

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES  
ADMINISTRATION**

**NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

**48 CFR Part 52**

[FAR Case 93-024]

RIN 9000-AG74

**Federal Acquisition Regulation;  
Allowable Cost and Payment Clause**

**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 are proposing changes to the Federal Acquisition Regulation (FAR) to clarify payment provisions for large business prime contractors which are awarded cost-type contracts. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**DATES:** Comments should be submitted on or before February 20, 1996 to be considered in the formulation of a final rule.

**ADDRESSES:** Interested parties should submit written comments on: General Services Administration, FAR Secretariat (VRS), 18th and F Streets, NW, Room 4037, Washington, DC 20405.

Please cite FAR case 93-024 in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** Jeremy F. Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAR case 93-024.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The Office of Federal Procurement Policy SWAT Team on Civilian Agency Contracting in its report of December 1992, entitled "Improving Contracting Practices and Management Controls on Cost-Type Federal Contracts", recommended several FAR revisions which were viewed to have Government-wide benefit.

One area identified for clarification included the payment provisions in FAR clauses 52.216-7, Allowable Cost

and payment, and 52.232-7, Payment Under Time-and-Materials and Labor-Hour Contracts. The SWAT Team concluded that these clauses did not clearly convey the Government's intent that payments to subcontractors by large business prime contractors were not billable to the Government until the contractor had actually paid the subcontractors. The proposed rule amends these payment clauses to clarify that, on cost-type contracts, payments to subcontractors are not billable by large business prime contractors until the subcontractors have been paid by the prime contractor.

**B. Regulatory Flexibility Act**

This proposed rule is not expected 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 only applies to large business entities who wish to be reimbursed under cost-type contracts. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and cite (FAR case 93-024), in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which 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 52**

Government procurement.  
Dated: December 15, 1995.  
Edward C. Loeb,  
*Acting Director, Office of Federal Acquisition Policy.*

Therefore, it is proposed that 48 CFR Part 52 be amended as set forth below:

**PART 52—SOLICITATION PROVISIONS  
AND CONTRACT CLAUSES**

1. The authority citation for 48 CFR Part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 52.216-7 is amended by revising the clause date and paragraph (b)(i)(iii) to read as follows:

**52.216-7 Allowable cost and payment.**

\* \* \* \* \*

Allowable Cost and Payment (Date)

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iii) The amount of progress and other payments that have been paid by cash, check or other form of payment to the Contractor's subcontractors under similar cost standards.

\* \* \* \* \*

3. Section 52.232-7 is amended by revising the clause date and the second sentence of paragraph (b)(2) to read as follows:

**52.232-7 Payments under time-and-materials and labor-hour contracts.**

\* \* \* \* \*

Payments Under Time-and-Materials and Labor-Hour Contracts (Date)

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \* Reimbursable costs in connection with subcontracts shall be limited to the amounts paid to the subcontractor for items and services purchased directly for the contract only when cash, checks, or other form of payment has been made for such purchased items or services; however, this requirement shall not apply to a Contractor that is a small business concern. \* \* \*

\* \* \* \* \*

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES  
ADMINISTRATION**

**NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

**48 CFR Part 44**

[FAR Case 94-605]

[RIN 9000-AG75]

**Federal Acquisition Regulation;  
Contractors' Purchasing Systems  
Reviews**

**AGENCY:** 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 a revision to the Federal Acquisition Regulation (FAR) concerning requirements under Contractors' Purchasing Systems Reviews (CPSR's). This regulatory action was not subject to Office of Management and Budget review under

Executive Order 12866, dated September 30, 1993.

**DATES:** Comments should be submitted on or before February 20, 1996 to be considered in the formulation of a final rule.

**ADDRESSES:** Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4037, Washington, DC 20405.

Please cite FAR case 94-605 in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Klein at (202) 501-3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAR case 94-605.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Concern has been expressed that FAR 44.302(a) includes contractors in the CPSR process that will be severely inconvenienced by the review, and allows for the review of systems even when there is no benefit to the Government. Under the current FAR 44.302, a CPSR is to be conducted for each contractor whose sales to the Government are expected to exceed \$10 million during the next 12 months. However, the Councils have agreed to raise the \$10 million threshold to \$25 million and have determined that contractors meeting the \$25 million threshold should be reviewed before conducting a CPSR, to decide if a CPSR is necessary. The increased thresholds (\$10 million to \$25 million) that are reflected in this proposed rule have previously been approved under FAR case 94-40, Contractors' Purchasing Systems Reviews and Subcontractor

Consent, and is awaiting publication as a final rule. The need for a CPSR will be determined based on volume, complexity, and dollar value of subcontracting activity. The proposed revision is intended to prevent unwarranted CPSR's from being conducted.

**B. Regulatory Flexibility Act**

This proposed rule is not expected 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 will reduce the number of CPSR's being conducted by requiring a review to determine if a CPSR is needed. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 94-605), in correspondence.

**C. Paperwork Reduction Act**

The information collection requirements for CPSR's have been previously approved under Office of Management and Budget Number 9000-0132. This proposed rule does not contain any increased information collection requirements.

**List of Subjects in 48 CFR Part 44**

Government procurement.

Dated: December 15, 1995.

Edward C. Loeb,  
*Acting Director, Office of Federal Acquisition Policy.*

Therefore, it is proposed that 48 CFR Part 44 be amended as set forth below:

**PART 44—SUBCONTRACTING POLICIES AND PROCEDURES**

1. The authority citation for 48 CFR Part 44 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 44.302 is revised to read as follows:

**§ 44.302 Requirements.**

(a) Each contractor whose sales to the Government, using other than sealed bid procedures, are expected to exceed \$25 million during the next 12 months, shall be reviewed to determine if Contractors' Purchasing Systems Review (CPSR) is needed. Such sales include those represented by prime contracts, subcontracts under Government prime contracts, and modifications. The need for a CPSR will be determined based on volume, complexity, and dollar value of subcontracting activity. Generally, a CPSR is not performed for a specific contract. The head of the agency responsible for contract administration may raise or lower the \$25 million review level if such action is considered to be in the Government's best interest.

(b) Once an initial determination has been made under paragraph (a) of this section, at least every 3 years the cognizant contract administration activity will either: conduct a follow-up purchasing review; or determine that a purchasing system review is not required based on volume, complexity, and dollar value of subcontracting activity.

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