received the invoice.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 12, 13, 22, and 52

[FAC 2001-01; FAR Case 1998-614; Item IV]

RIN 9000-AI46

Federal Acquisition Regulation; Veterans' Employment

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 Sections 7 and 8 of the Veterans Employment Opportunities Act of 1998. Section 7 expands and improves veterans' employment emphasis under Federal contracts. Section 8 amends the veterans' employment reporting requirements. The rule also implements the Department of Labor's (DoL) Office of Federal Contract Compliance Programs (OFCCP) final rule amending regulations on Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Special Disabled Veterans and Veterans of the Vietnam Era, which clarifies DoL implementation of the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1972, as amended.

DATES: *Effective Date:* December 21, 2001.

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 2001-01, FAR case 1998-614.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR 12.503, 13.005, 22.13, and the associated clauses and provisions at FAR Part 52 to implement recent statutory and regulatory changes relating to veterans' employment opportunities and reporting. Paragraph (a) of Section 7 of the Veterans' Employment Opportunities Act of 1998 (Pub. L. 105-339) amends 38 U.S.C. 4212 in paragraph (a) to increase the threshold for covered contracts from \$10,000 to \$25,000, and expands applicability beyond "special disabled veterans and veterans of the Vietnam era" to include other eligible veterans (*i.e.*, any other veterans who served on active duty during a war or in a campaign or an expedition for which a campaign badge has been authorized).

Paragraph (b) of Section 7 amends 31 U.S.C. 1354 to specifically prohibit contracting officers from obligating or expending appropriated funds to enter into covered contracts with a contractor that does not meet veterans' employment reporting requirements (VETS-100 Report). In accordance with 41 U.S.C. 429 and 41 U.S.C. 430, the Councils have listed this law as inapplicable to acquisitions not greater than the simplified acquisition threshold and acquisitions of commercial items.

Paragraph (b) also requires the DoL to maintain a database on those contractors that have submitted the required VETS-100 Reports for the current reporting period. However, the database will not contain data on whether those contractors that did not submit reports were required to do so. The Councils have added a new provision by which the offeror represents that, if subject to the reporting requirements of 38 U.S.C. 4212(d), it has not failed to submit the most recent required VETS-100 Reports.

This rule lists 31 U.S.C. 1354(a) as not applicable to commercial item contracts and acquisitions not greater than the simplified acquisition threshold of \$100,000 pursuant to FASA at 41 U.S.C. 429 and 41 U.S.C. 430. Accordingly, the representation in the provision at

52.222-38, Compliance with Veterans' Employment Reporting Requirements, is not applicable to commercial item acquisitions and acquisitions not greater than the simplified acquisition threshold of \$100,000.

Section 8 of Public Law 105-339 amends 38 U.S.C. 4212(d)(1) to require reporting of the maximum number and the minimum number of employees during the period covered by the report. This requirement has been included in the clause at 52.222-37, which summarizes the DoL reporting requirements.

In conformance with the Veterans Employment Opportunities Act of 1998 and the OFCCP final rule, this final rule revises the clause at 52.222-35, adding definitions of "special disabled veterans," "qualified special disabled veteran," "other eligible veteran," and "executive and top management," and changes the definition of "veteran of the Vietnam Era." The clause requires contractors to list all employment openings, except executive and top management, with the local employment service office. Contractors may fulfill the listing requirement by listing jobs electronically with America's Job Bank. The requirements for posting employment notices have also changed.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 64 FR 67992, December 3, 1999. Four respondents submitted comments on the proposed rule. The comments were considered in the development of the final rule.

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 implements the Contracting Restrictions of the Veterans Employment Opportunities Act of 1998 (Pub. L. 105-339) which will only affect offerors who were required to submit reports but did not do so; and also implements the OFCCP final rule (63 FR 59630), which DoL has certified will not have a significant economic impact on