

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.

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(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.

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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

based directly on an employee's specific increase in income taxes resulting from assignment overseas.

Item VII—Final Indirect Cost Rates (FAR Case 95-018)

This final rule amends FAR Subpart 42.7 and Part 52 to improve procedures for providing payments to contractors under cost-type contracts by (1) permitting, with certain restrictions, contractor use of billing rates contained in certified final indirect cost rate proposal; (2) providing for Government

release of 75 to 90 percent of all fee withholds under physically completed contracts, after receipt of the contractor's certified final indirect cost rate proposals; and (3) establishing a timeframe for contractor submission of final invoices or vouchers.

Item VIII—Modification of Existing Contracts (FAR Case 96-606)

This interim rule is issued pursuant to the Clinger-Cohen Act of 1996 (Pub. L. 104-106) to amend the Federal Acquisition Regulation. It implements

Section 4402(d) and (e) 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.

Dated: September 19, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

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