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Part V

Department of Defense General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 2, 12, and 52
Federal Acquisition Regulation;
Commercially Available Off-the-Shelf
Items; Proposed Rule

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 2, 12, and 52****[FAR Case 2000–305]****RIN 9000–AJ55****Federal Acquisition Regulation;
Commercially Available Off-the-Shelf
Items**

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

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Acquisition Regulatory Council is soliciting comments regarding the implementation of section 4203 of the Federal Acquisition Reform Act (the Act) with respect to Commercially Available Off-the-Shelf Item Acquisitions. The Act requires the Federal Acquisition Regulation (FAR) to list certain provisions of law that are inapplicable to contracts for acquisition of commercially available off-the-shelf items. The statute excludes section 15 of the Small Business Act and bid protest procedures from the list. The list of statutes cannot include a provision of law that provides for criminal or civil penalties.

Certain laws have already been determined to be inapplicable to all commercial items as a result of the implementation of the Federal Acquisition Streamlining Act of 1994 (see FAR 12.503). The additional

provisions of law that could be determined inapplicable to commercially available off-the-shelf items are listed under **SUPPLEMENTARY INFORMATION** below.

DATES: Comments are due on or before March 31, 2003.

ADDRESSES: Interested parties should submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Attn: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—farcase.2000-305@gsa.gov.

Please submit comments only and cite FAR case 2000–305 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 Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAR case 2000–305.

SUPPLEMENTARY INFORMATION: The provisions of law that could be determined inapplicable to commercially available off-the-shelf items are: 5 U.S.C. 552a, Privacy Act (see 52.239–1); 29 U.S.C. 793, Affirmative Action for Handicapped Workers (see 52.222–36); 31 U.S.C. 529, Restriction on Advance Payments (allow agencies to modify paragraph (i) in the clause at 52.212–4 to require payment upon notice of shipping); 38 U.S.C. 4212, Affirmative Action for Special Disabled Vietnam Era Veterans (see 52.222–35); 38 U.S.C. 4212(d)(1), Employment Reports on Special disabled Veterans and Veterans of the Vietnam Era (see 52.222–37); 41 U.S.C. 10, Buy American Act—Supplies (see

52.225–1 and 52.225–3); 41 U.S.C. 253d, Validation of Proprietary Data Restrictions (see section 12.211); 41 U.S.C. 253g and 10 U.S.C. 2482, Prohibition on Limiting Subcontractor Direct Sales to the United States (see 52.203–6); 41 U.S.C. 254d(c) and 10 U.S.C. 2513(c), Examination of Records of Contractor (see 52.215–2); 41 U.S.C. 418a, Rights in Technical Data (see section 12.211); 41 U.S.C. 442, Cost Accounting Standards (see section 12.214 and the FAR Appendix, 48 CFR Chapter 99); 41 U.S.C. 423(e)(3), Administrative Actions (see 3.104); 46 U.S.C. 1241(b), Transportation in American Vessels of Government Personnel and Certain Cargo (see 52.247–64); and 42 U.S.C. 6962(c)(3)(A)(ii), Estimate of Percentage of Recovered Material Content for EPA-Designated Products (see 52.223–9).

For purposes of this notice, a “commercially available off-the-shelf item”—

(a) Means any item of supply, other than real property, that—

(1) Is of a type customarily used by the general public for nongovernmental purposes;

(2) Has been sold in substantial quantities in the commercial marketplace; and

(3) Is offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace.

(b) This does not include bulk cargo, as defined in 46 U.S.C. App. 1702, such as agricultural and petroleum products.

Dated: January 23, 2003.

Al Matera,

Director, Acquisition Policy Division.

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