

after January 1, 1999, regardless of the date of contract award.

**Comment Date:** Comments should be submitted to the FAR Secretariat at the address shown below on or before May 3, 1999 to be considered in the formulation of a final rule.

**ADDRESSES:** Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405. E-Mail comments submitted over the Internet should be addressed to: [farcase.98-301@gsa.gov](mailto:farcase.98-301@gsa.gov)

Please cite FAC 97-11, FAR case 98-301 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. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 97-11, FAR case 98-301.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Section 808 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85) revised 10 U.S.C. 2324 and 41 U.S.C. 256 to limit allowable compensation costs for senior executives of contractors for a fiscal year to the benchmark compensation amount determined applicable for each fiscal year by the Administrator for Federal Procurement Policy. Section 808 defined "senior executive" as—

(A) The chief executive officer of the contractor or any individual acting in a similar capacity for the contractor;

(B) The four most highly compensated employees in management positions of the contractor other than the chief executive officer; and

(C) In the case of a contractor that has components which report directly to the contractor's headquarters, the five most highly compensated employees in management positions at each such components."

Section 804 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261) revises the definition of "senior executive" at 10 U.S.C. 2324(1)(5) and 41 U.S.C. 256(m)(2). Section 804 defines "senior executives" as "the five most highly compensated employees in management positions at each home office and each segment of the contractor" whether or not the home office or segment reports directly to the contractor's headquarters.

This interim rule revises the definition of "senior executive" at FAR 31.205-6(p) to implement Section 804 of Pub. L. 105-261. This change applies to costs of compensation incurred after January 1, 1999, regardless of the date of contract award.

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.

**B. Regulatory Flexibility Act**

The 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 most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule. 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. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR Case 98-301), in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of OMB 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 because this rule implements Section 804 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-621) and applies to costs of compensation incurred after January 1, 1999, regardless of the date of contract award. However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

**List of Subjects in 48 CFR Part 31:**

Government procurement.

Dated: February 25, 1999.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, 48 CFR Part 31 is amended as set forth below:

**PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES**

1. The authority citation for 48 CFR Part 31 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 31.205-6 is amended in paragraph (p) introductory text by adding a sentence after the heading; by redesignating paragraphs (p)(2)(ii)(A) through (p)(2)(ii)(C) as (p)(2)(ii)(A)(1) through (p)(2)(ii)(A)(3), respectively; and by adding new paragraphs (p)(2)(ii)(A) introductory text and (p)(2)(ii)(B) to read as follows:

**31.205-6 Compensation for personal services.**

\* \* \* \* \*

(p) \* \* \* (Note that pursuant to Section 804 of Pub. L. 105-261, the definition of "senior executive" in (p)(2)(ii) has been changed for compensation costs incurred after January 1, 1999.)

\* \* \* \* \*

(2) \* \* \*

(ii) \* \* \*

(A) Prior to January 2, 1999—

\* \* \* \* \*

(B) Effective January 2, 1999, the five most highly compensated employees in management positions at each home office and each segment of the contractor, whether or not the home office or segment reports directly to the contractor's headquarters.

\* \* \* \* \*

[FR Doc. 99-5210 Filed 3-3-99; 8:45 am]

BILLING CODE 6820-EP-P

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 1, 25, 52, and 53**

[FAC 97-11; Item IX]

**Federal Acquisition Regulation; Technical Amendments**

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

**ACTION:** Technical amendments.

**SUMMARY:** This document makes amendments to the Federal Acquisition Regulation in order to update references and make editorial changes.

**EFFECTIVE DATE:** March 4, 1999.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755.

**List of Subjects in 48 CFR Parts 1, 25, 52, and 53**

Government procurement.

Dated: February 25, 1999.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, 48 CFR Parts 1, 25, 52, and 53 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 25, 52, and 53 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 1—FEDERAL ACQUISITION REGULATIONS SYSTEM**

2. In section 1.106 the table following the introductory paragraph is amended by revising the entry for "SF 1418" to read as follows:

**1.106 OMB approval under the Paperwork Reduction Act.**

FAR segment	OMB control No.
* * * * *	
SF 1418 .....	9000-0045
* * * * *	

**PART 25—FOREIGN ACQUISITION**

3. Section 25.402 is amended in paragraph (b) by revising the last two sentences to read as follows:

**25.402 Policy.**

\* \* \* \* \*

(b) \* \* \* This determination is effective until September 30, 1999, except that, for products of Panama, this determination is effective until September 30, 2000. These dates may be extended by the U.S. Trade Representative by means of a notice in the **Federal Register**.

\* \* \* \* \*

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

**52.219-8 [Amended]**

4. Section 52.219-8 is amended by revising the title of the clause to read "Utilization of Small Business Concerns".

**PART 53—FORMS**

5. Section 53.228 is amended by revising paragraph (n) to read as follows:

**53.228 Bonds and insurance.**

\* \* \* \* \*

(n) *SF 1418 (Rev. 2/99) Performance Bond For Other Than Construction Contracts.* (See 28.106-1(n).) SF 1418 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

\* \* \* \* \*

6. Section 53.301-1418 is revised to read as follows:

**53.301-1418 Performance bond for other than construction contracts.**

BILLING CODE 6820-EP-P

<b>PERFORMANCE BOND FOR OTHER THAN CONSTRUCTION CONTRACTS</b> <i>(See instructions on reverse)</i>	DATE BOND EXECUTED <i>(Must be same or later than date of contract)</i>	OMB No.: 9000-0045
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Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405

PRINCIPAL <i>(Legal name and business address)</i>	TYPE OF ORGANIZATION <i>("X" one)</i> <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> JOINT VENTURE <input type="checkbox"/> CORPORATION STATE OF INCORPORATION
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SURETY(IES) <i>(Name(s) and business address(es))</i>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th colspan="4" style="text-align: center;">PENAL SUM OF BOND</th> </tr> <tr> <td style="width:25%;">MILLION(S)</td> <td style="width:25%;">THOUSAND(S)</td> <td style="width:25%;">HUNDRED(S)</td> <td style="width:25%;">CENTS</td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td colspan="2">CONTRACT DATE</td> <td colspan="2">CONTRACT NO.</td> </tr> <tr> <td colspan="2"> </td> <td colspan="2"> </td> </tr> <tr> <td colspan="2">OPTION DATE</td> <td colspan="2">OPTION NO.</td> </tr> <tr> <td colspan="2"> </td> <td colspan="2"> </td> </tr> </table>	PENAL SUM OF BOND				MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS					CONTRACT DATE		CONTRACT NO.						OPTION DATE		OPTION NO.					
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MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS																										
CONTRACT DATE		CONTRACT NO.																											
OPTION DATE		OPTION NO.																											

**OBLIGATION:**  
 We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

**CONDITIONS:**  
 The Principal has entered into the contract identified above.

**THEREFORE:**  
 The above obligation is void if the Principal: (1) Performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of the contract during either the base term or an optional term of the contract and any extensions thereof that are granted by the Government, with or without notice to the Surety(ies), and during the life of any guaranty required under the contract, and (2) performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of the contract that hereafter are made. Notice of those modifications to the Surety(ies) is waived.

The guaranty for a base term covers the initial period of performance of the contract and any extensions thereof excluding any options. The guaranty for an option term covers the period of performance for the option being exercised and any extensions thereof.

The failure of a surety to renew a bond for any option term shall not result in a default of any bond previously furnished covering any base or option term.

**WITNESS:**  
 The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date.

PRINCIPAL			
SIGNATURE(S)	1. _____	2. _____	Corporate Seal
	(Seal)	(Seal)	
NAME(S) & TITLE(S) <i>(Typed)</i>	1. _____	2. _____	

INDIVIDUAL SURETY(IES)			
SIGNATURE(S)	1. _____	2. _____	Corporate Seal
	(Seal)	(Seal)	
NAME(S) <i>(Typed)</i>	1. _____	2. _____	

CORPORATE SURETY(IES)			
<b>SURETY A</b>	NAME & ADDRESS	STATE OF INC.	LIABILITY LIMIT \$
	SIGNATURE(S)	1. _____	2. _____
	NAME(S) & TITLE(S) <i>(Typed)</i>	1. _____	2. _____

SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		

BOND PREMIUM	▶	RATE PER THOUSAND (\$)	TOTAL (\$)
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INSTRUCTIONS

- This form is authorized for use in connection with Government contracts. Any deviation from this form will require the written approval of the Administrator of General Services.
- Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.
- (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.
- (b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning their financial capability.
- Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.
- Type the name and title of each person signing this bond in the space provided.
- Unless otherwise specified, the bond shall be submitted to the contracting office that awarded the contract.