which this contract is physically complete (or longer, if approved in writing by the Contracting Officer), the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.

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Alternate I (Feb 1997). * * *

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(h) *Final Payment.* Upon approval of a completion invoice or voucher submitted by the Contractor in accordance with paragraph (c)(4) of this clause, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs not previously paid.

[FR Doc. 96–32811 Filed 12–30–96; 8:45 am]

BILLING CODE 6820–EP–M

48 CFR Part 43

[FAC 90–44; FAR Case 96–606; Item VIII]

RIN 9000–AH44

Federal Acquisition Regulation; Modification of Existing Contracts

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

ACTION: Interim rule.

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 Sections 4402 (d) and (e) of the Clinger-Cohen Act of 1996, which authorizes regulations to provide for modification of existing contracts without requiring consideration, upon request of the contractor, to incorporate changes authorized by the Act. 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. The Federal Acquisition Reform Act of 1996 was subsequently renamed the Clinger-Cohen Act of 1996.

DATES: *Effective Date:* January 1, 1997.

Comments Due: To be considered in the formulation of a final rule, comments should be submitted to the address given below on or before March 3, 1997.

ADDRESSES: Comments should be submitted to: General Services Administration, Ms. Beverly Fayson, FAR Secretariat, 18th & F Streets NW, Room 4037, Washington, DC 20405.

E-Mail comments submitted over the Internet should be addressed to: 96–606@www.ARNet.gov.

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 96–606.

SUPPLEMENTARY INFORMATION:

A. Background

Section 4402(d) of the Clinger-Cohen Act of 1996 (Pub. L. 104–106) states that regulations implementing the Act may provide for modification of existing contracts without consideration, upon request of the contractor, to incorporate changes authorized by the Act. Section 4402(e)(2) also states that nothing in the Act requires the renegotiation or modification of existing contracts to incorporate changes authorized by the Act. This interim rule adopts the policy of encouraging, but not requiring, appropriate modifications without consideration, upon the request of the contractor. If the contracting officer determines that modification of an existing contract is appropriate to incorporate changes authorized by the Act, the modification should insert the current version of the applicable FAR clauses into the contract.

B. Regulatory Flexibility Act

The changes in this 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 it enables industry and the Government to gain significant benefits, including the potential reduction of contract costs, by authorizing the incorporation into existing contracts any of the Clinger-Cohen Act changes that will benefit the contracting parties. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy of 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 also 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 90–44, FAR case 96–606), in correspondence. The IRFA is summarized as follows:

This rule will apply to all large and small entities that currently have a Government contract. Most likely, contractors will not request modification of contracts under $25,000, because the usually short period of performance under these contracts will discourage modification. The number of active contracts over $25,000 held by small entities at any point in time is not readily available. However, in Fiscal Year 1995, small entities were awarded 31,421 contracts (number does not include modifications to contracts) over $25,000. Small entities may or may not request modification of those contracts depending on whether they determine that modification of their specific contracts to incorporate Clinger-Cohen Act of 1996 changes will be advantageous. This rule imposes no new reporting, recordkeeping, or other compliance requirements. This rule is the only practical alternative to implement subsections 4402 (d) and (e) of the Act.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not impose any new reporting or recordkeeping requirements which require Office of Management and Budget approval 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, pursuant to 41 U.S.C. 418b, urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. The rule is necessary because immediate promulgation of an interim rule will provide significant benefits to industry and the Government. Sections 4402 (d) and (e) of the Clinger-Cohen Act of 1996 authorize contracting officers, if requested by the prime contractor, to modify contracts without requiring consideration to incorporate changes authorized by the Act.

Implementation of Sections 4402 (d) and (e) as an interim rule will enable industry and the Government to gain immediate benefits, including the potential reduction of contract costs. The interim rule authorizes the adoption of any of the rules implementing the Clinger-Cohen Act of 1996 that will benefit the contracting parties. The interim rule should involve no substantial risk to industry, since contractors must affirmatively request adoption of the rules for an existing contract. 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 43

Government procurement.

Dated: December 19, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR part 43 is amended as set forth below:

PART 43—CONTRACT MODIFICATIONS

1. The authority citation for 48 CFR part 43 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 43.102 is amended by revising paragraph (c) to read as follows:

43.102 Policy.

* * * * *

(c) The Federal Acquisition Streamlining Act of 1994, Public Law 103–355 (FASA), and Section 4402 of the Clinger-Cohen Act of 1996, Public Law 104–106, authorize, but do not require, contracting officers, if requested by the prime contractor, to modify contracts without requiring consideration to incorporate changes authorized by FASA or Clinger-Cohen Act amendments into existing contracts. Contracting officers are encouraged, if appropriate, to modify contracts without requiring consideration to incorporate these new policies. The contract modification should be accomplished by inserting into the contract, as a minimum, the current version of the applicable FAR clauses.

[FR Doc. 96–32812 Filed 12–30–96; 8:45 am]

BILLING CODE 6820–EP–M

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

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

ACTION: Small entity compliance guide notice.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration as the Federal Acquisition Regulation (FAR) Council. This Small Entity Compliance Guide has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 90–44 which amend the FAR. None of the rules had a Final Regulatory Flexibility Analysis prepared in accordance with 5 U.S.C. 604. Further information regarding these rules may be obtained by referring to FAC 90–44 which precedes this notice. This document may be obtained from the Internet at http://www.gsa.gov/far/SECG.

FOR FURTHER INFORMATION CONTACT:

Beverly Fayson, FAR Secretariat, (202) 501–4755.

SUPPLEMENTARY INFORMATION:

LIST OF RULES IN FAC 90–44

Item	Subject	FAR case	Analyst
I	Automatic Data Processing Equipment Leasing Costs (Interim)	96–010	Olson.
II	Major System Definition	96–322	O'Neill.
III	Preaward Debriefings	96–304	DeStefano.
IV	Certification Requirements—Drug-Free Workplace	96–311	DeStefano.
V	Consideration of Late Offers	95–019	DeStefano.
VI	Foreign Differential Pay (Interim)	96–012	Olson.
VII	Final Indirect Cost Rates	95–018	Klein.
VIII	Modification of Existing Contracts (Interim)	96–606	DeStefano.

Item I—Automatic Data Processing Equipment Leasing Costs (FAR Case 96–010)

This interim rule deletes the cost principle at 31.205–2, Automatic Data Processing Equipment (ADPE) Leasing Costs, the ADPE definition at 31.001, and references to the term ADPE found elsewhere in part 31.

Item II—Major System Definition (FAR Case 96–322)

This final rule amends the definition of ''major system'' at FAR 2.101 to increase the dollar thresholds applicable to the Department of Defense. The rule implements 10 U.S.C. 2302(5) as amended by Section 805 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201).

Item III—Preaward Debriefings (FAR Case 96–304)

This final rule revises FAR Subpart 15.10 to implement Section 4104 of the Clinger-Cohen Act of 1996 (Pub. L. 104–106). Section 4104 requires that, prior to contract award, contracting officers provide a debriefing to any interested offeror on the reasons for that offeror's exclusion from the competitive range in a competitive negotiation.

Item IV—Certification Requirements—Drug-Free Workplace (FAR Case 96–311)

This final rule amends FAR Parts 9, 13, 23, and 52 to delete the requirement for an offeror to provide a certification regarding a drug-free workplace. The rule implements Section 4301(a)(3) of the Clinger-Cohen Act of 1996 (Public Law 104–106).

Item V—Consideration of Late Offers (FAR Case 95–019)

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 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 to commercial item solicitations which contain the provision at 52.212–1(f), Late Offers.

Item VI—Foreign Differential Pay (FAR Case 96–012)

This interim rule deletes the prohibition at FAR 31.205–6(e)(2) on the calculation of foreign differential pay