

\$200,000/\$250,000). No comments were received in response to the Initial Regulatory Flexibility Analysis for either case. The increased thresholds are limited to specified procurements. In addition, the special authorities are only available for a short period of time. There are no data available on the number of procurements that will be eligible. However, we expect the number of small entities that will be impacted by the increased thresholds to this limited class of procurements to be very small.

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, 10, 12, 13, 19, and 25

Government procurement.

Dated: September 24, 2003.

Laura G. Auletta,

Director, Acquisition Policy Division.

Interim Rules Adopted as Final With Changes

■ Accordingly, DoD, GSA, and NASA adopt the interim rules amending 48 CFR parts 2, 10, 12, 13, 19, and 25, which were published in the **Federal Register** at 67 FR 56116, August 30, 2002, and 68 FR 4048, January 27, 2003, as a final rule with the following change:

PART 10—MARKET RESEARCH

■ 1. The authority citation for 48 CFR part 10 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

10.002 [Amended]

■ 2. Amend section 10.002 in paragraph (b)(2)(iv) by removing “Government” and adding “Government and commercial” in its place.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12, 32, and 52

[FAC 2001-16; FAR Case 2001-005; Item V]

RIN 9000-AJ20

Federal Acquisition Regulation; Notification of Overpayment, Contract Financing Payments

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 require the contractor to notify the contracting officer if the Government overpays when making an invoice payment or a contract financing payment under either a commercial item or noncommercial item contract.

DATES: *Effective Date:* October 31, 2003.

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. Jeritta Parnell, Procurement Analyst, at (202) 501-4082. Please cite FAC 2001-16, FAR case 2001-005.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 67 FR 55676, August 29, 2002, with request for comments. Two respondents submitted public comments. A discussion of the comments is provided below. Differences between the proposed and the final rule are discussed in paragraph 4 below.

1. *Comment:* There is concern that credit invoices, due to a revision of indirect billing rates, contractual actions impacting negotiated price, adjustments to progress payments as a result of change in the contract's estimated cost at completion, and authorized borrow-payback transfers will all be potentially misconstrued as overpayments because they may result in a need for the contractor to pay a sum back to the

Government as a result of the normal and expected operation of contractual terms and conditions. Therefore, the following definition should be added at the beginning of each of the proposed paragraphs imposing a notification requirement:

An overpayment is a payment of an amount greater than the value the contractor is entitled to receive at the time of the payment.

Councils' response: Do not concur. The intent of the rule is to require contractors to notify the Government when they become aware that an incorrect payment has been made. The Councils do not believe there is a demonstrated need for such a definition. First, the term “overpayment” is used in Government contracting in a variety of contexts, and we are concerned that establishing a definition in the payment clauses could have unintended consequences. Second, when a contract is modified to reflect the incorporation of new billing rates, or some other contract administration action, the contract modification should identify whether a credit is due the Government. The Councils do not anticipate that a contracting officer would issue a notification of overpayment in these instances. If, in the future, it becomes apparent that, in practice, contracting officers are taking an overly broad and needlessly burdensome interpretation of what constitutes an overpayment for the purposes of this notification requirement, then the Councils will revisit this issue.

2. *Comment:* A dollar threshold of \$25,000, or some other reasonable threshold, should be established for the notification of overpayment requirement. The requirement for providing a notification for any overpayment, no matter how small or insignificant in amount, is not cost-effective. In addition, instead of immediate notification, DoD should give contractors thirty days to notify the contracting officer, after the overpayment has been verified to source documents. Finally, the contract should require that the disposition instructions provided by the contracting officer be broadened, *i.e.*, that the payment office be required to provide both the contractor and contracting officer with appropriation-level detail of how all overpayment refunds are posted back to the contract.

Councils' response: The Councils do not agree with the premise that a threshold is needed. Many, if not most, contractors now provide notice to the Government when they believe an overpayment, or any other payment

error, has occurred, and there is no threshold involved. Notification helps to reinforce the public's trust that taxpayer dollars are being properly expended and is important, even for smaller dollar transactions, because there may be a mistake in the payment process that will cause future payment errors. Notification will enable the Government to identify and correct any systemic problems that may have arisen. The Councils also do not believe the rule needs to specify a notification timeframe. If it is not clear to the contractor that an overpayment has actually occurred, the contractor could double-check its records expeditiously prior to notification. On the other hand, if the contractor provides notification and later determines that it was in error, the contractor can retract the notification as easily and as swiftly as it was made. The Councils believed that further disposition instructions should be addressed on a case-by-case basis.

3. *Comment:* The analyses required by the Regulatory Flexibility Act and Paperwork Burden Act should be revised since they do not adequately address the burden that the proposed rule places on contractors, especially small businesses.

Councils' response: The Councils believe that it is a normal business practice for contractors to have billing systems in place that identify what is owed them, and to submit payment requests to the Government accordingly. Consequently, the inclusion of notification of overpayment language in payment and financing clauses is the formalization of a practice that normally is already followed by most contractors, *i.e.*, to inform the entity that pays you when you believe a mistake has been made. Therefore, the proposed case, and the notification requirement (already instituted in FAR case 1999-023 published in the **Federal Register** at 66 FR 65353, December 18, 2001, for most invoicing payments), would only reflect a new burden for contractors that routinely ignore payment mistakes. The Councils believe the increase in the paperwork burden, as stated in the proposed rule, adequately reflects this impact.

In addition, it is not expected that this change will impact a substantial number of small entities since the overpayments cited by GAO in its July 1999 report GAO/NSIAD-99-131, Greater Attention Needed to Identify and Recover Overpayments, were all related to large businesses.

4. *Comment:* Government inaction when overpayments occur is a major problem in addition to the overpayment itself. Therefore, it is recommended that

the words "promptly" and "timely" be added to the rule, as indicated below, to emphasize the need for quick response on the part of a contracting officer to the contractor's notification of overpayment.

"If the contractor notifies the contracting officer of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the contracting officer must promptly provide instructions to the contractor, in coordination with the cognizant payment office, regarding timely disposition of the overpayment."

Councils' response: Concur. The proposed rule has been changed at FAR 12.215 and FAR 32.008.

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.*, since the overpayments cited by GAO in its report GAO/NSIAD-99-131 were all related to large businesses (*see* reconciliation of comment #3).

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104-13) applies because the final rule contains information collection requirements. This final rule requires the contractor to notify the contracting officer if the contractor becomes aware that the Government has overpaid on a financing payment under a contract for noncommercial items, and on financing and invoice payments under a contract for commercial items. Although this estimated burden requires approval under the Act, it is so small (less than 1 percent increase) that it does not substantially impact the estimated total burden under Office of Management and Budget Control Number 9000-0102 (in lieu of OMB Control Number 9000-0070, which was inadvertently listed in the proposed rule). (*See* reconciliation of comment #3.)

List of Subjects in 48 CFR Parts 12, 32, and 52

Government procurement.

Dated: September 24, 2003.

Laura G. Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 12, 32, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 12, 32, and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Add section 12.215 to read as follows:

12.215 Notification of overpayment.

If the contractor notifies the contracting officer of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the contracting officer must promptly provide instructions to the contractor, in coordination with the cognizant payment office, regarding timely disposition of the overpayment.

PART 32—CONTRACT FINANCING

■ 3. Add section 32.008 to read as follows:

32.008 Notification of overpayment.

If the contractor notifies the contracting officer of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the contracting officer must promptly provide instructions to the contractor, in coordination with the cognizant payment office, regarding timely disposition of the overpayment.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend section 52.212-4 by revising the date of the clause and paragraph (i) to read as follows (the undesignated paragraph following paragraph (i) is removed):

52.212-4 Contract Terms and Conditions—Commercial Items.

* * * * *

Contract Terms and Conditions—Commercial Items (Oct. 2003)

* * * * *

(i) *Payment.*—(1) *Items accepted.* Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and

prompt payment regulations at 5 CFR part 1315.

(3) *Electronic Funds Transfer (EFT)*. If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.

(4) *Discount*. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) *Overpayments*. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

* * * * *

■ 5. Amend section 52.213-4 by revising the date of the clause and paragraph (a)(2)(iv) to read as follows:

52.213-4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (Oct. 2003).

- (a) * * *
- (2) * * *

(iv) 52.232-25, Prompt Payment (Oct. 2003).

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■ 6. Amend section 52.232-25 by revising the date of the clause and paragraph (d) to read as follows:

52.232-25 Prompt Payment.

* * * * *

Prompt Payment (Oct. 2003).

* * * * *

(d) *Overpayments*. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

(End of clause)

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■ 7. Amend section 52.232-26 by revising the date of the clause and paragraph (c) to read as follows:

52.232-26 Prompt Payment for Fixed-Price Architect-Engineer Contracts.

* * * * *

Prompt Payment for Fixed-Price Architect-Engineer Contracts (Oct. 2003).

* * * * *

(c) *Overpayments*. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the

Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

(End of clause)

■ 8. Amend section 52.232-27 by revising the date of the clause and paragraph (1) to read as follows:

52.232-27 Prompt Payment for Construction Contracts.

* * * * *

Prompt Payment for Construction Contracts (Oct. 2003).

* * * * *

(1) *Overpayments*. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 2001-16; FAR Case 2003-006; Item VI]

RIN 9000-AJ71

Federal Acquisition Regulation; Caribbean Basin Country—Dominican Republic

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 reinstate the treatment of the products of the Dominican Republic as eligible products under acquisitions subject to the Trade Agreements Act, as directed by the U.S. Trade Representative (USTR).

DATES: *Effective Date:* October 31, 2003.

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.

Cecelia Davis, Procurement Analyst, at (202) 219-0202. Please cite FAC 2001-16, FAR case 2003-006.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR 25.003, 25.400, and the clauses at 52.212-5 and 52.225-5 to implement the direction of the USTR to reinstate the treatment of certain products of the Dominican Republic as eligible products under acquisitions subject to the Trade Agreements Act (TAA), as published by the USTR in the **Federal Register** at 68 FR 27883, May 21, 2003.

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 Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98-577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Parts 25 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 2001-16, FAR case 2003-006), 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.*

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: September 24, 2003.

Laura G. Auletta,
Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 25 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 25 and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).