

Dated: June 18, 2002.

Deidre A. Lee,

Director, Defense Procurement.

Dated: June 10, 2002.

David A. Drabkin,

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

Dated: June 10, 2002.

Tom Luedtke,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 17, 31, 33, 49, and 52

[FAC 2001-08; FAR Case 2000-406; Item I]

RIN 9000-AJ19

Federal Acquisition Regulation; Definition of "Claim" and Terms Relating to Termination

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 clarify and move the definitions of "claim" and certain terms relating to termination to the FAR part regarding definitions.

DATES: *Effective Date:* July 29, 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. Linda Klein, Procurement Analyst, at (202) 501-3775. Please cite FAC 2001-08, FAR case 2000-406.

SUPPLEMENTARY INFORMATION:

A. Background

The purpose of this rule is to clarify the applicability of definitions, eliminate redundant or conflicting definitions, and streamline the process for locating definitions. This rule is not

intended to change the meaning of any FAR text or clause. Movement of various definitions to FAR 2.101 is not intended to change the operation of the cost principles, and specifically the movement of the definition of "claim" to FAR 2.101 is not intended to change the scope or context of FAR 31.205-47(f)(1).

This final rule—

- Revises and moves the definitions of "claim" from 33.201; "continued portion of the contract," "partial termination," "terminated portion of the contract" from FAR 49.001; and "termination for convenience" from FAR 17.103;

- Adds a definition of "termination for default" at FAR 2.101 and a new paragraph 17.104(d) that explains the distinction between "termination for convenience" and "cancellation" that was deleted from the definition of "termination for convenience" that was moved from FAR 17.103;

- Revises FAR 33.213(a) to clarify the distinction between claims "arising under a contract" and claims "relating to a contract";

- Revises the definition of "claim" in the clause at FAR 52.233-1 to conform to the definition at FAR 2.101; and
- Makes other editorial revisions for clarity.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 66 FR 42922, August 15, 2001, with a request for comment. One respondent submitted two comments to the proposed rule. The Councils considered and accepted both comments. The rule was modified as a result. The first comment recommended that the parenthetical reference at FAR 31.205(f)(1) be changed to reflect the new location of the definition of "claim" at FAR 2.101. This was done. The second comment recommended that a clarifying statement be added to the **Federal Register** notice stating that the movement of the various definitions to FAR 2.101 is not intended to change the operation of the cost principles, and specifically the movement of the definition of "claim" to FAR 2.101 is not intended to change the scope of FAR 31.205-47(f)(1). This was also done.

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 does not change policy. We did not receive any comments regarding this determination as a result of publication of the proposed rule in the **Federal Register** on August 15, 2001 (66 FR 42922).

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 2, 17, 31, 33, 49, and 52

Government procurement.

Dated: June 19, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 17, 31, 33, 49, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 17, 31, 33, 49, 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. Amend section 2.101 by adding, in alphabetical order, the definitions "Claim," "Continued portion of the contract," "Partial termination," "Termination for convenience," "Termination for default," and "Terminated portion of the contract" to read as follows:

2.101 Definitions.

* * * * *

Claim means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. However, a written demand or written assertion by the contractor seeking the payment of money exceeding \$100,000 is not a claim under the Contract Disputes Act of 1978 until certified as required by the Act. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim, by written notice to the contracting officer as provided in

33.206(a), if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

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Continued portion of the contract means the portion of a contract that the contractor must continue to perform following a partial termination.

* * * * *

Partial termination means the termination of a part, but not all, of the work that has not been completed and accepted under a contract.

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Termination for convenience means the exercise of the Government's right to completely or partially terminate performance of work under a contract when it is in the Government's interest.

Termination for default means the exercise of the Government's right to completely or partially terminate a contract because of the contractor's actual or anticipated failure to perform its contractual obligations.

Terminated portion of the contract means the portion of a contract that the contractor is not to perform following a partial termination. For construction contracts that have been completely terminated for convenience, it means the entire contract, notwithstanding the completion of, and payment for, individual items of work before termination.

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PART 17—SPECIAL CONTRACTING METHODS

17.103 [Amended]

3. Amend section 17.103 by removing the definition "Termination for convenience."

4. Amend section 17.104 by adding paragraph (d) to read as follows:

17.104 General.

* * * * *

(d) The termination for convenience procedure may apply to any Government contract, including multiyear contracts. As contrasted with cancellation, termination can be effected at any time during the life of the contract (cancellation is effected between fiscal years) and can be for the total quantity or partial quantity (where as cancellation must be for all subsequent fiscal years' quantities).

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.205-47 [Amended]

5. Amend section 31.205-47 in paragraph (f)(1) by removing "(see 33.201)" and adding "(see 2.101)" in its place.

PART 33—PROTESTS, DISPUTES, AND APPEALS

33.201 [Amended]

6. Amend section 33.201 by removing the definition "Claim."

7. Amend section 33.213 by revising paragraph (a) to read as follows:

33.213 Obligation to continue performance.

(a) In general, before passage of the Act, the obligation to continue performance applied only to claims arising under a contract. However, the Act, at 41 U.S.C. 605(b), authorizes agencies to require a contractor to continue contract performance in accordance with the contracting officer's decision pending a final resolution of any claim arising under, or relating to, the contract. (A claim arising under a contract is a claim that can be resolved under a contract clause, other than the clause at 52.233-1, Disputes, that provides for the relief sought by the claimant; however, relief for such claim can also be sought under the clause at 52.233-1. A claim relating to a contract is a claim that cannot be resolved under a contract clause other than the clause at 52.233-1.) This distinction is recognized by the clause with its Alternate I (see 33.215).

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PART 49—TERMINATION OF CONTRACTS

49.001 [Amended]

8. Amend section 49.001 by removing the definitions "Claim," "Continued portion of the contract," "Partial termination," and "Terminated portion of the contract."

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.213-4 [Amended]

9. Amend section 52.213-4 by revising the date of the clause to read "(7/02)"; and by removing from paragraph (a)(2)(v) "(Dec 1998)" and adding "7/02" in its place.

10. Amend section 52.233-1 by revising the date and paragraph (c) of the clause; and by revising the introductory paragraph of Alternate I to read as follows:

52.233-1 Disputes.

* * * * *

Disputes (7/02)

* * * * *

(c) Claim, as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum

certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

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Alternate I (Dec 1991). As prescribed in 33.215, substitute the following paragraph (i) for paragraph (i) of the basic clause:

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8 and 51

[FAC 2001-08; FAR Case 1999-614; Item II]

RIN 9000-AJ01

Federal Acquisition Regulation; Federal Supply Schedule Order Disputes and Incidental Items

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 incorporate policies for disputes in schedule contracts and the handling of incidental items, and to remove the requirement to notify GSA when a schedule contractor refuses to honor an order placed by a Government contractor.

DATES: Effective Date: July 29, 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. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 2001-08, FAR case 1999-614.