



Federal Register

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Part II

**Department of Defense
General Services
Administration**

**National Aeronautics and
Space Administration**

**48 CFR Parts 1, 2, et al.
Federal Acquisition Circular and
Regulations; Final Rules**

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 2001-06; Introduction

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

ACTION: Summary presentation of final rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2001-06. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at <http://www.arnet.gov/far>.

DATES: For effective dates and comment dates, see separate documents which follow.

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 the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2001-06 and specific FAR case number(s). Interested parties may also visit our website at <http://www.arnet.gov/far>.

Item	Subject	FAR Case	Analyst
I	Commercial Items—Standard Form 1449	2000-012	Moss.
II	Definitions for “Contract Action” and “Contracting Action”	2000-402	Moss.
III	Definitions for Sealed Bid and Negotiated Procurements	2000-403	DeStefano.
IV	Procurement Integrity Rewrite	1998-024	DeStefano.
V	Acquisition of Helium	2000-008	Nelson.
VI	HUBZone Program Applicability	2001-003	Cundiff.
VII	Application of Labor Clauses	1999-612	Nelson.
VIII	Technical Amendments.		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2001-06 amends the FAR as specified below:

Item I—Commercial Items SF 1449 (FAR Case 2000-012)

Standard Form 1449, Solicitation/Contract/Order for Commercial Items, is prescribed by the FAR for the acquisition of commercial items. This final rule makes several minor revisions to the form, including the addition of a block to indicate that the acquisition is a HUBZone set-aside, the substitution of a NAICS code for the SIC code, the notation that award is made only on the offeror’s items specifically listed in block 29, and the addition of several blocks in the area of the form used as a receiving report by the Government. All of the changes involve blocks that are completed by the Government.

Item II—Definitions for “Contract Action” and “Contracting Action” (FAR Case 2000-402)

This final rule amends the FAR to provide for consistent use of the term “contract action.” The rule changes the term “contracting action” to “contract action” throughout the FAR and makes other editorial changes to clarify the text.

Item III—Definitions for Sealed Bid and Negotiated Procurements (FAR Case 2000-403)

This final rule amends the FAR to clarify definitions that are used for sealed bid and negotiated procurements. The final rule—

- Moves the definitions of “bid sample” and “descriptive literature” from FAR Part 14 to FAR 2.101 because the definitions apply to more than one FAR part, e.g., Parts 14 and 15;
- Amends those definitions and the definition of “offer” in accordance with plain language guidelines;
- Revises applicable provisions in FAR Part 52 to conform with the new definitions;
- Adds a new definition for “solicitation” at FAR 2.101; and
- Provides definitions for “bid” and “bidder” in FAR Part 28 because, as used in that part, the terms address sealed bid and negotiated acquisitions.

The rule clarifies terminology used in FAR 15.201(f), 15.609(e), and 35.007(g). Where we mean an entity that is actively seeking a contract, we use the term “prospective offeror.” However, those cites describe processes that are set up to ensure fair and open competition. Therefore, any interested party is able to participate, including parties that the Government has not yet identified. Therefore, the rule uses the more general term “potential offeror.”

Item IV—Procurement Integrity Rewrite (FAR Case 1998-024)

This final rule amends FAR parts 2, 3, 4, 9, 15, and 52 to rewrite the procurement integrity coverage (the implementation of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (more commonly referred to as the Procurement Integrity Act)) in plain language.

FAR 3.104 implements prohibitions, restrictions, and other requirements of the Procurement Integrity Act that are placed on certain agency officials that participate in Federal agency procurements. However, other statutes and regulations also govern the conduct of Government employees. While specific guidance pertaining to the Procurement Integrity Act at FAR 3.104 does not implement these other statutes and regulations, the rule does add guidance to alert these agency officials that they should seek advice from agency ethics officials before engaging in certain activities that could have serious consequences, including criminal prosecution.

These revisions to FAR 3.104 do not change either the requirements of the Procurement Integrity Act or change, in any manner, who is covered by, or the activities covered in, Office of Government Ethics regulations interpreting conflict of interest statutes.

Item V—Acquisition of Helium (FAR Case 2000-008)

This final rule revises FAR Subpart 8.5 and the clause at 52.208-8 to

implement the Department of the Interior final rule regarding helium contracts that was published in the **Federal Register** at 63 FR 66760, December 3, 1998. The final rule—

- Changes the definitions;
- Eliminates the requirement for certain contractors and subcontractors to submit helium forecasts; and
- Establishes the requirement that contractors and subcontractors under contracts with a major helium requirement must report purchases of helium from Federal helium suppliers.

Item VI—HUBZone Program Applicability (FAR Case 2001–003)

The HUBZone Act of 1997 expanded the applicability of the HUBZONE Program to all agencies covered by the FAR after September 30, 2000, and is currently reflected in the FAR. This rule amends the FAR to simplify the existing language at FAR Parts 12, 19, and 52.

Item VII—Application of Labor Clauses (FAR Case 1999–612)

This final rule affects all contracting officers who use the FAR. The rule—

- Moves the Prohibition of Segregated Facilities clause from the list at paragraph (b), to the list at paragraph (a), of the clause at 52.213–4 and clarifies the existing requirements of 41 CFR 60–1.8, promulgated by the Department of Labor under E.O. 11246. The Prohibition of Segregated Facilities clause must be included in contracts whenever the Equal Opportunity clause (FAR 52.222–26) is included.

- Moves the Equal Opportunity clause from the list at paragraph (b), to the list at paragraph (a), of the clause at 52.213–4 because the clause must be included in almost all contracts, even those under \$10,000, in accordance with the requirements at FAR 22.802(a)(1) and 22.807(b). Even though included, the clause is inapplicable unless the aggregate value of contracts and subcontracts awarded to the contractor exceeds \$10,000 in a year.

- Makes other revisions to the clause at FAR 52.222–26, Equal Opportunity, to include a definition of “United States” and incorporate the exception for work performed outside the United States.

Item VIII—Technical Amendments

These amendments update sections and make editorial changes at FAR 1.404, 5.207, 6.302–5, 9.104–3, 31.101, 52.219–19, and 52.219–20.

Dated: March 6, 2002.

Al Matera,
Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001–06 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2001–06 are effective April 4, 2002.

Dated: March 4, 2002.

Deidre A. Lee,
Director, Defense Procurement.

Dated: March 4, 2002.

David A. Drabkin,
Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: March 1, 2002.

Tom Luedtke,
Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 02–5819 Filed 3–19–02; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1 and 53

[FAC 2001–06; FAR Case 2000–012; Item I]

RIN 9000–AJ31

Federal Acquisition Regulation; Commercial Items—Standard Form 1449

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 update Standard Form 1449, Solicitation/Contract/Order for Commercial Items.

DATES: *Effective Date:* April 4, 2002.

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 2001–06, FAR case 2000–012.

SUPPLEMENTARY INFORMATION:

A. Background

Standard Form 1449, Solicitation/Contract/Order for Commercial Items, is prescribed by the FAR for the acquisition of commercial items. This final rule makes several minor revisions to the form, including the addition of a block to indicate that the acquisition is a HUBZone set-aside, the substitution of a NAICS code for the SIC code, the notation that award is made only on the offeror's items specifically listed in block 29, and the addition of several blocks in the area of the form used as a receiving report by the Government. None of the changes involve blocks that are completed by the public.

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

This 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 1 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 2001–06, FAR case 2000–012), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000–0136. The previous edition of the form indicated that the public reporting burden related to the form had been cleared under OMB No. 9000–0136. That statement has been removed from this edition because OMB Clearance 9000–0136 covers information collections unique to commercial item acquisition. It does not cover the information required by this form. This form is primarily completed by the Government. The contractor/offeror fills in only its name, address, and proposed prices. Those pieces of information do not require clearance in the FAR under