

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Part 13**

[FAR Case 2005–029; Docket 2006–0020]

RIN 9000–AK46

**Federal Acquisition Regulation; FAR
Case 2005–029, Termination or
Cancellation of Purchase Orders**

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

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to correct the inadvertent omission of appropriate references in the FAR pertaining to termination for cause of those purchase orders that have been accepted in writing. The Government is soliciting comments from interested parties to ensure the language in this proposed rule is clear in stating the appropriate termination coverage for commercial purchase orders that have been accepted in writing by the contractor.

DATES: Interested parties should submit written comments to the FAR Secretariat on or before May 22, 2006 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2005–029 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Agency Web Site: <http://www.acqnet.gov/far/ProposedRules/proposed.htm>. Click on the FAR case number to submit comments.

- E-mail: farcase.2005-029@gsa.gov. Include FAR case 2005–029 in the subject line of the message.

- Fax: 202–501–4067.

- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2005–029 in all correspondence related to this case. All comments received will be posted without change to <http://www.acqnet.gov/far/ProposedRules/proposed.htm>, including any personal and/or business confidential information provided.

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FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Michael O. Jackson, Procurement Analyst, at (202) 208–4949. Please cite FAR case 2005–029 for information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:**A. Background**

This rule proposes to amend FAR 13.302–4 by reinstating the appropriate coverage for termination for cause of commercial purchase orders.

For commercial purchase orders that have been accepted in writing by the contractor, current references to FAR 12.403(d) and FAR 52.212–4(l) as stated in 13.302–4(a) address termination for convenience. The current FAR language at 13.302–4(a) was established in February 1998 under Federal Acquisition Circular 97–3. This change constituted a complete rewrite/reorganization of FAR Part 13. Previously, FAR Part 13 identified both termination for cause as well as for convenience as the termination methods available to contracting officers. Furthermore, FAR 12.403 permits the Government to terminate a contract for commercial items either for the convenience of the Government or for cause, and makes no distinction based on the dollar value of the commercial item contract, nor the contractual method utilized to procure the commercial item. Therefore, the proposed changes at FAR 13.302–4(a) reinstate references to procedures for termination for cause as well as termination for convenience.

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 Councils do not expect this proposed rule to 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 the Government's existing termination rights but merely clarifies those rights by correcting an inadvertent error in the FAR. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite

comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Part 13 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.* (FAR case 2005–029), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed 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 Part 13

Government procurement.

Dated: March 15, 2006.

Gerald Zaffos,

Director, Contract Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 13 as set forth below:

**PART 13—SIMPLIFIED ACQUISITION
METHODS**

1. The authority citation for 48 CFR part 13 continues to read as follows:

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

2. Amend section 13.302–4 by:

a. Revising paragraph (a)(1); and

b. Revising paragraph (b)(2) to read as follows:

**13.302–4 Termination or cancellation of
purchase orders.**

(a) * * *

(1) 12.403 and 52.212–4(l) or (m) for commercial items; or

* * * * *

(b) * * *

(2) If the contractor does not accept the cancellation or claims that costs were incurred as a result of beginning performance under the purchase order, the contracting officer shall process the action as a termination prescribed in paragraph (a) of this subsection.

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