

Act for products of Caribbean Basin countries. 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:** September 30, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. Peter O'Such at (202) 501-1759 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 95-030.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

This final rule amends FAR 25.402(b) by changing the date "1995" to "1996." Products of Caribbean Basin countries were to be treated as eligible products until September 30, 1995, unless otherwise extended by the U.S. Trade Representative (USTR) by means of a Federal Register notice. On October 3, 1995, the USTR published an extension through September 30, 1996 (60 FR 51822).

##### **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 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.* (FAC 90-39, FAR case 95-030), 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 25**

Government procurement.

Dated: June 4, 1996.

Edward C. Loeb,  
*Director, Federal Acquisition Policy Division.*

Therefore, 48 CFR Part 25 is amended as set forth below:

## **PART 25—FOREIGN ACQUISITION**

1. The authority citation for 48 CFR Part 25 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).

### **§ 25.402 [Amended]**

2. Section 25.402 is amended in the first sentence of paragraph (b) by removing "(see 51 FR 6964-6965, February 27, 1986)"; and in the second sentence by revising "1995" to read "1996".

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## **48 CFR Parts 25 and 52**

[FAC 90-39; FAR Case 92-048; Item XVI]

**RIN 9000-AF83**

### **Federal Acquisition Regulation; Fluctuating Exchange Rates**

**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 provide guidance and a solicitation provision regarding evaluation of foreign currency offers. 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. Peter O'Such at (202) 501-1759 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 92-048.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

An amendment to FAR Subpart 25.5 and a corresponding solicitation provision were published in the Federal Register as a proposed rule, with a request for comments (see 59 FR 16391, April 6, 1994). Two responses were received. The Council's analysis of those comments resulted in a revision to the rule to delete "commercially available" in the description of the current market exchange rate used in the evaluation of foreign currency offers.

The final rule also adds language at 25.501(b) and 52.225-4 to address evaluation of offers in negotiated acquisitions, when award is based on initial offers received.

##### **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 the rule pertains to contracts entered into and performed overseas and, with rare exceptions, will affect only foreign concerns. No comments were received on the impact of this rule on small entities during the public comment period.

##### **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 25 and 52**

Government procurement.

Dated: June 4, 1996.

Edward C. Loeb,  
*Director, Federal Acquisition Policy Division.*

Therefore, 48 CFR Parts 25 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 25 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 25—FOREIGN ACQUISITION**

2. In part 25, subpart 25.5, the heading is revised to read as follows:

### **Subpart 25.5—Use of Foreign Currency**

3. Section 25.501 is revised to read as follows:

#### **25.501 Policy.**

(a) Unless a specific currency is required by international agreement or by the Trade Agreements Act (see 25.405(d)), contracting officers shall determine whether solicitations for contracts to be entered into and performed outside the United States will require submission of offers either in U.S. currency or in a specified foreign

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)

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### **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.