

December 2002

INFORMATION TECHNOLOGY SERVICES

Agencies Complying with Revision to Federal Acquisition Regulation





Highlights of [GAO-03-32](#), a report to the Senate Committee on Governmental Affairs, House Committee on Government Reform, and the House Subcommittee on Technology and Procurement Policy.

Why GAO Did This Study

Concerned that minimum personnel experience or education requirements in agency solicitations for information technology (IT) services were contributing to worker shortages, Congress included a provision in the fiscal year 2001 Defense authorization act requiring that the Federal Acquisition Regulation (FAR) be amended to limit the use of such requirements. Specifically, agencies are not to include these requirements in solicitations for IT services that result in performance-based contracts—those with performance work statements that set forth contract requirements in clear, specific, and objective terms with measurable outcomes—unless the contracting officer determines that agency needs cannot be met without them.

This law also required GAO to study and report on the government's implementation of this provision. Accordingly, GAO assessed whether the FAR rule implementing this requirement conforms with the provision (section 813 of P.L. 106-398) and to what extent executive agencies have complied with the new requirement. GAO chose nine agencies to review, based on its analysis of data in FedBizOpps, a governmentwide Web site containing government business opportunities over \$25,000.

In commenting on a draft of this report, agencies agreed with its findings or did not indicate a position.

www.gao.gov/cgi-bin/getrpt?GAO-03-32.

To view the full report, including the scope and methodology, click on the link above. For more information, contact David A. Powner at (202) 512-9286 or pownerd@gao.gov.

INFORMATION TECHNOLOGY SERVICES

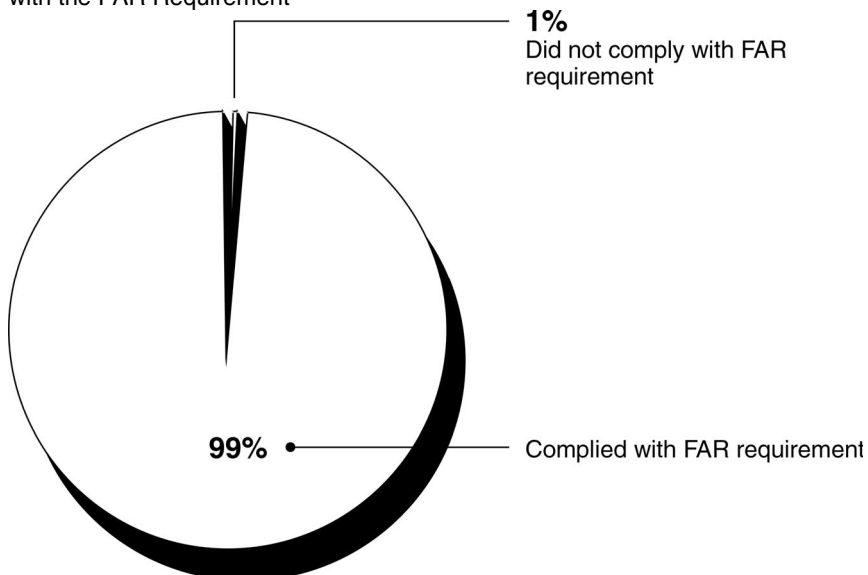
Agencies Complying with Revision to Federal Acquisition Regulation

What GAO Found

The final FAR rule implementing section 813 of P.L. 106-398, which was published on December 18, 2001, conforms with the requirements in this law. Specifically, as required by P.L. 106-398, the FAR now prohibits minimum experience or education requirements for contractor personnel in performance-based solicitations for IT services unless the contracting officer determines that the needs of the agency cannot be met without such requirements.

Agencies in GAO's review have been complying with the FAR's minimum experience and education requirements. Specifically, as shown in the chart below, of the 161 performance-based solicitations in GAO's review, in only 1 case—or about 1 percent—was an agency not in compliance with the FAR; that is, the solicitation contained minimum experience requirements and the contracting officer had not made a determination of agency need. In this case, the contracting officer was unaware of the FAR requirement at the time that the solicitation was issued, but stated that he would make such a determination in the future, when applicable.

Percentage of Performance-Based Solicitations in GAO's Review That Did Not Comply with the FAR Requirement



Source: GAO analysis of agency solicitations.

Contents

Letter		1
	Results in Brief	2
	Background	3
	FAR Requirement in Conformance with Law	3
	Agencies Complying with FAR Requirement	4
	Conclusions	6
	Agency Comments and Our Evaluation	6

Appendix I	Scope and Methodology	8
-------------------	------------------------------	----------

Appendix II	Number of Solicitations with Minimum Experience or Education Requirements, by Department/Agency	11
--------------------	--	-----------

Appendix III	Information on Solicitations with Minimum Experience or Education Requirements	12
---------------------	---	-----------

Appendix IV	Comments from the Department of Health and Human Services	13
--------------------	--	-----------

Appendix V	Comments from the Department of the Interior	14
-------------------	---	-----------

Appendix VI	Comments from the National Aeronautics and Space Administration	15
--------------------	--	-----------

Appendix VII	GAO Contact and Staff Acknowledgments	16
	GAO Contact	16
	Acknowledgments	16

Table

Table 1: Number of Performance-Based Solicitations by Department/Agency	9
--	---

Figure

Figure 1: Percentage of Performance-Based Solicitations in Our Review That Did Not Comply with the FAR Requirement	5
---	---

Abbreviations

DOD	Department of Defense
HHS	Department of Health and Human Services
FAR	Federal Acquisition Regulation
GSA	General Services Administration
IT	information technology
NASA	National Aeronautics and Space Administration



United States General Accounting Office
Washington, DC 20548

December 18, 2002

The Honorable Joseph I. Lieberman
Chairman
The Honorable Fred Thompson
Ranking Minority Member
Committee on Governmental Affairs
United States Senate

The Honorable Dan Burton
Chairman
The Honorable Henry A. Waxman
Ranking Minority Member
Committee on Government Reform
House of Representatives

The Honorable Tom Davis
Chairman
The Honorable Jim Turner
Ranking Minority Member
Subcommittee on Technology and Procurement Policy
Committee on Government Reform
House of Representatives

Concerned that agencies were including minimum personnel requirements in information technology (IT) services contracts, the Congress included limitations on their use in section 813 of the Floyd D. Spence National Defense Authorization Act, Fiscal Year 2001 (P.L. 106-398). Section 813 requires that the Federal Acquisition Regulation (FAR) be amended to prohibit minimum personnel experience or education requirements in IT services solicitations that result in performance-based¹ contracts unless the contracting officer determines that the needs of the agency cannot be met without such requirements. A final FAR rule implementing this requirement was published on December 18, 2001.

¹According to P.L. 106-398, performance-based means that the contract includes the use of performance work statements that set forth contract requirements in clear, specific, and objective terms with measurable outcomes.

P.L. 106-398 also requires that GAO report on the implementation of section 813. Our objectives were to determine (1) whether the FAR requirement conforms with P.L. 106-398 and (2) to what extent executive agencies have complied with the new FAR requirement. In doing this work, we reviewed and compared the legislation with the applicable FAR requirement. In addition, we reviewed 161 solicitations identified as performance-based by the departments of Commerce, Defense, Health and Human Services, the Interior, State, the Treasury, and Veterans Affairs; the General Services Administration; and the National Aeronautics and Space Administration. In reviewing these solicitations, we ascertained whether they contained minimum experience or education requirements for contractor personnel. If the solicitations contained such requirements, we interviewed agency contracting officials and reviewed applicable documents to determine the rationale for including the requirements. Appendix I provides additional information on our scope and methodology.

Results in Brief

The FAR rule implementing section 813 of P.L. 106-398 conforms with the requirements in this law. Specifically, as required by P.L. 106-398, the FAR now prohibits minimum experience or education requirements for contractor personnel in performance-based solicitations for IT services unless the contracting officer determines that the needs of the agency cannot be met without such requirements.

Agencies in our review were complying with the FAR's limitation on minimum experience and education requirements. Specifically, only 1 of the 161 performance-based solicitations we reviewed did not comply with the FAR requirement. In this one case, the solicitation contained minimum experience requirements for contractor personnel, and the contracting officer did not make a determination of agency need. The contracting officer stated that he was unaware of the FAR requirement at the time that the solicitation was issued but would make the appropriate determination in the future if applicable circumstances should arise.

In providing comments on a draft of this report, two agencies stated that they were in agreement with the findings of the report, and six agencies did not indicate whether they agreed or disagreed.

Background

The government's purchases of IT services have tripled over the past decade, from \$5.7 billion in fiscal year 1991 to about \$17.1 billion in fiscal year 2001.² To achieve greater cost savings and better outcomes with this spending, the Congress and the administration have encouraged greater use of performance-based service contracting. Under this approach, the contracting agency specifies the outcome or result that it desires and leaves it to the contractor to decide how best to achieve the desired outcome. We recently reported that, in 2001, agencies reported using performance-based contracting methods on about \$28.6 billion, or 21 percent, of the \$135.8 billion total obligations incurred for all services.³

According to the legislative history of section 813, the Congress was concerned that minimum experience or education requirements included in agency solicitations for IT services were contributing to worker shortages by requiring contractors to use highly trained and educated workers to perform some services that could be done by less educated or experienced workers.⁴ In addition, it was felt that minimum experience requirements were inappropriate for performance-based services contracts because they are supposed to be awarded on the basis of measurable outcomes. Finally, the Chairman of the House Subcommittee on Technology and Procurement Policy was also concerned that minimum personnel requirements hampered the ability of contractors to find qualified personnel to perform the work under government contracts. As a result of these concerns, the Congress included a provision in the fiscal year 2001 Defense authorization act requiring that the FAR be amended to prohibit minimum personnel experience or education requirements in IT services solicitations resulting in performance-based contracts unless the contracting officer determines that the needs of the agency cannot be met without such requirements.

FAR Requirement in Conformance with Law

On December 18, 2001, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council published the final FAR rule implementing section 813 of P.L. 106-398. This rule is in conformance with section 813 in that it adopts the requirements of the statute and captures

²Dollar amounts are in 2001 constant dollars.

³U.S. General Accounting Office, *Contract Management: Guidance Needed for Using Performance-Based Service Contracting*, [GAO-02-1049](#) (Washington D.C.: Sept. 23, 2002).

⁴Cong. Rec. S5075 (Daily ed.), June 14, 2000.

the evident intent of the Congress. Specifically, FAR section 39.104 substantially duplicates the legislative language, stating

“When acquiring information technology services, solicitations must not describe any minimum experience or educational requirement for proposed contractor personnel unless the contracting officer determines that the needs of the agency—

(a) Cannot be met without that requirement; or

(b) Require the use of other than a performance-based contract (see Subpart 37.6).”

Agencies Complying with FAR Requirement

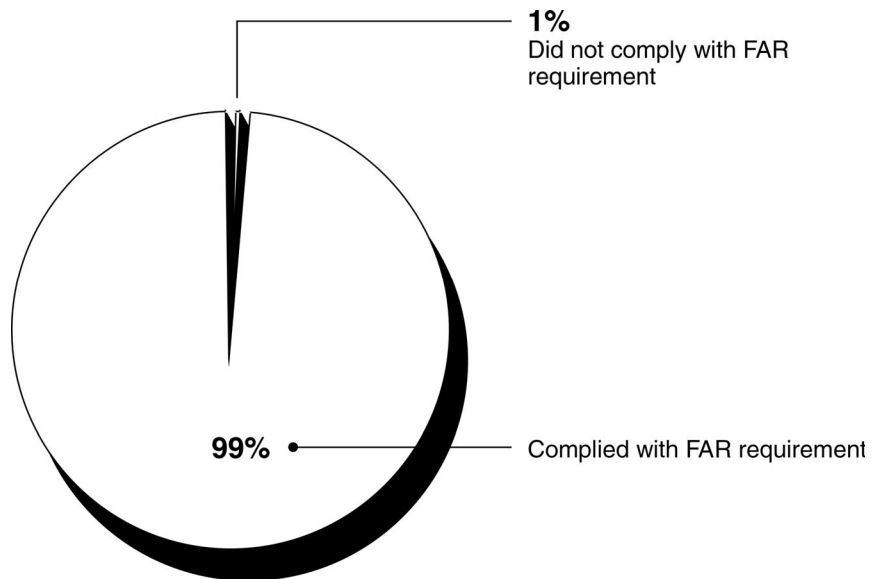
The nine agencies in our review were complying with the FAR requirement. Of the 161 performance-based solicitations in our review, in only one case was an agency not in compliance with the FAR; that is, the solicitation contained minimum experience requirements,⁵ and the contracting officer had not made a determination of agency need.

Very few of the solicitations in our review included minimum experience or education requirements for contractor personnel. Specifically, only about 4 percent, or 7 of 161 solicitations, contained such minimum personnel requirements (app. II provides the results of our solicitation review by agency, and app. III contains additional information on the seven solicitations with minimum personnel requirements). Moreover, of the seven solicitations that included minimum experience or education personnel requirements, in six cases the agency complied with the FAR since the contracting officers made a determination that the needs of the agency could not be met without such requirements. Accordingly, as illustrated in figure 1, in only one solicitation—or about 1 percent—that we reviewed did the agency fail to comply with the FAR requirement

⁵Neither the law nor the FAR defines the phrase “minimum experience or educational requirement” for proposed contractor personnel. For the purposes of this report, we interpreted the phrase to include only those solicitation provisions that explicitly set minimum standards. For example, a requirement that “proposed contractor personnel must have a minimum 5 years’ experience in COBOL programming and/or master’s degrees in computer science” would be prohibited under FAR section 39.104. However, agencies can consider an offeror’s experience and expertise in evaluating proposals, consistent with section 813 and the FAR, as long as the agency does not require minimum experience or education requirements for contractor personnel. For example, a solicitation provision that requires offerors to “demonstrate experience or expertise in COBOL programming” would not violate the FAR.

because the contracting officer did not make a determination that the needs of the agency could not be met without such requirements.

Figure 1: Percentage of Performance-Based Solicitations in Our Review That Did Not Comply with the FAR Requirement



Source: GAO analysis of agency solicitations.

Regarding the solicitation that was not in compliance with the FAR, the contracting officer stated that he was unaware of the FAR requirement at the time that the solicitation was issued in July 2002. He stated that since he is now aware of the requirement, he will make the required determination in the future, if applicable.

In two other cases, solicitations contained words such as “extensive experience” and “strongly desired” levels of experience. Agency contracting officials explained that such wording does not constitute minimum personnel requirements because they are not mandatory requirements. Although we agree that such statements do not legally establish a minimum personnel requirement, such provisions have the practical effect of directing vendors to satisfy those requirements in order to be competitive. Finally, in one case the solicitation provided minimum experience and education requirements “for informational purposes only.” The contracting officer explained that the minimum experience and education requirements were included in the solicitation at the request of prospective contractors, and were labeled “for informational purposes

only.” However, a subsequent provision of the solicitation requires that contractor personnel in various labor categories should possess at least the minimum experience or education requirements listed in the solicitation. These provisions are clearly inconsistent. It is unclear which provision would be determined to prevail if the solicitation was challenged.

Conclusions

As required by P.L. 106-398, the FAR was amended to limit the inclusion of minimum experience or education requirements for contractor personnel in IT services solicitations resulting in performance-based contracts. Agencies were complying with this regulation. Specifically, in our review of 161 solicitations, only 1 contained minimum experience requirements in which the contracting officer did not make a determination of agency needs, as required by the FAR.

Agency Comments and Our Evaluation

We received both oral and written comments on a draft of this report from eight agencies; two agencies stated that they were in agreement with the findings of the report, and six agencies did not indicate whether they agreed or disagreed. Specifically:

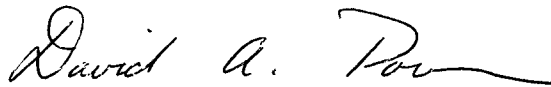
- A procurement analyst in the office of the Director, Defense Procurement and Acquisition Policy, stated that the Department of Defense had no comments on the report.
- In written comments, the Inspector General stated that the Department of Health and Human Services had no comments on the report (see app. IV).
- In written comments, the Assistant Secretary for Policy, Management, and Budget stated that the Department of the Interior agreed with the contents and findings of the report (see app. V).
- An assistant transition coordinator in the GAO Liaison Office stated that the Department of State had no comments on the report.
- The Deputy Director, Office of the Procurement Executive, stated that the Department of the Treasury agreed with the findings of the report.
- The Director, Congressional Reports and Correspondence, stated that the Department of Veterans Affairs had no comments on the report.
- A management analyst in the Audit Followup and Evaluation Branch stated that the General Services Administration had no comments on the report.
- The written comments of the Deputy Administrator, National Aeronautics and Space Administration, did not state whether the agency agreed or disagreed with the findings in the report (see app. VI).

We also requested comments from the Department of Commerce, but none were provided.

We are sending copies of this report to the secretaries of the departments of Commerce, Defense, Health and Human Services, the Interior, State, the Treasury, and Veterans Affairs; the administrators of the General Services Administration and the National Aeronautics and Space Administration; and the Director, Office of Management and Budget. We will also make copies available to others upon request. In addition, this report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you have any questions on matters discussed in this report, please contact me at (202) 512-9286 or Linda J. Lambert, Assistant Director, at (202) 512-9556. We can also be reached by E-mail at pownerd@gao.gov and lambertl@gao.gov, respectively.

Other contacts and key contributors to this report are listed in appendix VII.



David A. Powner
Director (Acting), Information Technology
Management Issues

Appendix I: Scope and Methodology

To determine whether the FAR requirement conforms with P.L. 106-398, we reviewed section 813 of the law and compared it with the applicable Federal Acquisition Regulation (FAR) requirement. In addition, we reviewed the Congressional Record and the applicable conference report to ascertain the legislative history of this provision.

To determine the extent to which executive agencies complied with the new FAR requirement, we obtained information on presolicitation notices¹ and combined synopses/solicitations² issued between December 18, 2001, and August 11, 2002, that were coded by the agencies as information technology (IT) and telecommunications services in the General Services Administration's (GSA) Federal Business Opportunities (FedBizOpps) Web site.³ FedBizOpps has been designated the single governmentwide point of electronic entry on the Internet where vendors can access the information they need to bid on available government business opportunities greater than \$25,000.

Based on information from FedBizOpps, we chose to review 9 agencies that had at least 30 presolicitation notices and combined synopses/solicitations coded as IT services. These agencies were the departments of Commerce, Defense (DOD), Health and Human Services (HHS), the Interior, State, the Treasury, and Veterans Affairs; GSA, and the National Aeronautics and Space Administration (NASA). We provided the list of presolicitation notices and combined synopses/solicitations from FedBizOpps to each of these agencies and asked them to identify those that were performance-based.⁴ For agencies that identified 15 or fewer performance-based solicitations, we reviewed all of their solicitations. For agencies that identified more than 15 performance-based solicitations, we reviewed a random sample of these solicitations. Table 1 provides the total number of reported performance-based solicitations by agency and the number we reviewed.

¹See FAR section 5.204.

²See FAR section 12.603.

³www.fedbizopps.gov.

⁴As a result of the agencies' analyses of the FedBizOpps data, the number of possible candidate solicitations was reduced from the number contained in this Web site at all but one of the agencies because, for example, (1) they were not performance-based, (2) they had been miscoded in FedBizOpps, or (3) the solicitation had not been issued or had been cancelled. We did not validate the agencies' assessment of their presolicitation notices and combined synopses/solicitations.

Table 1: Number of Performance-Based Solicitations by Department/Agency

Department/agency	Number of performance-based solicitations	Number reviewed
Commerce	4	4
DOD		
Defense Information Technology Contracting Organization/Inquiry Quote Orders ^a	928	50
All other components	144	40
HHS	11	11
Interior	13	13
State	27	15
Treasury	3	3
Veterans Affairs	6	6
GSA	4	4
NASA	21	15
Total	1,161	161

^aThe Defense Information Technology Contracting Organization uses Inquiry Quote Orders to support solicitations for long-haul telecommunications services that cannot otherwise be satisfied through the Defense Information Systems Network suite of contracts or the FTS 2001 contracts.

Source: Agencies provided the performance-based solicitation numbers; the numbers were not validated by GAO.

The 161 solicitations we reviewed covered a wide range of IT services, including software maintenance and support, network support, cellular services, and technical support services. In addition, 59 or about 37 percent of these performance-based solicitations were sole-source acquisitions,⁵ and the remainder were issued under competitive procedures.

For solicitations in our review, we obtained copies of the solicitation and ascertained whether they contained minimum experience or education requirements for contractor personnel. If the solicitations contained such requirements, we interviewed agency contracting officials and reviewed applicable documents to determine the rationale for including the requirements.

⁵FAR subpart 2.1 defines sole-source acquisition as a contract for the purchase of supplies or services that is entered into or proposed to be entered into by an agency after soliciting and negotiating with only one source.

We conducted our review between July and October 2002 in accordance with generally accepted government auditing standards.

Appendix II: Number of Solicitations with Minimum Experience or Education Requirements, by Department/Agency

Department/agency	Number of solicitations reviewed	Number with minimum experience or education requirements	Percentage of solicitations with requirements
Commerce	4	0	0
DOD			
Defense Information Technology Contracting Organization/Inquiry Quote Orders ^a	50	0	0
All others	40	5	13
HHS	11	1	9
Interior	13	1	8
State	15	0	0
Treasury	3	0	0
Veterans Affairs	6	0	0
GSA	4	0	0
NASA	15	0	0
Total	161	7	4

^aThe Defense Information Technology Contracting Organization uses Inquiry Quote Orders to support solicitations for long-haul telecommunications services, which cannot otherwise be satisfied through the Defense Information Systems Network suite of contracts, or the FTS 2001 contracts.

Source: GAO analysis of agency solicitations.

Appendix III: Information on Solicitations with Minimum Experience or Education Requirements

Department/ agency	Solicitations including minimum personnel requirements	Determination of agency need? ^a
DOD/Air Force	Required that the base telecommunications system manager, outside plant cable technician, and telephone help-desk technician have 1 or 2 years of experience in performing various functions.	Yes—The contracting officer made a determination prior to the issuance of the solicitation that the inclusion of minimum personnel requirements was necessary to ensure continuity of operations for a mission-critical telecommunications system. He noted that the complexity of modern telecommunications systems requires personnel with experience and training to operate and maintain these systems without disruption.
DOD/Air Force	Required that contractor personnel have a minimum of 1 year of experience with network communication, database management, and systems management.	Yes—According to the former contracting officer, she made a determination prior to the issuance of the solicitation that the inclusion of the minimum personnel requirements was necessary because the work involved a highly technical computing environment in which inexperienced personnel could cause the delay of the testing schedules for weapons systems development.
DOD/Army	Required that certain types of contractor employees have a minimum of 1 or 2 years of experience in (1) resolving technical problems, (2) addressing inquiries regarding hardware/software support, or (3) various types of computer repair and troubleshooting capabilities.	Yes—The contracting officer stated that she made a determination prior to the issuance of the solicitation that the minimum personnel requirements were necessary because the majority of the work performed would be mission critical, directly impacting the various medical missions of the Army and supporting the war-fighter and various behind-the-scenes personnel who provide administrative and logistics support.
DOD/Army	Required that the proposed program manager, database engineer, Web engineer, senior-level programmers, and mid-level programmers have at least a Bachelor of Science degree and various minimum levels of experience.	Yes—The contracting officer made a written determination prior to the issuance of the solicitation that minimum personnel requirements were necessary because the maintenance of the applicable system database is a critical function. According to the determination document, the effort was highly technical in nature, required a vast knowledge of databases and the Internet, and required personnel who were capable of executing the contract requirements immediately upon contract award.
DOD/Army	Required that (1) the proposed project manager have at least 5 years experience in this role and (2) contractor employees have at least 3 years' experience in various tasks, such as installing and upgrading electrical, electronic, and optical communication components.	No—The contracting officer stated that he was unaware of the FAR requirement at the time that the solicitation was issued. However, he noted that he included a project manager experience requirement to ensure that this person was adequately qualified and would not have to be trained. He added that the 3-year requirement helps avoid liability issues, which could arise from allowing unlicensed and inexperienced electricians to work in a remote area on a government facility.
HHS/National Institutes of Health	Required that the project manager, implementation project manager, and the leads for infrastructure support and application implementation support meet various minimum experience requirements.	Yes—The contracting officer made a written determination prior to the issuance of the solicitation that including minimum personnel requirements would minimize implementation risks. In addition, the determination noted that the evaluation of key staff resumes, thorough minimum experience requirements, and reference checks would enable the agency to make a best value decision between competing contractors.
Interior/U.S. Geological Survey	Required that certain technicians and a telephone attendant meet various minimum experience requirements.	Yes—The contracting officer stated that he made a determination prior to the issuance of the solicitation that skilled workers who have specific experience, training, and certifications were needed because lesser skilled contractor staff could (1) risk personal injury since they would be working with electrical cabling and (2) seriously damage agency equipment.

^aNeither the law nor the FAR requires that a contracting officer put in writing the determination that the needs of the agency could not be met without minimum experience or education requirements.

Source: Applicable agencies.

Appendix IV: Comments from the Department of Health and Human Services



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

DEC 3 2002

Mr. Joel C. Willemssen
Managing Director, Information Technology Issues
United States General
Accounting Office
Washington, D.C. 20548

Dear Mr. Willemssen:

The department has reviewed your draft report entitled, "Information Technology Services: Agencies Complying with Revision to Federal Acquisition Regulation," and has no comments at this time.

The department appreciates the opportunity to comment on this draft report before its publication.

Sincerely,

A handwritten signature in black ink, reading "Janet Rehnquist", is positioned above the printed name.

Janet Rehnquist
Inspector General

The Office of Inspector General (OIG) is transmitting the department's response to this draft report in our capacity as the department's designated focal point and coordinator for General Accounting Office reports. The OIG has not conducted an independent assessment of these comments and therefore expresses no opinion on them.

Appendix V: Comments from the Department of the Interior



United States Department of the Interior

OFFICE OF THE ASSISTANT SECRETARY
POLICY, MANAGEMENT AND BUDGET
Washington, D.C. 20240

DEC - 4 2002

Ms. Linda Lambert
Assistant Director, Information
Technology Issues
U.S. General Accounting Office
Washington, D.C. 20548

Dear Ms. Lambert:

Thank you for providing the Department of the Interior with the opportunity to review and comment on General Accounting Office (GAO) Draft Report, "Information Technology Services: Agencies Complying with Revision to Federal Acquisition Regulation (FAR)." (GAO-03-32, Job Code 310439) We are in agreement with the draft report's content and findings that agencies (including the Department of the Interior) are in compliance with the FAR prohibition against inclusion of minimum experience or education requirements for contractor personnel in performance-based solicitations for information technology services. As such, we have no suggested changes to recommend at this time.

Thank you again for providing us with the opportunity to review the draft report.

Sincerely,

P. Lynn Scarlett
Assistant Secretary - Policy,
Management and Budget

Appendix VI: Comments from the National Aeronautics and Space Administration

National Aeronautics and
Space Administration
Office of the Administrator
Washington, DC 20546-0001



December 2, 2002

Mr. David E. Cooper
Director
Acquisition and Sourcing Management
United States General Accounting Office
Washington, DC 20548

Dear Mr. Cooper:

NASA has reviewed the draft GAO report "Information Technology Services: Agencies Complying with Revision to Federal Acquisition Regulation" (GAO-03-32) and thanks you for the opportunity to provide comments.

We were pleased the report included no recommendations for NASA. More specifically, we were pleased that all 15 of the NASA performance-based solicitations that were reviewed conformed with the FAR rule prohibiting minimum experience or education requirements for contractor personnel in performance-based solicitations for IT services unless the contracting officer determines that the needs of the Agency cannot be met without such requirements.

If you have any questions or require additional information, please contact Tom Luedtke, Assistant Administrator for Procurement, at (202) 358-2090.

Cordially,


For Frederick D. Gregory
Deputy Administrator

Appendix VII: GAO Contact and Staff Acknowledgments

GAO Contact

Linda J. Lambert, (202) 512-9556

Acknowledgments

Shannin Addison, Norman Heyl, Michael Holland, Frank Maguire, and Patricia Slocum made key contributions to this report.

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