

consistency with 48 CFR 9904.412, Cost accounting standard for composition and measurement of pension cost (CAS 412), and 48 CFR 9904.413, Adjustment and allocation of pension cost (CAS 413). CAS 412 and CAS 413 relate to accounting for pension costs under negotiated Government contracts.

**Item V—Rehabilitation Act, Workers With Disabilities (FAR Case 96-610)**

The interim rule published as Item V of FAC 97-05 is converted to a final rule without change. The rule implements Department of Labor regulations at 41 CFR 60-741 regarding affirmative action to employ, and advance in employment, qualified individuals with disabilities.

**Item VI—Civil Defense Costs (FAR Case 97-036)**

This final rule deletes the civil defense cost principle at FAR 31.205-5, as this guidance is no longer deemed necessary. The acceptability of civil defense costs will remain governed by the allocability, allowability, and reasonableness criteria discussed in FAR Part 31.

**Item VII—Costs Related to Legal/Other Proceedings (FAR Case 95-020)**

This final rule amends FAR 31.205-47, Costs related to legal and other proceedings, to clarify the allowability of costs incurred for *qui tam* suits in which the Government does not intervene. This rule is consistent with audit guidance issued by the Defense Contract Audit Agency on August 24, 1995. Certain Government contracting personnel and contractors may have had common misinterpretations of the language at FAR 31.205-47 prior to August 24, 1995. For *qui tam* legal fees incurred prior to August 24, 1995, if the Government contracting personnel and the contractor shared a common misinterpretation of the language at FAR 31.205-47, the contracting officer, in consultation with his or her legal advisors, should determine the appropriate treatment of those costs on a case-by-case basis.

**Item VIII—Service Contracts (FAR Case 97-302)**

This final rule revises FAR 32.703-3 and amends 37.106 to implement Section 801 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85). Section 801 provides that the Secretary of Defense, the Secretary of a military department, or the Secretary of Transportation with respect to the Coast Guard, when it is not operating as a service in the Navy, may enter into a contract for procurement of severable services for a

period that begins in one fiscal year and ends in the next fiscal year. This authority remains the same for civilian agencies other than NASA.

**Item IX—Payment Due Dates (FAR Case 97-609)**

This final rule amends FAR Subpart 32.9 to clarify that agencies may amend the clauses at FAR 52.232-25, Prompt Payment, and 52.232-26, Prompt Payment for Fixed-Price Architect-Engineer Contracts, to specify a period shorter than 30 days (but not less than 7 days) for making contract invoice payments.

**Item X—Technical Amendments**

Amendments are being made at sections 1.106, 6.302-3, 14.205-1, 14.407-4, 15.404-1, 19.102, 19.1004, 32.705-1, 33.104, 36.601-4, 41.103, 52.212-5, 52.244-6, and 53.228 in order to update references and make editorial changes.

Dated: October 22, 1998.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

FAC 97-09

Federal Acquisition Circular (FAC) 97-09 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 97-09 are effective December 29, 1998, except for Items I, II, V, and X which are effective October 30, 1998.

Dated: October 23, 1998.

**Eleanor R. Spector,**

*Director, Defense Procurement.*

**Ida M. Ustad,**

*Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.*

Dated: October 16, 1998.

**Tom Luedtke,**

*Acting Associate Administrator for Procurement, National Aeronautics and Space Administration.*

[FR Doc. 98-28954 Filed 10-29-98; 8:45 am]

BILLING CODE 6820-EP-U

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 1, 4, 13, 14, 15, and 52**

[FAC 97-09; FAR Case 97-003; Item I]

RIN 9000-A114

**Federal Acquisition Regulation; Taxpayer Identification Numbers**

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

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Subsection (i) of the Debt Collection Improvement Act of 1996 and Section 1022 of the Taxpayer Relief Act of 1997, and to clarify the Government requirements for reporting of contract information and payment information to the Internal Revenue Service (IRS). 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:** October 30, 1998.

*Comment Date:* Comments should be submitted to the FAR Secretariat at the address shown below on or before December 29, 1998, to be considered in the formulation of a final rule.

**ADDRESSES:** Interested parties should submit written comments to: General Services Administration FAR Secretariat (MVR), 800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

E-Mail comments submitted over the Internet should be addressed to: farcase.97-003@gsa.gov

Please cite FAC 97-09, FAR case 97-003 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 Mr. Jeremy Olson at (202) 501-0692. Please cite FAC 97-09, FAR case 97-003.

**SUPPLEMENTARY INFORMATION:**

## A. Background

Subsection (i) of the Debt Collection Improvement Act of 1996 (Pub. L. 104-134) amends 31 U.S.C. 7701 by requiring that the head of each Federal agency require each contractor doing business with the Government to furnish its Taxpayer Identification Number (TIN) and by requiring the Government to disclose its intent to use such number for purposes of collecting and reporting on any delinquent amounts. Section 1022 of the Taxpayer Relief Act of 1997 (Pub. L. 105-32) amends 26 U.S.C. 6041A(d) to add payments for services provided by corporations to the types of payments that the Government is required to report to the IRS using Form 1099.

This interim rule expands the scope of FAR Subpart 4.9 to require the contractor to provide a TIN for debt collection purposes. Prior to this revision, FAR Subpart 4.9 required the contractor to provide a TIN only to facilitate Government reporting of certain contract information and payment information to the IRS. The rule also deletes the provisions at FAR 52.214-2, Type of Business Organization—Sealed Bidding, and 52.215-4, Type of Business Organization, since the information requested in these provisions is duplicative of the information requested in the provisions at FAR 52.204-3, Taxpayer Identification, and 52.212-3, Offeror Representations and Certifications—Commercial Items, as amended by this rule. In addition, this rule clarifies and updates the requirement for Government agencies to obtain contract information and payment information to facilitate issuance of Form 1099 and other reports to the IRS.

## 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 the rule merely clarifies existing requirements for contractors to submit TINs, requires the Government to advise contractors of the potential debt collection usage of the TIN, and clarifies and updates requirements for Government reporting of contract information and payment information to the IRS. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subparts also 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 97-003), in correspondence.

## C. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) is deemed to apply because the interim rule contains information collection requirements. The interim rule decreases the collection requirements currently approved under Office of Management and Budget (OMB) Control Number 9000-0046, since the rule deletes the provisions at FAR 52.214-2 and 52.215-4.

OMB Control Numbers 9000-0097 and 9000-0136 approved the information collection requirements that existed in the FAR at 52.204-3 and 52.212-3, respectively, prior to implementation of this interim rule. Revisions to these provisions required by the interim rule have no net impact on the collection requirements currently approved.

## 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 rule implements Subsection (i) of the Debt Collection Improvement Act of 1996 (Pub. L. 104-134), which was effective upon enactment on April 25, 1996; and Section 1022 of the Taxpayer Relief Act of 1997 (Pub. L. 105-32), which applies to payments made after December 31, 1997. An interim rule is necessary to ensure that changes are made to the FAR to address the statutory requirements to notify contractors that the TIN may be used for debt collection purposes, and to add payments for services provided by corporations to the types of payments subject to IRS Form 1099 reporting requirements. 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 1, 4, 13, 14, 15, and 52

Government procurement.

Dated: October 22, 1998.

**Edward C. Loeb,**

*Director, Federal Acquisition, Policy Division.*

Therefore, 48 CFR Parts 1, 4, 13, 14, 15, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 4, 13, 14, 15, 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 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

### 1.106 [Amended]

2. Section 1.106 is amended in the table following the introductory paragraph by removing the FAR segments at 52.214-2 and 52.215-4 and their corresponding OMB Control Numbers.

## PART 4—ADMINISTRATIVE MATTERS

3. Section 4.203 is revised to read as follows:

### 4.203 Taxpayer identification information.

(a) If the contractor has furnished a Taxpayer Identification Number (TIN) when completing the solicitation provision at 52.204-3, Taxpayer Identification, or paragraph (b) of the solicitation provision at 52.212-3, Offeror Representations and Certifications—Commercial Items, the contracting officer shall, unless otherwise provided in agency procedures, attach a copy of the completed solicitation provision as the last page of the copy of the contract sent to the payment office.

(b) If the TIN or type of organization is derived from a source other than the provision at 52.204-3 or 52.212-3(b), the contracting officer shall annotate the last page of the contract or order forwarded to the payment office to state the contractor's TIN and type of organization, unless this information is otherwise provided to the payment office in accordance with agency procedures.

(c) If the contractor provides its TIN or type of organization to the contracting officer after award, the contracting officer shall forward the information to the payment office within 7 days of its receipt.

(d) *Federal Supply Schedule contracts.* Each contracting officer that places an order under a Federal Supply Schedule contract (see Subpart 8.4) shall provide the TIN and type of organization information to the payment office in accordance with paragraph (b) of this section.

(e) *Basic ordering agreements and indefinite-delivery contracts (other than Federal Supply Schedule contracts).*

(1) Each contracting officer that issues a basic ordering agreement or indefinite-delivery contract (other than a Federal Supply Schedule contract) shall provide to contracting officers placing orders under the agreement or contract—

(i) A copy of the agreement or contract with a copy of the completed solicitation provision at 52.204-3 or 52.212-3(b) as the last page of the agreement or contract; or

(ii) The contractor's TIN and type of organization information.

(2) Each contracting officer that places an order under a basic ordering agreement or indefinite-delivery contract (other than a Federal Supply Schedule contract) shall provide the TIN and type of organization information to the payment office in accordance with paragraph (a) or (b) of this section.

4. Subpart 4.9 is revised to read as follows:

#### Subpart 4.9—Taxpayer Identification Number Information

Sec.

4.900 Scope of subpart.

4.901 Definitions.

4.902 General.

4.903 Reporting contract information to the IRS.

4.904 Reporting payment information to the IRS.

4.905 Solicitation provision.

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

#### Subpart 4.9—Taxpayer Identification Number Information

##### 4.900 Scope of subpart.

This subpart provides policies and procedures for obtaining—

(a) Taxpayer Identification Number (TIN) information that may be used for debt collection purposes; and

(b) Contract information and payment information for submittal to the payment office for Internal Revenue Service (IRS) reporting purposes.

##### 4.901 Definitions.

*Common parent*, as used in this subpart, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

*Taxpayer Identification Number (TIN)*, as used in this subpart, means the number required by the IRS to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

##### 4.902 General.

(a) *Debt collection.* 31 U.S.C. 7701(c) requires each contractor doing business with a Government agency to furnish its TIN to that agency. 31 U.S.C. 3325(d) requires the Government to include, with each certified voucher prepared by the Government payment office and submitted to a disbursing official, the TIN of the contractor receiving payment under the voucher. The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the contractor's relationship with the Government.

(b) *Information reporting to the IRS.* The TIN is also required for Government reporting of certain contract information (see 4.903) and payment information (see 4.904) to the IRS.

##### 4.903 Reporting contract information to the IRS.

(a) 26 U.S.C. 6050M, as implemented in 26 CFR, requires heads of Federal executive agencies to report certain information to the IRS.

(b)(1) The required information applies to contract modifications—

(i) Increasing the amount of a contract awarded before January 1, 1989, by \$50,000 or more; and

(ii) Entered into on or after April 1, 1990.

(2) The reporting requirement also applies to certain contracts and modifications thereto in excess of \$25,000 entered into on or after January 1, 1989.

(c) The information to report is—

(1) Name, address, and TIN of the contractor;

(2) Name and TIN of the common parent (if any);

(3) Date of the contract action;

(4) Amount obligated on the contract action; and

(5) Estimated contract completion date.

(d) Transmit the information to the IRS through the Federal Procurement Data System (see Subpart 4.6 and implementing instructions).

##### 4.904 Reporting payment information to the IRS.

26 U.S.C. 6041 and 6041A, as implemented in 26 CFR, in part, require payors, including Government agencies, to report to the IRS, on Form 1099, payments made to certain contractors. 26 U.S.C. 6109 requires a contractor to provide its TIN if a Form 1099 is required. The payment office is responsible for submitting reports to the IRS.

##### 4.905 Solicitation provision.

The contracting officer shall insert the provision at 52.204-3, Taxpayer

Identification, in solicitations that are not conducted under the procedures of Part 12, unless the TIN, type of organization, and common parent information for each offeror will be obtained from some other source (e.g., centralized database) in accordance with agency procedures.

#### PART 13—SIMPLIFIED ACQUISITION PROCEDURES

5. Section 13.106-3 is amended by adding paragraph (e) to read as follows:

##### 13.106-3 Award and documentation.

\* \* \* \* \*

(e) *Taxpayer Identification Number.* If an oral solicitation is used, the contracting officer shall ensure that the copy of the award document sent to the payment office is annotated with the contractor's Taxpayer Identification Number (TIN) and type of organization (see 4.203), unless this information will be obtained from some other source (e.g., centralized database). The contracting officer shall disclose to the contractor that the TIN may be used by the Government to collect and report on any delinquent amounts arising out of the contractor's relationship with the Government (31 U.S.C. 7701(c)(3)).

#### PART 14—SEALED BIDDING

##### 14.201-6 [Amended]

6. Section 14.201-6 is amended by removing and reserving paragraph (b)(2).

#### PART 15—CONTRACTING BY NEGOTIATION

##### 15.209 [Amended]

7. Section 15.209 is amended by removing and reserving paragraph (d).

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

8. Section 52.204-3 is revised to read as follows:

##### 52.204-3 Taxpayer identification.

As prescribed in 4.905, insert the following provision:

##### Taxpayer Identification (Oct 1998)

(a) *Definitions.*

*Common parent*, as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

*Taxpayer Identification Number (TIN)*, as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

(b) All offerors must submit the information required in paragraphs (d) through (f) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS. If the resulting contract is subject to the payment reporting requirements described in Federal Acquisition Regulation (FAR) 4.904, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

(c) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(d) Taxpayer Identification Number (TIN).

- TIN:
TIN has been applied for.
TIN is not required because:
Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;
Offeror is an agency or instrumentality of a foreign government;

(e) Type of organization.

- Sole proprietorship;
Partnership;
Corporate entity (not tax-exempt);
Corporate entity (tax-exempt);
Government entity (Federal, State, or local);
Foreign government;
International organization per 26 CFR 1.6049-4;
Other

(f) Common parent.

- Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this provision.

Name and TIN of common parent:

Name

TIN

(End of provision)

9. Section 52.212-3 is amended by revising the date of the provision and paragraph (b) to read as follows:

52.212-3 Offeror representations and certifications—Commercial items.

\* \* \* \* \*

Offeror Representations and Certifications—Commercial Items (Oct 1998)

\* \* \* \* \*

(b) Taxpayer Identification Number (TIN) (26 U.S.C. 6109, 31 U.S.C. 7701). (Not applicable if the offeror is required to provide this information to a central contractor registration database to be eligible for award.)

(1) All offerors must submit the information required in paragraphs (b)(3)

through (b)(5) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the Internal Revenue Service (IRS).

(2) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(3) Taxpayer Identification Number (TIN).

- TIN:
TIN has been applied for.
TIN is not required because:
Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;
Offeror is an agency or instrumentality of a foreign government;
Offeror is an agency or instrumentality of the Federal Government.

(4) Type of organization.

- Sole proprietorship;
Partnership;
Corporate entity (not tax-exempt);
Corporate entity (tax-exempt);
Government entity (Federal, State, or local);
Foreign government;
International organization per 26 CFR 1.6049-4;

Other

(5) Common parent.

- Offeror is not owned or controlled by a common parent;
Name and TIN of common parent:

Name

TIN

\* \* \* \* \*

52.214-2 [Reserved]

10. Section 52.214-2 is removed and reserved.

52.215-4 [Reserved]

11. Section 52.215-4 is removed and reserved.

[FR Doc. 98-28955 Filed 10-29-98; 8:45 am]

BILLING CODE 6820-EP-U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 5, 13, 14, and 32

[FAC 97-09; FAR Case 97-304; Item II]

RIN 9000-A110

Federal Acquisition Regulation; Electronic Commerce in Federal Procurement

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

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 850 of the National Defense Authorization Act for Fiscal Year 1998 by removing Federal Acquisition Computer Network (FACNET) specific terms and requirements and replacing them with more flexible electronic commerce policies. 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: October 30, 1998.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before December 29, 1998, 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.97-304@gsa.gov

Please cite FAC 97-09, FAR case 97-304, 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 K. Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 97-09, FAR case 97-304.

SUPPLEMENTARY INFORMATION: