breakdowns, profit, indirect cost rates, and similar information; and

(4) The names of individuals providing reference information about an offeror's past performance.

(f) The contracting officer shall include an official summary of the debriefing in the contract file.

15.1007 Protests against award.

(a) Before filing a protest, prior to award of a contract, of the exclusion of an offeror from the competitive range (or otherwise from further consideration), use of alternative dispute resolution techniques is encouraged (see subpart 33.2).

(b) Protests against award in negotiated acquisitions shall be treated substantially the same as in sealed bidding (see subpart 33.1).

(c) If, within one year of contract award, a protest causes the agency to issue either a new solicitation or a new request for best and final offers on the protested contract award, the agency shall make available to all prospective offerors for the new solicitation, or original offerors that are requested to submit new best and final offers—

(1) Information provided in any debriefings conducted on the original award about the successful offeror's proposal; and

(2) Other nonproprietary information provided to the original offerors.

15.1008 Discovery of mistakes.

For treatment of mistakes in an offeror's proposal that are discovered before award, see 15.607. Mistakes in a contractor's proposal that are disclosed after award shall be processed in accordance with 14.407–4.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

6. Section 36.607 is amended by revising paragraph (b) to read as follows:

36.607 Release of information on firm selection.

* * * * *

(b) Debriefings of successful and unsuccessful firms will be held after final selection has taken place and will be conducted, to the extent practicable, in accordance with 15.1004, 15.1006 (b) through (f), and 15.1007(c). Note that 15.1006 (d)(2) through (d)(5) do not apply to architect-engineer contracts.

[FR Doc. 96–32807 Filed 12–30–96; 8:45 am]

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48 CFR Parts 9, 13, 23, and 52

[FAC 90–44; FAR Case 96–311; Item IV]

RIN 9000–AH06

Federal Acquisition Regulation; Certification Requirements—Drug-Free Workplace

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 amending the Federal Acquisition Regulation (FAR) to delete the requirement for an offeror to provide a certification regarding a drug-free workplace. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph DeStefano at (202) 501–1758 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 90–44, FAR case 96–311.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule implements Section 4301(a)(3) of the Clinger-Cohen Act of 1996 (Pub. L. 104–106). Section 4301(a)(3) amended 41 U.S.C. 701 to eliminate the requirement for an offeror to certify that it will take certain actions to provide a drug-free workplace.

A proposed rule with request for public comment was published in the Federal Register at 61 FR 31814, June 20, 1996. No substantive comments were received. The final rule includes only editorial changes to the proposed rule.

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, although the rule eliminates a certification requirement, the underlying policy regarding maintenance of a drug-free workplace has not changed.

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 Parts 9, 13, 23, and 52

Government procurement.

Dated: December 19, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 9, 13, 23, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 9, 13, 23, 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 9—CONTRACTOR QUALIFICATIONS

2. Section 9.406–2 is amended by revising paragraph (b)(1)(ii) to read as follows:

9.406–2 Causes for debarment.

* * * * *

(b)(1) * * *

(ii) Violations of the Drug-Free Workplace Act of 1988 (Public Law 100–690), as indicated by—

(A) Failure to comply with the requirements of the clause at 52.223–6, Drug-Free Workplace; or

(B) Such a number of contractor employees convicted of violations of criminal drug statutes occurring in the workplace as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace (see 23.504).

* * * * *

3. Section 9.407–2 is amended by revising paragraph (a)(4) to read as follows:

9. 407–2 Causes for suspension.

(a) * * *

(4) Violations of the Drug-Free Workplace Act of 1988 (Public Law 100–690), as indicated by—

(i) Failure to comply with the requirements of the clause at 52.223–6, Drug-Free Workplace; or

(ii) Such a number of contractor employees convicted of violations of criminal drug statutes occurring in the workplace as to indicate that the contractor has failed to make a good

faith effort to provide a drug-free workplace (see 23.504);

* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.111 [Amended]

4. Section 13.111 is amended by removing paragraph (g) and redesignating paragraphs (h) and (i) as (g) and (h), respectively.

PART 23—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

5. Section 23.504 is amended by revising the introductory text of paragraph (a), paragraphs (a)(3) and (b); and by removing paragraph (c) and redesignating (d) as (c). The revised text reads as follows:

23.504 Policy.

(a) No offeror other than an individual shall be considered a responsible source (see 9.104–1(g) and 19.602–1(a)(2)(i)) for a contract that exceeds the simplified acquisition threshold, unless it agrees that it will provide a drug-free workplace by—

* * * * *

(3) Providing all employees engaged in performance of the contract with a copy of the statement required by paragraph (a)(1) of this section;

* * * * *

(b) No individual shall be awarded a contract of any dollar value unless that individual agrees not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing the contract.

* * * * *

5b. In addition to the amendments set forth above, section 23.504 is further amended by removing ''calendar'' from paragraphs (a)(4)(ii), (a)(5), (a)(6), and the newly designated paragraph (c).

6. Section 23.505 is amended by revising the section heading and the introductory text of paragraph (a); in paragraph (a)(2) by removing ''; or'' and inserting a period; and by removing paragraph (b), redesignating paragraph (c) as (b) and revising the introductory text of newly designated (b). The revised text reads as follows:

23.505 Contract clause.

(a) Contracting officers shall insert the clause at 52.223–6, Drug-Free Workplace, except as provided in paragraph (b) of this section, in solicitations and contracts—

* * * * *

(b) Contracting officers shall not insert the clause at 52.223–6, Drug-Free Workplace, in solicitations and contracts, if—

* * * * *

7. Section 23.506 is amended by revising paragraph (d) to read as follows:

23.506 Suspension of payments, termination of contract, and debarment and suspension actions.

* * * * *

(d) The specific causes for suspension of contract payments, termination of a contract for default, or suspension and debarment are—

(1) The contractor has failed to comply with the requirements of the clause at 52.223–6, Drug-Free Workplace; or

(2) The number of contractor employees convicted of violations of criminal drug statutes occurring in the workplace indicates that the contractor has failed to make a good faith effort to provide a drug-free workplace.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.223–5 [Removed and reserved]

8. Section 52.223–5 is removed and reserved.

9a. Section 52.223–6 is amended—

(a) In the introductory paragraph by removing ''23.505(b)'' and inserting ''23.505'';

(b) By revising the date of the clause heading;

(c) In the introductory text of paragraph (a) by removing the comma following the word ''clause'' and inserting an emdash ''—'';

(d) At the end of paragraph (b)(6)(ii) by removing the period and inserting ''; and'';

(e) By revising paragraph (c); and

(f) In paragraph (d) by removing the ''s'' from the word ''paragraphs''.

The revised text reads as follows:

52.223–6 Drug-Free Workplace.

* * * * *

Drug-Free Workplace (Jan. 1997)

* * * * *

(c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

* * * * *

9b. In addition to the amendments set forth above, section 52.223–6 is further amended by removing ''calendar'' from the introductory text of paragraph (b) each time it appears, from paragraphs (b)(4)(ii) and (b)(5), and the introductory paragraph of (b)(6).

[FR Doc. 96–32808 Filed 12–30–96; 8:45 am]

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48 CFR Parts 14, 15, and 52

[FAC 90–44; FAR Case 95–019; Item V]

RIN 9000–AG89

Federal Acquisition Regulation; Consideration of Late Offers

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 amending the Federal Acquisition Regulation (FAR) to broaden the conditions under which late offers for procurements other than commercial items can be considered. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: March 3, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph DeStefano at (202) 501–1758 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 90–44, FAR case 95–019.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the late bid rule to allow an offer to be accepted if the late receipt was due primarily to Government mishandling after receipt at the Government installation. The rule recognizes the use of hand-carried offers (including delivery by a commercial carrier) as a common business practice, and provides flexibility in determining when an offer (bid or proposal) was received at the Government activity, by applying standards used by the General Accounting Office. The rule also expands the definition of acceptable evidence to support acceptance of a late offer and adds a new exception at FAR 52.215–10(a)(5) and 52.215–36(a)(3) which allows consideration of a proposal that was misdirected or misdelivered (not necessarily through mishandling) to an office other than that designated for receipt of offers in the solicitation. These changes do not apply