

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

[FAC 2005–16; FAR Case 2005–029; Item II; Docket 2006–0020, Sequence 21]

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: 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 correct the inadvertent omission of an appropriate reference pertaining to the termination for cause procedures for purchase orders that have been accepted in writing.

DATES: *Effective Date:* March 22, 2007.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Michael Jackson, Procurement Analyst, at (202) 208–4949. Please cite FAC 2005–16, 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 final rule amends the Federal Acquisition Regulation 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 under FAC 97–3, published in the **Federal Register** at 62 FR 64912 on December 9, 1997, and became effective on February 9, 1998. This change constituted a complete rewrite and 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, this final rule amends FAR Part 13.302–4(a) by reinstating the appropriate coverage for and references to termination for cause of commercial purchase orders.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 71 FR 14445 on March 22, 2006. The 60–day comment period for the proposed rule ended May 22, 2006. One respondent provided a comment. This comment is discussed below.

Public Comment

Comment: The commenter suggests that the words “in writing by the contractor” be deleted. The commenter asserts that the beginning of performance of work under a purchase order should be recognized as contractor acceptance of the purchase order, which in most cases, begins on the date of award.

Response: The scope of this case is the correction of an administrative error to re-establish the FAR language for termination for cause procedures for purchase orders that have been accepted in writing. To revise the case now to include all purchase orders, whether accepted in writing or not, would exceed the scope of what was published in the proposed rule. The Councils recognize that this issue requires additional review and will set up a separate case to address it.

Summary of Changes

FAR 13.302–4(a) is revised to reinstitute references to procedures for termination for cause as well as termination for convenience under FAR 12.403 and 52.212–4(l) or (m).

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 the Government’s existing termination rights but merely clarifies those rights by correcting an inadvertent error in the FAR.

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 Part 13

Government procurement.

Dated: March 15, 2007

Ralph De Stefano,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 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 revising paragraphs (a)(1) and (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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DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 22 and 52**

[FAC 2005–16; FAR Case 2006–019; Item III Docket 2006–0020, Sequence 12]

RIN 9000–AK66

**Federal Acquisition Regulation; FAR
Case 2006–019, Contracts with
Religious Entities**

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