

**DATES:** *Effective Date:* June 8, 2005.

The Department of Labor's final rule implementing E.O. 13201 was published on March 29, 2004, with an effective date of April 28, 2004. This FAR rule is the formal notification to contracting officers to insert the E.O. 13201 clause in covered solicitations issued on or after the effective date of this rule.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Kimberly A. Marshall, Procurement Analyst, at (202) 219-0986. Please cite FAC 2005-04, FAR case 2004-010.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This final rule amends the Federal Acquisition Regulation. DoD, GSA, and NASA published an interim rule in the **Federal Register** at 69 FR 76352, December 20, 2004. The 60-day comment period for the interim rule ended February 18, 2005. The Councils did not receive any public comments, and, therefore, agree to finalize the interim rule without change.

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 merely requires contractors to post notices and to insert a clause in subcontracts and purchase orders requiring subcontractors and vendors to post the notices also. The notices advise the contractors' and subcontractors' nonunion member employees of their rights under existing law concerning use of their union dues or fees where a union security agreement is in place. The rule provides sanctions for noncompliance, but full compliance with the Executive Order and any related rules, regulations and orders of the Secretary of Labor is expected of all contractors. Further, this rule is only implementing the Department of Labor (DOL) final rule. The Secretary of Labor has certified to the Chief Counsel for Advocacy at the Small Business

Administration that the DOL final rule will not substantially change existing obligations for Federal contractors. The Councils did not receive any comments relating to the Regulatory Flexibility Act. However, the Councils will consider comments from small entities concerning the affected FAR Parts 2, 22, 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 2005-04, FAR case 2004-010), in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 1215-0203.

**List of Subjects in 48 CFR Parts 2, 22, 52**

Government procurement.

Dated: May 27, 2005.

**Julia B. Wise,**

*Director, Contract Policy Division.*

■ Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 2, 22, and 52, which was published at 69 FR 76352, December 20, 2004, is adopted as a final rule without change.

[FR Doc. 05-11180 Filed 6-7-05; 8:45 am]

**BILLING CODE 6820-EP-S**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 7, 11, 13, and 15**

[2005-04; FAR Case 2003-025; Item II]

**RIN 9000-AK03**

**Federal Acquisition Regulation; Telecommuting for Federal Contractors**

**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 to convert the interim rule published in the **Federal Register** at 69 FR 59701, October 5,

2004, to a final rule without change. The final rule amends the Federal Acquisition Regulation (FAR) to implement section 1428 of the Services Acquisition Reform Act of 2003, Title XIV of Public Law 108-136, Authorization of Telecommuting for Federal Contractors.

**DATES:** *Effective Date:* June 8, 2005.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Gerald Zaffos, Procurement Analyst, at (202) 208-6091. Please cite FAC 2005-04, FAR case 2003-025.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

An interim rule implementing Section 1428 of the Services Acquisition Reform Act of 2003 (Title XIV of Public Law 108-136) was published in the **Federal Register** on October 5, 2004 (69 FR 59701). Five comments were received from four respondents in response to the interim rule. While all of the commenters were supportive of the rule, the commenters offered the following recommendations to maximize the use of telecommuting for Federal contractors. One commenter suggested that the Councils provide an incentive for "suppliers who take the initiative to hire telecommuting contractors." The Councils did not adopt this suggestion because the statute does not establish incentives, and the Councils believe establishing such an incentive is beyond the scope and authority of the Councils. Another commenter believes that the rule does not go far enough because it allows the contracting officer to determine that allowing telecommuting would be contrary to the agency's requirements. The commenter believes that Government managers who are uncomfortable with the concept of telecommuting will convince contracting officers to disallow telecommuting more often than allow it. To prevent this, the commenter recommended that "telecommuting be established as a 'requirement' for some percentage of government contracts and that telecommuting be defined as working offsite for 25 or more hours a week." This commenter also recommended that contracting officers who award contracts to firms that allow their employees to telecommute receive additional training, funds, "and a leg up on promotion." The Councils did not adopt this recommendation because there is no evidence that contracting officers will not act in good faith when making a determination not to allow

telecommuting. Moreover, the requirement for a written determination will allow agencies to conduct periodic reviews as may be necessary to ensure there is no abuse of this discretion. Also, issues of contracting officer rewards are personnel issues that are beyond the scope of this case and the general purview of the Councils. Another commenter recommended creating a vetting procedure for determinations to prohibit telecommuting and to hold contracting officers' "feet to the fire." The Councils did not adopt this recommendation because compliance issues are beyond the scope of this case and are more appropriately addressed by individual agency management.

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 there is no Governmentwide policy or practice concerning contractor employee telecommuting. In addition, this rule will not be a major change, but instead a small positive benefit to small businesses.

#### 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 7, 11, 13, and 15

Government procurement.

Dated: May 27, 2005.

**Julia B. Wise,**

*Director, Contract Policy Division.*

■ Interim Rule Adopted as Final Without Change  
 ■ Accordingly, the interim rule amending 48 CFR parts 7, 11, 13, and 15, which was published in the **Federal Register** at 69 FR 59701, October 5, 2004, is adopted as a final rule without change. [FR Doc. 05-11181 Filed 6-7-05; 8:45 am]

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 2, 4, 12, 37, and 52

[FAC 2005-04; FAR Case 2004-004; Item III]

RIN 9000-AJ97

#### Federal Acquisition Regulation; Incentives for Use of Performance-Based Contracting for Services

**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 to convert the interim rule published in the **Federal Register** at 69 FR 34226, June 18, 2004, to a final rule with changes to amend the Federal Acquisition Regulation (FAR) to implement Sections 1431 and 1433 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136). Section 1431 enacts Governmentwide authority to treat performance-based contracts or task orders for services as commercial items if certain conditions are met, and requires agencies to report on performance-based contracts or task orders awarded using this authority. Section 1433 amends the definition of commercial item to add specific performance-based terminology and to conform to the language added by Section 1431.

**DATE:** *Effective Date:* June 8, 2005.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Julia Wise, Director, Contract Policy Division, at (202) 208-1168. Please cite FAC 2005-04, FAR case 2004-004.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This final rule amends the Federal Acquisition Regulation. DoD, GSA, and NASA published an interim rule in the **Federal Register** at 69 FR 34226, June 18, 2004, implementing Section 1431 and Section 1433 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136). Public comments were received from three

entities. The Councils reviewed and resolved the comments. The disposition of comments, as stated below, requires one change to the rule, as requested in comment 7.

1. *Comment:* Requested clarification as to whether the term "performance assessment" should be used in place of "quality assurance" in FAR 37.601(a)(2). This comment was based on a statement in the "Guidebook for Performance-Based Services Acquisition (PBSA) in the Department of Defense," December 2000, that, "[h]ereafter, 'performance assessment' will be used in place of the term 'quality assurance' unless otherwise noted."

*Council's response:* This statement applied only to usage in the Guide and was not meant as a change in Governmentwide policy. In fact, a more recent memo, dated August 19, 2003, from the Undersecretary of Defense for Acquisition, Technology and Logistics, continues to use the term "quality assurance," as does the "Seven Steps Guide to Procurement Based Services Acquisition Guide." This comment is more appropriate for FAR Case 2003-18, which covers a broader revision of Performance-Based Services Acquisition, and will be considered along with other comments received in response to that case. FAR Case 2003-18 was published in the **Federal Register** at 69 FR 43712, July 21, 2004; public comments were due September 20, 2004.

2. *Comment:* Suggested that the Councils move the reference to quality assurance surveillance plans from FAR 37.601(a)(2) and make it a new subparagraph (5) to emphasize the importance of quality assurance surveillance plans.

*Council's response:* The Councils did not adopt this suggestion because the purpose of this case is to allow agencies to use FAR Part 12 for noncommercial services if the services otherwise meet the existing definition of performance-based contracting. This comment is more appropriate for FAR Case 2003-18 and will be considered along with other comments received in response to that case.

3. *Comment:* Recommended revising FAR 12.102(g)(1) by adding the additional qualifying factor of "Includes a performance work statement."

*Council's response:* The Councils did not adopt this suggestion because the purpose of the case is to allow agencies to use FAR Part 12 for noncommercial services if the services otherwise meet the existing definition of performance-based contracting, which addresses use of a work statement that is performance-based. FAR