

special account with the \_\_\_\_\_ [insert the name of the financial institution]. None of the funds in the special account shall be mingled with other funds of the Contractor. Withdrawals from the special account may be made only by check of the Contractor countersigned by the Contracting Officer or a Government countersigning agent designated in writing by the Contracting Officer.

\* \* \* \* \*

(f) \* \* \*

(3) If interest is required under the contract, the Contracting Officer shall determine a daily interest rate based on the higher of (i) the published prime rate of the financial institution (depository) in which the special account is established or (ii) the rate established by the Secretary of the Treasury under Pub. L. 92-41 (50 U.S.C. App. 1215(b)(2)). The Contracting Officer shall revise the daily interest rate during the contract period in keeping with any changes in the cited interest rates.

\* \* \* \* \*

(g) *Financial institution agreement.* Before an advance payment is made under this contract, the Contractor shall transmit to the administering office, in the form prescribed by the administering office, an agreement in triplicate from the financial institution in which the special account is established, clearly setting forth the special character of the account and the responsibilities of the financial institution under the account. The Contractor shall select a financial institution that is a member bank of the Federal Reserve System, an "insured" bank within the meaning of the Federal Deposit Insurance Corporation Act (12 U.S.C. 1811), or a credit union insured by the National Credit Union Administration.

\* \* \* \* \*

(p) \* \* \*

(11) Deposit any of its funds except in a bank or trust company insured by the Federal Deposit Insurance Corporation or a credit union insured by the National Credit Union Administration;

\* \* \* \* \*

Advance Payments Without Special Account (Mar 2001)

\* \* \* \* \*

(m) \* \* \*

(11) Deposit any of its funds except in a bank or trust company insured by the Federal Deposit Insurance Corporation or a credit union insured by the National Credit Union Administration;

\* \* \* \* \*

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 52

[FAC 97-22; FAR Case 1999-021; Item IV]

RIN 9000-AJ05

#### Federal Acquisition Regulation; Part 12 and Assignment of Claims

**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 (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to add, in the contract clause addressing terms and conditions for commercial items, the prohibition for a contractor to assign its rights to receive payment in accordance with the Assignment of Claims Act (31 U.S.C. 3727) when a third party makes payment under the contract (e.g., use of the Governmentwide commercial purchase card). This prohibition is currently in the contract clause addressing terms and conditions required to implement statutes or Executive orders for commercial items.

**DATES:** *Effective Date:* March 12, 2001.

**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 97-22, FAR case 1999-021.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Paragraph (e) of the clause at FAR 52.232-36, Payment by Third Party, states that a contractor may not assign its rights to receive payment under the assignment of claims terms of the contract if payment is made by a third party (e.g., use of the Governmentwide commercial purchase card). This clause is included in paragraph (b)(25) of the clause at FAR 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

Paragraph (b) of the clause at FAR 52.212-4, Contract Terms and Conditions—Commercial Items, states

that a contractor may assign its rights to receive payments due as a result of performance of the contract, but paragraph (b) does not include the prohibition against the assignment of claims if payment is made by a third party (e.g., use of the Governmentwide commercial purchase card). FAR 12.302(b) further states that the contracting officer shall not tailor FAR 52.212-4(b).

The purpose of this rule is to correct the inconsistency between FAR 52.212-4(b) and FAR 52.212-5(b)(25). The rule revises FAR 52.212-4(b) to add the prohibition against the assignment of claims when payment is made by a third party.

This is not a significant regulatory action, and therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

##### 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. However, the Councils will consider comments from small entities concerning the affected FAR part 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97-22, FAR case 1999-021), 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 the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

##### List of Subjects in 48 CFR part 52

Government procurement.

Dated: December 22, 2000.

Al Matera,

Acting Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 52 as set forth below:

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

1. The authority citation for 48 CFR part 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).

2. Amend section 52.212-4 by revising the date of the clause and paragraph (b) to read as follows:

**52.212-4 Contract Terms and Conditions—Commercial Items.**

\* \* \* \* \*

Contract Terms and Conditions—Commercial Items (Mar 2001)

\* \* \* \* \*

(b) *Assignment.* The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes payment (e.g., use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

\* \* \* \* \*

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**DEPARTMENT OF DEFENSE****GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Part 52**

[FAC 97-22; FAR Case 1996-023; Item V]

RIN 9000-AJ06

**Federal Acquisition Regulation; Clause Flowdown—Commercial Items**

**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 (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify requirements for the inclusion of FAR clauses in subcontracts for commercial items awarded under contracts for other than commercial items.

**DATES:** *Effective Date:* March 12, 2001.

**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 97-22, FAR case 1996-023.

**SUPPLEMENTARY INFORMATION:****A. Background**

This final rule amends the clause at FAR 52.244-6, Subcontracts for Commercial Items, to revise the list of

clauses the contractor must flow down to subcontractors and to clarify that contractors may flow down a minimal number of other clauses.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 62 FR 49903, September 23, 1997. Four sources submitted comments in response to the proposed rule. The Councils considered all comments in the development of the final rule.

This is not a significant regulatory action, and therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**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 clarifies existing requirements regarding the inclusion of clauses in subcontracts for commercial items awarded under contracts for other than commercial items.

**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 the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 52**

Government procurement.

Dated: December 22, 2000.

**Al Matera,**

*Acting Director, Federal Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA amend 48 CFR part 52 as set forth below:

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

1. The authority citation for 48 CFR part 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).

**52.213-4 [Amended]**

2. Amend section 52.213-4 by removing from the clause heading "(July 2000)" and adding "(Mar 2001)" in its place; and be removing "(Oct 1998)" from paragraph (a)(2)(vi) of the clause and adding "Mar 2001" in its place.

3. Amend section 52.244-6 by revising the section heading, the introductory text of paragraph (a), and the clause heading; removing "as used in this clause," from the definitions "Commercial item" and "Subcontract"; and by revising paragraph (c) to read as follows:

**52.244-6 Subcontracts for Commercial Items.**

\* \* \* \* \*

Subcontracts for Commercial Items (Mar 2001)

(a) Definitions. As used in this clause—

\* \* \* \* \*

(c)(1) The following clauses shall be flowed down to subcontracts for commercial items:

(i) 52.219-8, Utilization of Small Business Concerns (OCT 2000) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222-26, Equal Opportunity (FEB 1999) (E.O. 11246).

(iii) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (APR 1998) (38 U.S.C. 4212(a)).

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (JUN 1998) (29 U.S.C. 793).

(v) 52.247-64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (JUN 2000) (46 U.S.C. Appx 1241) (flowdown not required for subcontracts awarded beginning May 1, 1996).

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

\* \* \* \* \*

[FR Doc. 01-15 Filed 1-9-01; 8:45 am]

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**DEPARTMENT OF DEFENSE****GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 1, 19, 22, 42, 52, and 53**

[FAC 97-22; Item VI]

**Federal Acquisition Regulation; Technical Amendments**

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

**ACTION:** Final rule.

**SUMMARY:** This document makes amendments to the Federal Acquisition