

currency. In unusual circumstances, the contracting officer may permit submission of offers in other than a specified currency.

(b) To ensure a fair evaluation of offers, solicitations should generally require all offers to be priced in the same currency. However, if submission of offers in other than a specified currency is permitted, the contracting officer shall convert the offered prices to U.S. currency for evaluation purposes. The contracting officer shall use the current market exchange rate from a commonly used source in effect on the

(1) Date of bid opening for sealed bid acquisitions,

(2) Closing date for negotiated acquisitions when award is based on initial offers, or

(3) Due date for receipt of best and final offers, for other negotiated acquisitions.

(c) If contracts are priced in foreign currency, agencies must ensure that adequate funds are available to cover currency fluctuations in order to avoid a violation of the Anti-Deficiency Act.

4. Section 25.502 is added to read as follows:

25.502 Solicitation provision.

The contracting officer shall insert the provision at 52.225-4, Evaluation of Foreign Currency Offers, in solicitations if the use of other than a specified currency is permitted. The contracting officer shall insert the source of the rate to be used in the evaluation of offers.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 52.225-4 is added to read as follows:

52.225-4 Evaluation of Foreign Currency Offers.

As prescribed in 25.502, insert the following provision:

EVALUATION OF FOREIGN CURRENCY OFFERS (AUG 1996)

If offers are received in more than one currency, offers shall be evaluated by converting the foreign currency to United States currency using (*insert source of rate*) in effect on the (a) date of bid opening for sealed bid acquisitions, (b) closing date for negotiated acquisitions when award is based on initial offers, or (c) due date for receipt of best and final offers, for other acquisitions.

(End of provision)

[FR Doc. 96-14531 Filed 6-19-96; 8:45 am]

BILLING CODE 6820-EP-P

48 CFR Parts 28 and 52

[FAC 90-39, FAR Case 95-301, Item XVII]

RIN 9000-AG99

Federal Acquisition Regulation; Irrevocable Letters of Credit and Alternatives to Miller Act Bonds

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

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule to amend the Federal Acquisition Regulation (FAR) to implement OFPP Policy Letter 91-4 (previously considered under FAR case 91-113, Irrevocable Letters of Credit) and provide alternatives to Miller Act Bonds, as required by Section 4104(b) of the Federal Acquisition Streamlining Act of 1994 (FASA) (Pub. L. 103-355). 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: June 20, 1996.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before August 19, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRs), 18th & F Streets, NW, Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405.

Please cite FAC 90-39, FAR case 95-301 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Jack O'Neill at (202) 501-3856 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-39, FAR case 95-301.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends FAR Parts 28 and 52 to provide for use of Irrevocable Letters of Credit as an alternative to corporate or individual sureties as security for Miller Act bonds, and provides alternatives to Miller Act 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 FASA.

B. Regulatory Flexibility Act

The interim 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 the rule provides alternatives to Miller Act bonds for construction contracts valued at \$25,000 to \$100,000. In addition, it offers Irrevocable Letters of Credit as an alternative to surety on Miller Act bonds for construction contracts over \$100,000. These alternatives may be helpful to both large and small construction contractors. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. 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 cite 5 U.S.C. 601, *et seq.* (FAR Case 95-301), 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 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 compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because Section 4104(b) of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355), regarding Irrevocable Letters of Credit and alternatives to Miller Act Bonds, requires immediate implementation. 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 Parts 28 and 52

Government procurement.

Dated: June 4, 1996.
Edward C. Loeb,
Director, Federal Acquisition Policy Division.

Therefore, 48 CFR parts 28 and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 28 and 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).

PART 28—BONDS AND INSURANCE

2. Section 28.001 is amended in the definition of "Bond" by revising the first sentence; and adding, in alphabetical order, the definition "Irrevocable letter of credit" to read as follows:

28.001 Definitions.

* * * * *

Bond means a written instrument executed by a bidder or contractor (the "principal"), and a second party ("the surety" or "sureties") (except as provided in 28.204), to assure fulfillment of the principal's obligations to a third party (the "obligee" or "Government"), identified in the bond.

* * * * *

Irrevocable letter of credit (ILC) means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money on demand to the Government (the beneficiary) until the expiration date of the letter. The letter of credit cannot be revoked or conditioned.

* * * * *

28.102 Performance and payment bonds and alternative payment protections for construction contracts.

3. The heading at section 28.102 is revised as set forth above.

4. Section 28.102-1 is amended in paragraph (a) introductory text by revising "\$25,000" to read "\$100,000"; redesignating paragraph (b) as (c) and adding after the word "bonds" the phrase "or alternative payment protection"; and adding (b)(1) and (b)(2). The revised text reads as follows:

28.102-1 General.

* * * * *

(b)(1) Pursuant to Section 4104(b)(2) of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355), for construction contracts greater than \$25,000, but not greater than \$100,000, the contracting officer shall select two or more of the following payment protections, giving particular consideration to inclusion of an irrevocable letter of credit as one of the selected alternatives:

- (i) A payment bond.
- (ii) An irrevocable letter of credit (ILC).

(iii) *A tripartite escrow agreement.* The prime contractor establishes an escrow account in a federally insured financial institution and enters into a tripartite escrow agreement with the financial institution, as escrow agent, and all of the suppliers of labor and material. The escrow agreement shall establish the terms of payment under the contract and of resolution of disputes among the parties. The Government makes payments to the contractor's escrow account, and the escrow agent distributes the payments in accordance with the agreement, or triggers the disputes resolution procedures if required.

(iv) *Certificates of deposit.* The contractor deposits certificates of deposit from a federally insured financial institution with the contracting officer, in an acceptable form, executable by the contracting officer.

(v) A deposit of the types of security listed in 28.204-1 and 28.204-2.

(2) The contractor shall submit to the Government one of the payment protections selected by the contracting officer.

* * * * *

5. Section 28.102-2 is amended by—
(a) Revising the heading of paragraph (b) and (b)(1) introductory text;

(b) In the last sentence of paragraph (b)(2) by removing "subparagraph (1) immediately above" and inserting "paragraph (b)(1) of this subsection" in its place;

(c) At the end of paragraph (b)(3) by removing the period and inserting ", or to furnish additional alternative payment protection." in its place;

(d) In paragraph (c)(1) and the first sentence of (c)(2) by inserting after the word "bonds" the phrase "or alternative payment protection";

(e) In the second sentence of paragraph (c)(2) by removing the word "above" and inserting "of this subsection" in its place;

(f) Adding paragraph (d). The revised text reads as follows:

28.102-2 Amount required.

* * * * *

(b) *Payment bonds or alternative payment protection.* (1) The penal amount of payment bonds or alternative payment protection shall equal—

* * * * *

(d) *Reducing amounts.* The contracting officer has the discretion to reduce the amount of security to support a bond, subject to the conditions of 28.203-5(c) or 28.204(b).

6. Section 28.102-3 is amended by revising the section heading; redesignating paragraphs (a), (b) and (c) as (a)(1), (a)(2) and (a)(3), respectively; redesignating the undesignated introductory paragraph as paragraph (a); and adding paragraph (b) to read as follows:

28.102-3 Solicitation requirements and contract clause.

* * * * *

(b) Insert the clause at 52.228-13, Alternative Payment Protections, in solicitations and contracts for construction, when the estimated or actual value exceeds \$25,000 but does not exceed \$100,000. Complete the clause by specifying the payment protection or protections selected (see 28.102-1(b)(1)), the penal amount required, and the deadline for submission.

7. Section 28.106-3 is amended by revising the section heading and adding paragraph (c) to read as follows:

28.106-3 Additional bond or security.

* * * * *

(c) When an ILC is used as an alternative to corporate or individual sureties as security for a performance or payment bond and the contract performance period is extended, the contracting officer shall require the contractor to provide an ILC with an appropriately extended maturity that meets the requirements of 28.204-3(f).

8. Section 28.106-5 is amended by redesignating paragraph (b) as (c); and adding a new paragraph (b) to read as follows:

§ 28.106-5 Consent of surety.

* * * * *

(b) When a contract for which performance or payment is secured by any of the types of security listed in 28.204 is modified as described in paragraph (a) of this subsection, no consent of surety is required.

* * * * *

9. Section 28.106-8 is added to read as follows:

28.106-8 Payment to subcontractors or suppliers.

The contracting officer will only authorize payment from an ILC (or any other cash equivalent security) upon a judicial determination of the rights of the parties, a signed notarized statement by the contractor that the payment is due and owed, or a signed agreement between the parties as to amount due and owed.

10. Section 28.203-5 is amended by redesignating paragraph (a)(2) as (a)(3) and revising the heading; adding a new

paragraph (a)(2); and in the second sentence of paragraph (c) by removing "and (2)" and inserting in its place "through (3)". The revised text reads as follows:

28.203-5 Release of lien.

* * * * *

(a) * * *

(2) *Contracts subject to alternative payment protection (28.102-1(b)(1)).* The security interest shall be maintained for the full contract performance period plus one year.

(3) *Other contracts not subject to the Miller Act.* * * *

* * * * *

11. Section 28.204 is revised to read as follows:

28.204 Alternatives in lieu of corporate or individual sureties.

(a) Any person required to furnish a bond to the Government may furnish any of the types of security listed in 28.204-1 through 28.204-3 instead of a corporate or individual surety for the bond. When any of those types of security are deposited, a statement shall be incorporated in the bond form pledging the security. The contractor shall execute the bond forms as the principal. Agencies shall establish safeguards to protect against loss of the security and shall return the security or its equivalent to the contractor when the bond obligation has ceased.

(b) Upon written request by any contractor securing a performance or payment bond by any of the types of security listed in 28.204-1 through 28.204-3, the contracting officer may release a portion of the security only when the conditions allowing the partial release of lien in 28.203-5(c) are met. The contractor shall, as a condition of the partial release, furnish an affidavit agreeing that the release of such security does not relieve the contractor of its obligations under the bond(s).

(c) The contractor may satisfy a requirement for bond security by furnishing a combination of the types of security listed in 28.204-1 through 28.204-3 or a combination of bonds supported by these types of security and additional surety bonds under 28.202 or 28.203. During the period for which a bond supported by security is required, the contractor may substitute one type of security listed in 28.204-1 through 28.204-3 for another, or may substitute, in whole or combination, additional surety bonds under 28.202 or 28.203.

12. Sections 28.204-3 and 28.204-4 are added to read as follows:

28.204-3 Irrevocable letter of credit (ILC).

(a) Any person required to furnish a bond has the option to furnish a bond secured by an ILC in an amount equal to the penal sum required to be secured (see 28.204). A separate ILC is required for each bond.

(b) The ILC shall be irrevocable, unconditional, expire only as provided in paragraph (f) of this subsection, and be issued by an acceptable federally insured financial institution as provided in paragraph (g) of this subsection. ILCs over \$5 million must be confirmed by another acceptable financial institution that had letter of credit business of at least \$25 million in the past year.

(c) To draw on the ILC, the contracting officer shall use the sight draft set forth in the clause at 52.228-14 and present it with the ILC to the issuing financial institution or the confirming financial institution (if any).

(d) If the contractor does not furnish an acceptable replacement ILC, or other acceptable substitute, at least 30 days before an ILC's scheduled expiration, the contracting officer shall immediately draw on the ILC.

(e) If, after the period of performance of a contract where ILCs are used to support payment bonds, there are outstanding claims against the payment bond, the contracting officer shall draw on the ILC prior to the expiration date of the ILC to cover these claims.

(f) Expiration dates shall be established as follows:

(1) If used as a bid guarantee, the ILC should expire no earlier than 60 days after the close of the bid acceptance period.

(2) If used as an alternative to corporate or individual sureties as security for a performance or payment bond, the offeror/contractor may submit an ILC to cover the entire period of performance or an ILC with an initial expiration date which is a minimum period of one year from the date of issuance, with a provision which states that the ILC is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the period of performance is completed. The final expiration date shall be:

(i) For contracts subject to the Miller Act, the later of—

(A) One year following the expected date of final payment;

(B) For performance bonds only, until completion of any warranty period; or

(C) For payment bonds only, until resolution of all claims filed against the payment bond during the one-year period following final payment.

(ii) For contracts not subject to the Miller Act, the later of—

(A) 90 days following final payment; or

(B) Until completion of any warranty period for performance bonds only.

(g) The ILC shall be issued or confirmed by a federally insured financial institution rated investment grade or higher.

(1) The offeror/contractor shall provide the contracting officer a credit rating that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC.

(2) If the contracting officer learns that a financial institution's rating has dropped below the required level, the contracting officer shall give the contractor 30 days to substitute an acceptable ILC or shall draw on the ILC using the sight draft in paragraph (g) of the clause at 52.228-14.

(h) Additional information on credit rating services and investment grade ratings, and a copy of the Uniform Customs and Practice (UCP) for Documentary Credits, 1983 Revision, International Chamber of Commerce Publication No. 400, is contained within the Office of Federal Procurement Policy Pamphlet No. 7, Use of Irrevocable Letters of Credit. This pamphlet may be obtained by calling the Office of Management and Budget's publications office at (202) 395-7332.

28.204-4 Contract clause.

Insert the clause at 52.228-14, Irrevocable Letter of Credit, in solicitations and contracts for services, supplies, or construction, when a bid guarantee, or performance bonds, or performance and payment bonds are required.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

13. Section 52.228-2 is amended by revising the introductory text, the date in the clause heading, and paragraph (a) of the clause; in paragraph (b) by removing "or"; at the end of paragraph (c) by removing the period and replacing it with "; or"; and adding paragraph (d) to read as follows:

52.228-2 Additional Bond Security.

As prescribed in 28.106-4, insert the following clause:

ADDITIONAL BOND SECURITY (JUN 1996)

* * * * *

(a) Any surety upon any bond, or issuing financial institution for other security, furnished with this contract becomes unacceptable to the Government;

* * * * *

(d) The contract performance period is extended and an irrevocable letter of credit (ILC) is used as security. If the Contractor

does not furnish an acceptable extension or replacement ILC, or other acceptable substitute, at least 30 days before an ILC's scheduled expiration, the Contracting Officer has the right to immediately draw on the ILC. (End of clause)

14. Sections 52.228-13 and 52.228-14 are added to read as follows:

52.228-13 Alternative Payment Protections.

As prescribed in 28.102-3(b), insert the following clause:

ALTERNATIVE PAYMENT PROTECTIONS (JUN 1996)

(a) The Contractor shall submit one of the following payment protections:

(b) The penal sum of the payment protection shall be in the amount of \$ _____.

(c) The submission of the payment protection is required by _____.

(d) The payment protection shall provide protection for the full contract performance period plus a one-year period.

(e) Except for escrow agreements and payment bonds, which provide their own protection procedures, the Contracting Officer is authorized to access funds under the payment protection when it has been alleged in writing by a supplier of labor or material that a nonpayment has occurred, and to withhold such funds pending resolution by administrative or judicial proceedings or mutual agreement of the parties.

(f) When a tripartite escrow agreement is used, the Contractor shall utilize only suppliers of labor and material who signed the escrow agreement.

(End of clause)

52.228-14 Irrevocable Letter of Credit.

As prescribed in 28.204-4, insert the following clause:

IRREVOCABLE LETTER OF CREDIT (JUN 1996)

(a) *Irrevocable letter of credit* (ILC), as used in this clause, means a written commitment by a federally insured financial institution to pay a stated amount of money on demand to the Government (the beneficiary), until the expiration date of the letter. Neither the financial institution nor the offeror/ Contractor can revoke or condition the letter of credit.

(b) If the offeror intends to use an ILC in lieu of a bid bond, or to support other types of bonds such as performance and payment bonds, the letter of credit and letter of confirmation formats in paragraphs (e) and (f) of this clause shall be used.

(c) The letter of credit shall be irrevocable, unconditional, issued by an acceptable federally insured financial institution as provided in paragraph (d) of this clause, and—

(1) If used as a bid guarantee, the ILC shall expire no earlier than 60 days after the close of the bid acceptance period;

(2) If used to secure a performance or payment bond, the offeror/Contractor may submit an ILC to cover the entire period of performance or may submit an ILC with an initial expiration date which is a minimum period of one year from the date of issuance, with a provision which states that the ILC is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the period of performance is completed. The final expiration date shall be:

(i) For contracts subject to the Miller Act, the later of—

(A) One year following the expected date of final payment;

(B) For performance bonds only, until completion of any warranty period; or

(C) For payment bonds only, until resolution of all claims filed against the payment bond during the one-year period following final payment.

(ii) For contracts not subject to the Miller Act, the later of—

(A) 90 days following final payment; or

(B) Until completion of any warranty period for performance bonds only.

(d) The ILC shall be issued or confirmed by a federally insured financial institution rated investment grade or higher. The offeror/ Contractor shall provide the Contracting Officer a credit rating that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC. ILCs over \$5 million must be confirmed by another acceptable financial institution that had letter of credit business of at least \$25 million in the past year.

(e) The following format shall be used by the issuing financial institution to create an ILC:

[Issuing Financial Institution's Letterhead or Name and Address]

Issue Date _____

Irrevocable Letter of Credit No. _____

Account party's name _____

Account party's address _____

For Solicitation No. _____

(For reference only)

TO: [U.S. Government agency]

[U.S. Government agency's address]

1. We hereby establish this irrevocable, unconditional, and transferable Letter of Credit in your favor for one or more drawings up to United States \$_____. This Letter of Credit is payable at [issuing financial institution's and, if any, confirming financial institution's] office at [issuing financial institution's address and, if any, confirming financial institution's address] and expires with our close of business on _____, or any automatically extended expiration date.

2. We hereby undertake to honor your or transferee's sight draft(s) drawn on issuing and, if any, confirming financial institution, for all or any part of this credit that is presented at the office specified in paragraph 1 of this Letter of Credit on or before the expiration date or any automatically extended expiration date.

3. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are

renumbered.] It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for one year from the expiration date hereof, or any future expiration date, unless at least 60 days prior to any expiration date, we notify you or the transferee by registered mail, or other receipted means of delivery, that we elect not to consider this Letter of Credit renewed for any such additional period. At the time we notify you, we also agree to notify the account party (and confirming financial institution, if any) by the same means of delivery.

4. This Letter of Credit is transferable. Transfers and assignments of proceeds are to be effected without charge to either the beneficiary or the transferee/assignee of proceeds.

5. This Letter of Credit is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1983 Revision, International Chamber of Commerce Publication No. 400, and to the extent not inconsistent therewith, to the laws of _____ [state of confirming financial institution, if any, otherwise state of issuing financial institution].

6. If this credit expires during an interruption of business of this financial institution as described in Article 19 of the UCP, the financial institution specifically agrees to effect payment if this credit is drawn against within 30 calendar days after the resumption of our business.

Sincerely,

[Issuing financial institution]

(f) The following format shall be used by the financial institution to confirm an ILC:

[Confirming Financial Institution's Letterhead or Name and Address] _____

_____, 19____

Our Letter of Credit

Advice Number _____

Beneficiary: _____

[U.S. Government agency]

Issuing Financial Institution: _____

Issuing Financial Institution's LC No.: _____

Gentlemen:

1. We hereby confirm the above indicated Letter of Credit, the original of which is attached, issued by _____ [name of issuing financial institution] for drawings of up to United States dollars _____/U.S. \$_____ and expiring with our close of business on _____ [the expiration date], or any automatically extended expiration date.

2. Draft(s) drawn under the Letter of Credit and this Confirmation are payable at our office located at _____.

3. We hereby undertake to honor sight draft(s) drawn under the Letter of Credit and this Confirmation if presented at our offices as specified herein.

4. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.] It is a condition of this confirmation that it be deemed automatically extended without amendment for one year from the expiration date hereof, or any automatically extended expiration date, unless:

(a) At least sixty (60) days prior to any such expiration date we shall notify the

Contracting Officer, or the transferee and the issuing financial institution, by registered mail or other receipted means of delivery, that we elect not to consider this confirmation extended for any such additional period; or

(b) The issuing financial institution shall have exercised its right to notify you or the transferee, the account party, and ourselves, of its election not to extend the expiration date of the Letter of Credit.

5. This confirmation is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1983 Revision, International Chamber of Commerce Publication No. 400, and to the extent not inconsistent therewith, to the laws of _____ [state of confirming financial institution].

6. If this confirmation expires during an interruption of business of this financial institution as described in Article 19 of the UCP, we specifically agree to effect payment if this credit is drawn against within 30 calendar days after the resumption of our business.
Sincerely,

[Confirming financial institution]

(g) The following format shall be used by the Contracting Officer for a sight draft to draw on the Letter of Credit:
SIGHT DRAFT

[City, State]

_____, 19 _____

[Name and address of financial institution]

Pay to the order of _____

[Beneficiary Agency] _____

the sum of United States \$ _____

This draft is drawn under _____

Irrevocable Letter of Credit No. _____

[Beneficiary Agency]

By: _____

(End of clause)

[FR Doc. 96-14532 Filed 6-19-96; 8:45 am]

BILLING CODE 6820-EP-P

48 CFR Part 31

[FAC 90-39; FAR Case 94-606; Item XVIII]

RIN 9000-AG93

Federal Acquisition Regulation; Part 31 Agency Supplements

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 to amend the Federal Acquisition Regulation (FAR) to remove the requirement for Civilian Agency Acquisition Council approval for agency supplements to FAR Part 31. 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.

EFFECTIVE DATE: August 19, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy F. Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-39, FAR case 94-606.

SUPPLEMENTARY INFORMATION:

A. Background

The Department of Transportation recommended that FAR 31.101 be amended to remove the requirement for Civilian Agency Acquisition Council approval for agency supplements to FAR Part 31. The change does not amend the requirement for approval of class deviations. Accordingly, supplementary coverage will be consistent with the FAR Part 31 coverage, unless a class deviation is approved. Therefore, advance approval of supplements is considered to be unnecessary.

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. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart 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 90-39, FAR case 94-606), 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.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: June 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

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

1. The authority citation for 48 CFR Part 31 continues to read as follows:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

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

2. Section 31.101 is amended by removing the third and fourth sentences and replacing them with the following text to read as follows:

31.101 Objectives.

* * * To achieve this uniformity, individual deviations concerning cost principles require advance approval of the agency head or designee. Class deviations for the civilian agencies require advance approval of the Civilian Agency Acquisition Council. Class deviations for the National Aeronautics and Space Administration require advance approval of the Associate Administrator for Procurement. Class deviations for the Department of Defense require advance approval of the Director of Defense Procurement, Office of the Under Secretary of Defense for Acquisition and Technology.

[FR Doc. 96-14533 Filed 6-19-96; 8:45 am]

BILLING CODE 6820-EP-P

48 CFR Part 31

[FAC 90-39; FAR Case 93-020; Item XIX]

RIN 9000-AF99

Federal Acquisition Regulation; Records Retention

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 to amend the Federal Acquisition Regulation (FAR) to explicitly state that contractors must maintain adequate cost records in order to be reimbursed for all claimed costs. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. It is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 19, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy F. Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-39, FAR case 93-020.