

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Parts 39 and 52

[FAC 97-01; FAR Case 96-607; Item XVII]
RIN 9000-AG90Federal Acquisition Regulation; Year
2000 Compliance

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

ACTION: Interim rule adopted as final with changes.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to adopt as final, with changes, the interim rule published as Item XIV of Federal Acquisition Circular 90-45. The rule amends the Federal Acquisition Regulation (FAR) to increase awareness of Year 2000 procurement issues and to ensure that solicitations and contracts address Year 2000 issues. 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 96-607.

SUPPLEMENTARY INFORMATION:

A. Background

An interim rule was published on January 2, 1997 (61 FR 273). The interim rule is converted to a final rule with revisions. Revisions were made to the definition, "Year 2000 compliant", at FAR 39.002 to better convey the intent of the definition.

Twenty comments from five respondents were received during the public comment period. All comments were considered in the development of the final rule.

The final rule will provide needed coverage to ensure that information technology products to be acquired and used by Federal agencies after December 31, 1999, will be able to process date

related data into the next century. Solicitations and contracts should require Year 2000 compliant technology, or require that non-compliant information technology be upgraded to be compliant in a timely manner. The rule also recommends that agency solicitations describe existing information technology that will be used with the information technology to be acquired and identify whether the existing information technology is Year 2000 compliant. If proper date/time data is provided, the Year 2000 compliant information technology must be able to process the data accurately. If it cannot process proper date/time data accurately, its failure will not be excused because of the noncompliance of another information technology product. Agencies are expected to test for Year 2000 compliance. However, lack of testing does not excuse failure of the information technology to be Year 2000 compliant.

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 this rule merely provides internal Government guidance regarding the development of contract requirements for the acquisition of information technology.

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 39 and
52

Government procurement.

Dated: August 7, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final With
Changes

Accordingly, the interim rule amending 48 CFR Parts 39 and 52, which was published at 61 FR 273, January 2, 1997, is hereby adopted as final with the following change:

PART 39—ACQUISITION OF
INFORMATION TECHNOLOGY

1. The authority citation for 48 CFR Part 39 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 39.002 is amended by revising the definition of "Year 2000 compliant" to read as follows:

39.002 Definitions.

* * * * *

Year 2000 compliant, as used in this part, means, with respect to information technology, that the information technology accurately processes date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information technology, used in combination with the information technology being acquired, properly exchanges date/time data with it.

[FR Doc. 97-21502 Filed 8-21-97; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Part 43

[FAC 97-01; FAR Case 96-606; Item XVIII]
RIN 9000-AH44Federal Acquisition Regulation;
Modification of Existing Contracts
Under FASA and FARA

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

ACTION: Interim rule adopted as final.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to adopt as final, the interim rule published as Item VIII of Federal Acquisition Circular 90-44 on December 31, 1996. The rule amends the Federal Acquisition Regulation (FAR) to implement subsection 10002(e) of the Federal Acquisition Streamlining Act of 1994 and subsections 4402 (d) and (e) of the Clinger-Cohen Act of 1996. The rule authorizes, but does not require, contracting officers, if requested by the contractor, to modify existing

contracts without requiring consideration to incorporate changes authorized by the Acts. 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 Mr. Ralph De Stefano, Procurement Analyst, at (202) 501-1758. Please cite FAC 97-01, FAR case 96-606.

SUPPLEMENTARY INFORMATION:

A. Background

Subsection 10002(e) of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355) (FASA) and subsection 4402(d) of the Clinger-Cohen Act of 1996 (Public Law 104-106) (Clinger-Cohen) allow regulations implementing the Acts to provide for modification of an existing contract without consideration upon the request of the contractor. Subsection 10002(e) of FASA and subsection 4402(e) of Clinger-Cohen provide that, except as specifically provided in these Acts, nothing in the Acts shall be construed to require the renegotiation or modification of contracts in existence on the date of the enactment of the Acts. The rule adopts the policy of encouraging, but not requiring, appropriate modifications without consideration, upon the request of the contractor. If the contracting officer determines that modification of an existing contract is appropriate to incorporate changes authorized by these Acts, the modification should insert the current version of the applicable FAR clauses into the contract.

No comments were received in response to the FASA interim rule published in the **Federal Register** at 61 FR 18915, April 29, 1996, and the Clinger-Cohen interim rule published in the **Federal Register** at 61 FR 69297, December 31, 1996.

B. Regulatory Flexibility Act

The final rule may 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 it enables industry and the Government to gain significant benefits, including the potential reduction of contract costs, by authorizing the incorporation into existing contracts any of the Federal Acquisition Streamlining Act and/or Clinger-Cohen Act changes that will benefit the contracting parties. A Final Regulatory Flexibility Analysis (FRFA) has been prepared and will be provided to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat. The FRFA is summarized as follows:

There were no public comments received in response to the Initial Regulatory Flexibility Analysis. The rule will apply to all large and small entities that currently have a Government contract. Most likely, contractors will not request modification of contracts under \$25,000, because the usually short period of performance under these contracts will discourage modification. The number of active contracts over \$25,000 held by small entities at any point in time or the total in any one fiscal year is not readily available from the *Federal Procurement Report, Fiscal Year 1996 through Fourth Quarter*. However, in fiscal year 1996, small entities were awarded approximately 37,192 contracts over \$25,000. The number of contract modifications requested by small entities to incorporate Federal Acquisition Streamlining Act and/or the Clinger-Cohen Act changes depends on whether they determine that modifications to their specific contracts will be advantageous. The rule imposes no new reporting, recordkeeping, or other compliance requirements. This rule is the only practical alternative to implement subsection 10002(e) of the Federal Acquisition Streamlining Act and subsections 4402 (d) and (e) of the Clinger-Cohen Act.

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 43

Government procurement.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR Part 43, which was

published at 61 FR 69297, December 31, 1996, is hereby adopted as final without change.

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

Dated: August 14, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.
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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter I

Federal Acquisition Regulation; Small Entity Compliance Guide

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

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration as the Federal Acquisition Regulation (FAR) Council. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 97-01 which amend the FAR. The rules marked with an asterisk (*) are those for which a final regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Further information regarding these rules may be obtained by referring to FAC 97-01 which precedes this notice. This document may be obtained from the Internet.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, FAR Secretariat, (202) 501-4755.

LIST OF RULES IN FAC 97-01

Item	Subject	FAR case	Analyst
I	Business Process Innovation	97-006	De Stefano.
II	FASA and the Walsh-Healey Public Contracts Act	96-601	O'Neill.