

Dated: January 11, 1996.

Edward C. Loeb,

*Acting Director, Office of Federal Acquisition Policy.*

Therefore, 48 CFR Parts 9 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 9 and 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).

## **PART 9—CONTRACTOR QUALIFICATIONS**

### **9.406-2 [Amended]**

2. Section 9.406-2 is amended in paragraph (a)(3) by inserting "tax evasion," after "false statements,".

### **9.407-2 [Amended]**

3. Section 9.407-2 is amended in paragraph (a)(3) by inserting "tax evasion," after "false statements,".

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

### **52.209-5 [Amended]**

4. Section 52.209-5 is amended by revising the clause date to read "(MAR 1996)"; and in paragraph (a)(1)(i)(B) by inserting "tax evasion," after "false statements".

### **52.212-3 [Amended]**

5. Section 52.212-3 is amended by revising the date of the provision to read "(MAR 1996)"; and in paragraph (h)(2) by adding "tax evasion," after "false statements,".

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## **DEPARTMENT OF DEFENSE**

### **GENERAL SERVICES ADMINISTRATION**

### **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

#### **48 CFR Parts 15 and 52**

[FAC 90-37; FAR Case 92-010; Item V]

RIN 9000-AF77

#### **Federal Acquisition Regulation; Nonprofit Institutions Clause Prescription**

**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 have agreed on a final rule to amend the Federal Acquisition Regulation (FAR). These changes revise the prescriptions for use of the clauses, Termination of Defined Benefit Pension Plans and Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB), and also clarifies the language of the clauses. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** March 26, 1996.

#### **FOR FURTHER INFORMATION CONTACT:**

Mr. Jeremy 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 FAC 90-37, FAR case 92-010.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

The wording of the prescriptions at 15.804-8(e) and (f) currently implies that the clauses at 52.215-27, Termination of Defined Benefit Pension Plans, and 52.215-39, Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions, should also be used in solicitations and contracts with noncommercial organizations. The clauses refer to the cost principles applicable to commercial organizations in FAR subpart 31.2, whereas OMB Circulars A-21, A-87 and A-122 contain the cost principles governing contracts with noncommercial organizations. In addition, the prescriptions currently contain dissimilar criteria concerning the use of the clauses in preaward or postaward cost situations. The revisions to the prescriptions at 15.804-8(e) and (f) correct these inconsistencies and clarify when the clauses at 52.215-27 and 52.215-39 should be used. Additional revisions to the clauses clarify the requirements specified in them. A proposed rule was published in the Federal Register at 59 FR 16389, April 6, 1994. Three public comments were received. No changes were made as a result of those comments.

##### **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 under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded

to small businesses are awarded on a competitive, fixed-price basis and the cost principles do not apply. It is estimated that the number of contract actions awarded to small businesses which require the submission of cost or pricing data average less than 1 percent of the total number of small business actions.

##### **C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the 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 Parts 15 and 52

Government procurement.

Dated: January 11, 1996.

Edward C. Loeb,

*Acting Director, Office of Federal Acquisition Policy.*

Therefore, 48 CFR Parts 15 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 15 and 52 continue to read as follows:

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

## **PART 15—CONTRACTING BY NEGOTIATION**

2. Section 15.804-8 is amended by revising paragraphs (e) and (f); and in paragraph (g) by removing the word "certified". The revised text reads as follows:

#### **15.804-8 Contract clauses and solicitation provisions.**

\* \* \* \* \*

(e) *Termination of defined benefit pension plans.* The contracting officer shall insert the clause at 52.215-27, Termination of Defined Benefit Pension Plans, in solicitations and contracts for which it is anticipated that cost or pricing data will be required or for which any preaward or postaward cost determinations will be subject to part 31.

(f) *Postretirement benefit funds.* The contracting officer shall insert the clause at 52.215-39, Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB), in solicitations and contracts for which it is anticipated that cost or pricing data will be required or for which any preaward or postaward cost determination will be subject to part 31.

\* \* \* \* \*

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

3. Section 52.215-27 is amended by revising the clause to read as follows:

**52.215-27 Termination of Defined Benefit Pension Plans.**

\* \* \* \* \*

Termination of Defined Benefit Pension Plans (Mar 1996)

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined benefit pension plan or otherwise recapture such pension fund assets. If pension fund assets revert to the Contractor or are constructively received by it under a termination or otherwise, the Contractor shall make a refund or gift a credit to the Government for its equitable share of the gross amount withdrawn. The Government's equitable share shall reflect the Government's participation in pension costs through those contracts for which cost or pricing data (see 15.804 of the Federal Acquisition Regulation (FAR)) were submitted or which are subject to FAR Part 31. The Contractor shall include the substance of this clause in all subcontracts under this contract which meets the applicability requirements of FAR 15.804-8(e).  
(End of clause)

4. Section 52.215-39 is amended by revising the clause to read as follows:

**52.215-39 Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB).**

\* \* \* \* \*

Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB) (Mar 1996)

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate or reduce a PRB plan. If PRB fund assets revert, or inure, to the Contractor or are constructively received by it under a plan termination, reduction, or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share of any amount of previously funded PRB costs which revert or inure to the Contractor. Such equitable share shall reflect the Government's previous participation in PRB costs through those contracts for which cost or pricing data (see 15.804 of the Federal Acquisition Regulation (FAR)) were submitted or which are subject to FAR Part 31. The Contractor shall include the substance of this clause in all subcontracts under this contract which meet the applicability requirements of FAR 15.804-8(f).  
(End of clause)

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 15**

[FAC 90-37; FAR Case 95-006; Item VI]

RIN 9000-AG69

**Federal Acquisition Regulation; Field Pricing Support Request**

**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 have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to clarify internal Government procedures for requesting field pricing support. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** March 26, 1996.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Jeremy 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 FAC 90-37, FAR case 95-006.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This final rule implements a recommendation of the Department of Defense Procurement Process Reform Process Action Team. The rule clarifies that contracting officers may send audit requests directly to the cognizant audit office, if no other type of field pricing support is required.

**B. Regulatory Flexibility Act**

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90-37, FAR case 95-006), in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the 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 15**

Government procurement.

Dated: January 11, 1996.

Edward C. Loeb,

*Acting Director, Office of Federal Acquisition Policy.*

Therefore, 48 CFR Part 15 is amended as set forth below:

**PART 15—CONTRACTING BY NEGOTIATION**

1. The authority citation for 48 CFR Part 15 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 15.805-5 is amended in paragraph (c)(1) by revising the second sentence to read as follows:

**15.805-5 Field pricing support.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \* If an audit is all that is needed, the contracting officer may initiate an audit by sending the request directly to the cognizant audit office.

\* \* \*

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 15**

[FAC 90-37; FAR Case 92-002; Item VII]

RIN 9000-AF74

**Federal Acquisition Regulation; Subcontract Proposal Audits**

**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