

Identification of Uncompensated Overtime (Oct 1997)

(a) *Definitions.* As used in this provision—*Uncompensated overtime* means the hours worked without additional compensation in excess of an average of 40 hours per week by direct charge employees who are exempt from the Fair Labor Standards Act. Compensated personal absences such as holidays, vacations, and sick leave shall be included in the normal work week for purposes of computing uncompensated overtime hours.

*Uncompensated overtime rate* is the rate that results from multiplying the hourly rate for a 40-hour work week by 40, and then dividing by the proposed hours per week. For example, 45 hours proposed on a 40-hour work week basis at \$20 per hour would be converted to an uncompensated overtime rate of \$17.78 per hour (\$20.00×40 divided by 45=\$17.78).

(b) For any proposed hours against which an uncompensated overtime rate is applied, the offeror shall identify in its proposal the hours in excess of an average of 40 hours per week, by labor category at the same level of detail as compensated hours, and the uncompensated overtime rate per hour, whether at the prime or subcontract level. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct.

(c) The offeror's accounting practices used to estimate uncompensated overtime must be consistent with its cost accounting practices used to accumulate and report uncompensated overtime hours.

(d) Proposals that include unrealistically low labor rates, or that do not otherwise demonstrate cost realism, will be considered in a risk assessment and will be evaluated for award in accordance with that assessment.

(e) The offeror shall include a copy of its policy addressing uncompensated overtime with its proposal.

(End of provision)

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 8, 13, and 51

[FAC 97-01; FAR Case 96-602; Item VIII]

RIN 9000-AH29

#### Federal Acquisition Regulation; ADP/ Telecommunications Federal Supply Schedules

**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 amending the Federal Acquisition Regulation (FAR) with respect to GSA's Federal Supply Schedules program. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

**DATES:** Effective October 21, 1997.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 97-01, FAR case 96-602.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This final rule amends FAR Parts 8, 13, and 51 to recognize the reassignment of Federal Supply Schedule contracts for ADP/Telecommunications to GSA's Federal Supply Service to add new coverage on the "GSA Advantage!" program, clarify when ordering offices should seek price reductions under schedule contracts, and to clarify procedures for placing schedule orders above the maximum order threshold.

A proposed rule requesting comment was published in the **Federal Register** at 61 FR 52844, October 8, 1996. Thirty-eight comments were received from twelve respondents. All comments were considered in developing the final rule.

##### 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 merely updates and clarifies guidance for Government agencies regarding use of the GSA Federal Supply Schedule program.

##### 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 8, 13, and 51

Government procurement.

Dated: August 7, 1997.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, 48 CFR Parts 8, 13, and 51 are amended as set forth below:

1. The authority citation for 48 CFR Parts 8, 13, and 51 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 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. Section 8.401 is revised to read as follows:

##### 8.401 General.

(a) The Federal Supply Schedule program, directed and managed by the General Services Administration (GSA), provides Federal agencies with a simplified process for obtaining commonly used commercial supplies and services at prices associated with volume buying (also see 8.001). Indefinite delivery contracts (including requirements contracts) are established with commercial firms to provide supplies and services at stated prices for given periods of time. Similar systems of schedule-type contracting are used for military items managed by the Department of Defense. These systems are not included in the Federal Supply Schedule program covered by this subpart.

(b) The GSA schedule contracting office issues publications, entitled Federal Supply Schedules, containing the information necessary for placing delivery orders with schedule contractors. Ordering offices issue delivery orders directly to the schedule contractors for the required supplies and services. Ordering offices may request copies of schedules by completing GSA Form 457, FSS Publications Mailing List Application, and mailing it to the GSA Centralized Mailing List Service (7CAFL), P.O. Box 6477, Fort Worth, TX 76115. Copies of GSA Form 457 also may be obtained from this address.

(c) GSA offers an on-line shopping service called "GSA Advantage!" that enables ordering offices to search product specific information (*i.e.*, national stock number, part number, common name), review delivery options, place orders directly with contractors (or ask GSA to place orders on the agency's behalf), and pay

contractors for orders using the Governmentwide commercial purchase card (or pay GSA). Ordering offices may access the "GSA Advantage!" shopping service by connecting to the Internet and using a web browser to connect to the Acquisition Reform Network (<http://www.arnet.gov>) or the GSA, Federal Supply Service (FSS) Home Page (<http://www.fss.gsa.gov>). For more information or assistance, contact GSA at Internet e-mail address: [gsa.advantage@gsa.gov](mailto:gsa.advantage@gsa.gov).

3. Section 8.402 is added to read as follows:

#### 8.402 Applicability.

Procedures in this subpart apply to Federal Supply Schedule contracts. Occasionally, special ordering procedures may be established. In such cases the procedures will be outlined in the "Federal Supply Schedules".

4. Section 8.404 is amended by revising paragraphs (a) and (b), and the paragraph heading of (c) to read as follows:

#### 8.404 Using schedules.

(a) *General.* When agency requirements are to be satisfied through the use of Federal Supply Schedules as set forth in this subpart, the simplified acquisition procedures of part 13 and the small business set-aside provisions of subpart 19.5 do not apply except for the provision at 13.202(c)(3). Orders placed pursuant to a Multiple Award Schedule (MAS), using the procedures in this subpart, are considered to be issued pursuant to full and open competition (see 6.102(d)(3)). Therefore, when placing orders under Federal Supply Schedules, ordering offices need not seek further competition, synopsise the requirement, make a separate determination of fair and reasonable pricing, or consider small business set-asides in accordance with subpart 19.5. GSA has already determined the prices of items under schedule contracts to be fair and reasonable. By placing an order against a schedule using the procedures in this section, the ordering office has concluded that the order represents the best value and results in the lowest overall cost alternative (considering price, special features, administrative costs, etc.) to meet the Government's needs.

(b) *Ordering procedures for optional use schedules*—(1) *Orders at or below the micro-purchase threshold.* Ordering offices can place orders at or below the micro-purchase threshold with any Federal Supply Schedule contractor.

(2) *Orders exceeding the micro-purchase threshold but not exceeding the maximum order threshold.* Orders

should be placed with the schedule contractor that can provide the supply or service that represents the best value. Before placing an order, ordering offices should consider reasonably available information about the supply or service offered under MAS contracts by using the "GSA Advantage!" on-line shopping service, or by reviewing the catalogs/pricelists of at least three schedule contractors and select the delivery and other options available under the schedule that meet the agency's needs. In selecting the supply or service representing the best value, the ordering office may consider—

(i) Special features of the supply or service that are required in effective program performance and that are not provided by a comparable supply or service;

(ii) Trade-in considerations;

(iii) Probable life of the item selected as compared with that of a comparable item;

(iv) Warranty considerations;

(v) Maintenance availability;

(vi) Past performance; and

(vii) Environmental and energy efficiency considerations.

(3) *Orders exceeding the maximum order threshold.* Each schedule contract has an established maximum order threshold. This threshold represents the point where it is advantageous for the ordering office to seek a price reduction. In addition to following the procedures in paragraph (b)(2) of this section and before placing an order that exceeds the maximum order threshold, ordering offices shall—

(i) Review additional schedule contractors' catalogs/pricelists or use the "GSA Advantage!" on-line shopping service;

(ii) Based upon the initial evaluation, generally seek price reductions from the schedule contractor(s) appearing to provide the best value (considering price and other factors); and

(iii) After price reductions have been sought, place the order with the schedule contractor that provides the best value and results in the lowest overall cost alternative (see 8.404(a)). If further price reductions are not offered, an order may still be placed, if the ordering office determines that it is appropriate.

(4) *Blanket purchase agreements (BPAs).* The establishment of Federal Supply Schedule BPAs is permitted (see 13.202(c)(3)) when following the ordering procedures in this subpart. All schedule contracts contain BPA provisions. Ordering offices may use BPAs to establish accounts with contractors to fill recurring requirements. BPAs should address the

frequency of ordering and invoicing, discounts, and delivery locations and times.

(5) *Price reductions.* In addition to the circumstances outlined in paragraph (b)(3) of this section, there may be instances when ordering offices will find it advantageous to request a price reduction. For example, when the ordering office finds a schedule supply or service elsewhere at a lower price or when a BPA is being established to fill recurring requirements, requesting a price reduction could be advantageous. The potential volume of orders under these agreements, regardless of the size of the individual order, may offer the ordering office the opportunity to secure greater discounts. Schedule contractors are not required to pass on to all schedule users a price reduction extended only to an individual agency for a specific order.

(6) *Small business.* For orders exceeding the micro-purchase threshold, ordering offices should give preference to the items of small business concerns when two or more items at the same delivered price will satisfy the requirement.

(7) *Documentation.* Orders should be documented, at a minimum, by identifying the contractor the item was purchased from, the item purchased, and the amount paid. If an agency requirement in excess of the micro-purchase threshold is defined so as to require a particular brand name, product, or a feature of a product peculiar to one manufacturer, thereby precluding consideration of a product manufactured by another company, the ordering office shall include an explanation in the file as to why the particular brand name, product, or feature is essential to satisfy the agency's needs.

(c) *Ordering procedures for mandatory use schedules.* \* \* \*

## PART 13—SIMPLIFIED ACQUISITION PROCEDURES

5. Section 13.202 is amended by adding paragraph (a)(4) and revising paragraph (c)(3) to read as follows:

### 13.202 Establishment of blanket purchase agreements (BPAs).

(a) \* \* \*

(4) There is no existing requirements contract for the same supply or service that the contracting activity is required to use.

\* \* \* \* \*

(c) \* \* \*

(3) Federal Supply Schedule contractors, if not inconsistent with the

terms of the applicable schedule contract.

\* \* \* \* \*

**PART 51—USE OF GOVERNMENT SOURCES BY CONTRACTORS**

**51.103 [Amended]**

6. Section 51.103 is amended by removing paragraph (c) and redesignating paragraph (d) as (c).

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 9 and 19**

[FAC 97-01; FAR Case 96-002; Item IX]

RIN 9000-AH66

**Federal Acquisition Regulation; Certificate of Competency**

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

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement revisions made to the Small Business Administration's regulations covering the procurement assistance programs. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

**DATES:** *Effective date:* August 22, 1997

*Comment Date:* Comments should be submitted to the FAR Secretariat at the address shown below on or before October 21, 1997 to be considered in the formulation of a final rule.

**ADDRESSES:** Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

E-Mail comments submitted over the Internet should be addressed to: farcase.96-002@gsa.gov.

Please cite FAC 97-01, FAR case 96-002 in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501-4764. Please cite FAC 97-01, FAR case 96-002.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This interim rule amends FAR Parts 9 and 19 to comply with revisions made to the Small Business Administration's (SBA) procurement assistance programs contained in 13 CFR Part 125 (61 FR 3310, January 31, 1996). This rule increases the threshold over which contracting officers may appeal the award of a Certificate of Competency (COC) from \$25,000 to \$100,000; updates the names of SBA offices involved in processing COCs; and implements the requirement that compliance with the limitations on subcontracting be considered an element of responsibility. Also, this interim rule removes language implementing Section 15(c) of the Small Business Act (15 U.S.C. 644(c)) as amended by Section 305 of Public Law 103-403, Small Business Administration Reauthorization and Amendments Act of 1994. Section 305, which authorized public and private organizations for the handicapped to participate in acquisitions set aside for small businesses, has expired.

**B. Regulatory Flexibility Act**

This interim 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 does not impose any new requirements on contractors, large or small. The Small Business Administration has certified that the revisions to 13 CFR 125 being implemented by this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subparts also 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 97-01, FAR case 96-002) 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.*

**D. Determination To Issue an Interim Rule**

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to conform the Federal Acquisition Regulation to revisions made in 13 CFR Part 125, pertaining to the Small Business Administration (SBA) procurement assistance programs. The SBA revisions became effective on March 1, 1996. However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in formulating the final rule.

**List of Subjects in 48 CFR Parts 9 and 19**

Government procurement.

Dated: August 7, 1997.

**Edward C. Loeb,**  
*Director, Federal Acquisition Policy Division.*

Therefore, 48 CFR Parts 9 and 19 are amended as set forth below:

1. The authority citation for 48 CFR Parts 9 and 19 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**

2. Section 9.103 is amended in paragraph (b) by revising the third sentence to read as follows:

**9.103 Policy.**

(b) \* \* \* If the prospective contractor is a small business concern, the contracting officer shall comply with subpart 19.6, Certificates of Competency and Determinations of Responsibility-  
\* \* \*

\* \* \* \* \*  
3. Section 9.104-3 is amended in paragraph (a) by adding a sentence at the end, and in paragraph (d) by redesignating the text as paragraph