

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.*  
[FR Doc. 97-22075 Filed 8-21-97; 8:45 am]

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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.

LIST OF RULES IN FAC 97-01—Continued

Item	Subject	FAR case	Analyst
III	* Irrevocable Letters of Credit and Alternatives to Miller Act Bonds	95-301	O'Neill.
IV	Automatic Data Processing Equipment Leasing Costs	96-010	Olson.
V	* Environmentally Sound Products	92-054A	De Stefano.
VI	New FAR Certifications	96-329	De Stefano.
VII	* Service Contracting	95-311	O'Neill.
VIII	ADP/Telecommunications Federal Supply Schedules	96-602	Nelson.
IX	Certificate of Competency (Interim)	96-002	Moss.
X	Economically Disadvantaged Individuals	97-008	Moss.
XI	Minority Small Business and Capital Ownership	95-028	Moss.
XII	Executive Order 12933, Nondisplacement of Qualified Workers Under Certain Contracts (Interim).	94-610	O'Neill.
XIII	Designation of Hong Kong	97-019	Linfield.
XIV	Foreign Differential Pay	96-012	Olson.
XV	Local Government Lobbying Costs	96-003	Nelson.
XVI	Independent Government Estimates—Construction	97-005	O'Neill.
XVII	Year 2000 Compliance	96-607	Nelson.
XVIII	* Modification of Existing Contracts under FASA and FARA	96-606	De Stefano.

**Item I—Business Process Innovation (FAR Case 97-006)**

This final rule amends FAR 1.102-4(e) to encourage contracting officers, in their role as members of the Government acquisition team, to take the lead in encouraging business process innovations and ensuring that business decisions are sound.

**Item II—FASA and the Walsh-Healey Public Contracts Act (FAR Case 96-601)**

The interim rule published as Item I of Federal Acquisition Circular 90-43 is converted to a final rule without change. The rule amends the FAR to eliminate the requirement that covered contractors under the Walsh-Healey Public Contracts Act must be either the manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract.

**Item III—Irrevocable Letters of Credit and Alternatives to Miller Act Bonds (FAR Case 95-301)**

The interim rule published as Item XVII of FAC 90-39 is revised and finalized. The rule amends FAR Parts 28 and 52 to provide for use of Irrevocable Letters of Credit as substitutes for corporate or individual surety on Miller Act bonds, and to provide alternatives to Miller Act payment bonds for construction contracts valued at \$25,000 to \$100,000, which are no longer subject to the Miller Act, in accordance with Section 4104(b)(1) of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355).

**Item IV—Automatic Data Processing Equipment Leasing Costs (FAR Case 96-010)**

The interim rule published as Item I of FAC 90-44 is converted to a final rule

without change. The rule amends FAR Part 31 to remove the automatic data processing equipment leasing cost principle.

**Item V—Environmentally Sound Products (FAR Case 92-054A)**

The interim rule published as Item II of FAC 90-27 is revised and finalized. The rule amends FAR Parts 1, 7, 10, 11, 13, 15, 23, 36, 42, and 52 to incorporate policies for the acquisition of environmentally preferable and energy-efficient products and services. The final rule differs from the interim rule in that it clarifies the acceptability of used, reconditioned, or remanufactured supplies, or former Government surplus property, proposed for use under a contract; revises the clause at 52.211-5 regarding acceptability of such material and limits its use in solicitations and contracts for commercial items; eliminates the provisions at 52.211-6 and 52.223-8 and the clause at 52.211-7; revises the clause at 52.223-9 to streamline reporting requirements regarding the recovered material content of EPA-designated items; and eliminates references to agency designation of items requiring minimum recovered material content.

**Item VI—New FAR Certifications (FAR Case 96-329)**

This final rule adds a new section at FAR 1.107 to reflect the provisions of Section 4301(b)(2) of the Clinger-Cohen Act of 1996 (Pub. L. 104-106). Section 4301(b)(2) prohibits the inclusion of a new certification requirement in the FAR for contractors or offerors unless the certification requirement is specifically imposed by statute, or unless a written justification for such certification requirement is provided to the Administrator for Federal

Procurement Policy by the FAR Council and the Administrator approves in writing the inclusion of the certification.

**Item VII—Service Contracting (FAR Case 95-311)**

This final rule amends FAR Parts 7, 16, 37, 42, 46, and 52 to implement Office of Federal Procurement Policy (OFPP) Policy Letter 91-2, Service Contracting. The OFPP policy letter prescribes policies and procedures for use of performance-based contracting methods.

**Item VIII—ADP/Telecommunications Federal Supply Schedules (FAR Case 96-602)**

This final rule amends FAR Subpart 8.4 to clarify procedures for placing orders and obtaining price reductions under GSA Federal supply schedule contracts, and to add information regarding the "GSA Advantage!" on-line shopping service. Related amendments are made at FAR 13.202(a)(4) and 51.103.

**Item IX—Certificate of Competency (FAR Case 96-002)**

This interim rule amends FAR Parts 9 and 19 to implement revisions made to the Small Business Administration's (SBA) procurement assistance programs contained in 13 CFR Part 125. The rule notably (1) increases the threshold over which contracting officers may appeal the award of a Certificate of Competency (COC) from \$25,000 to \$100,000; (2) updates the names of SBA offices involved in processing COC's; and (3) implements the requirement that compliance with the limitations on subcontracting be considered an element of responsibility. In addition, 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 Pub. L. 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.

**Item X—Economically Disadvantaged Individuals (FAR Case 97-008)**

This final rule amends the definition of "small disadvantaged business concern" at FAR 19.001 to update the categories of individuals considered to be socially and economically disadvantaged. In accordance with the Small Business Administration's regulations at 13 CFR 124.105, the Maldives Islands has been added to the category of "Subcontinent Asian Americans"; and Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, and Nauru have been added to the category of "Asian Pacific Americans."

**Item XI—Minority Small Business and Capital Ownership (FAR Case 95-028)**

The interim rule published as Item VII of FAC 90-43 is revised and finalized. The rule amends the FAR to reflect changes to the Small Business Administration's (SBA) regulations at 13 CFR Parts 121 and 124, which address the Minority Small Business and Capital Ownership Development Program. The rule clarifies eligibility and procedural requirements for procurements under the 8(a) program. The final rule differs from the interim rule in that it amends FAR 19.804-2 to reflect changes that the SBA is making in its processing of 8(a) requirements.

**Item XII—Executive Order 12933, Nondisplacement of Qualified Workers Under Certain Contracts (FAR Case 94-610)**

This interim rule adds a new FAR Subpart 22.12 implementing Executive Order 12933, Nondisplacement of Qualified Workers Under Certain Contracts, of October 20, 1994. The Executive Order and the interim rule require that workers on certain building service contracts be given the right of first refusal for employment with the successor contractor, if they would otherwise lose their jobs as a result of the award of the successor contract.

**Item XIII—Designation of Hong Kong (FAR Case 97-019)**

This final rule amends FAR 25.401 to add Hong Kong as a designated country under the Trade Agreements Act of 1979, as directed by the United States Trade Representative.

**Item XIV—Foreign Differential Pay (FAR Case 96-012)**

The interim rule published as Item VI of FAC 90-44 is converted to a final rule without change. The rule amends FAR 31.205-6 to remove the prohibition on the calculation of foreign differential pay based directly on an employee's specific increase in income taxes resulting from assignment overseas.

**Item XV—Local Government Lobbying Costs (FAR Case 96-003)**

The interim rule published as Item XI of FAC 90-43 is converted to a final rule without change. The rule amends FAR 31.205-22 to make allowable the costs of any lobbying activities to influence local legislation in order to directly reduce contract costs, or to avoid material impairment of the contractor's authority to perform the contract.

**Item XVI—Independent Government Estimates—Construction (FAR Case 97-005)**

This final rule amends FAR 36.203(a) and 36.605(a) to raise the threshold for a mandatory independent Government estimate of construction costs and architect-engineer costs from \$25,000 to \$100,000.

**Item XVII—Year 2000 Compliance (FAR Case 96-607)**

The interim rule published as Item XIV of FAC 90-45 is revised and finalized. The rule provides guidance regarding the acquisition of information technology that is Year 2000 compliant. The final rule differs from the interim rule in that it makes clarifying revisions to the definition of "Year 2000 compliant" at FAR 39.002.

**Item XVIII—Modification of Existing Contracts Under FASA and FARA (FAR Case 96-606)**

The interim rule published as Item VIII of FAC 90-44 is converted to a final rule without change. The rule amends FAR 43.102 to implement subsection 10002(e) of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355) and subsections 4402 (d) and (e) of the Clinger-Cohen Act of 1996 (Pub. L. 104-106). 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 Act.

Dated: August 14, 1997.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*  
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