

12959, Prohibiting Certain Transactions with Respect to Iran, which became effective May 6, 1995, and to conform the FAR to current restrictions in 31 CFR Chapter V (Office of Foreign Assets Control, Department of the Treasury). Subpart 25.7 and the clause at 52.225-11 are revised to add Iran and Libya to the list of prohibited sources, and to delete restrictions on procurement from Vietnam, Cambodia, and South Africa. A proposed rule was published in the Federal Register on February 22, 1996, at 61 FR 6910. No public comments were received. No changes were made 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 the rule does not impose any new requirements on contractors, large or small. The rule merely notifies contractors of changes in the existing prohibitions against transactions with certain countries. This change should have minimal impact on U.S. firms. There were no public comments in response to the Regulatory Flexibility Act Statement published with the proposed rule.

#### 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: August 2, 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. Subpart 25.7 is revised to read as follows:

#### Subpart 25.7—Restrictions on Certain Foreign Purchases

Sec.

25.701 Restrictions.

25.702 Contract clause.

##### 25.701 Restrictions.

(a) The Government does not acquire supplies or services from foreign governments or their organizations when these supplies or services cannot be imported lawfully into the United States. Therefore, agencies and their contractors and subcontractors shall not acquire any supplies or services originating from sources within, or that were located in or transported from or through—

- (1) Cuba (31 CFR part 515);
- (2) Iran (31 CFR part 560);
- (3) Iraq (31 CFR part 575);
- (4) Libya (31 CFR part 550); or
- (5) North Korea (31 CFR part 500).

(b) Agencies and their contractors and subcontractors shall not acquire any supplies or services from entities controlled by the Government of Iraq (Executive Orders 12722 and 12724).

(c) Questions concerning these restrictions should be referred to the Department of the Treasury, Office of Foreign Assets Control, Washington, DC 20220, (202) 622-2520.

##### 25.702 Contract clause.

The contracting officer shall insert the clause at 52.225-11, Restrictions on Certain Foreign Purchases, in solicitations and contracts over \$2,500.

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

3. Section 52.225-11 is revised to read as follows:

##### 52.225-11 Restrictions on Certain Foreign Purchases.

As prescribed in 25.702, insert the following clause:

Restrictions on Certain Foreign Purchases  
October 7, 1996

(a) Unless advance written approval of the Contracting Officer is obtained, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States under regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries include Cuba, Iran, Iraq, Libya, and North Korea.

(b) The Contractor shall not acquire for use in the performance of this contract any supplies or services from entities controlled by the Government of Iraq.

(c) The Contractor agrees to insert the provisions of this clause, including this paragraph (c), in all subcontracts hereunder.

(End of clause)

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#### DEPARTMENT OF DEFENSE

#### GENERAL SERVICES ADMINISTRATION

#### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 31

[FAC 90-41; FAR Case 93-010; Item V]

RIN 9000-AG65

#### Federal Acquisition Regulation; Legal Proceedings Costs

**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 make the costs of pre- or post-award protests unallowable. An exception to this requirement is made for costs incurred to defend against a protest, if the costs are incurred pursuant to a written request from the contracting officer. 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 7, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeremy Olson at (202) 501-3221 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 90-41, FAR case 93-010.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This final rule adds another category of unallowable costs to the list at 31.205-47(f). The rule disallows costs in connection with protests or the defense against protests of solicitations or contract awards, unless the costs of defending against a protest are incurred pursuant to a written request from the contracting officer. A proposed rule was published in the Federal Register on October 26, 1995, at 60 FR 54918. Twelve sources submitted public comments. All comments were considered in developing the final rule.

**B. Regulatory Flexibility Act**

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, applies to this final rule and a Final Regulatory Flexibility Analysis (FRFA) has been performed. Although a number of respondents took exception to the statement in the Federal Register that the proposed rule "is not expected to have a significant economic impact on a substantial number of small entities \* \* \* because most contracts awarded to small entities are awarded on a competitive, fixed-price basis and the cost principles do not apply", they added that (1) many contracts awarded to small entities are cost-reimbursable and cost principles apply; (2) cost principles apply when small entities negotiate annual overhead rates; and (3) cost principles apply whenever a cost analysis is performed. We agree that cost principles apply in these cases, but the analysis concluded that a substantial number of small businesses are not involved. In addition, this rule only applies to those small entities (1) whose contracts are governed by cost principles; and (2) who file a protest, or are defending against a protest. Based on the data available, the analysis concludes that the percentage of small entities who meet this second criterion is well below 5 percent. A copy of the FRFA may be obtained from the FAR Secretariat.

**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 31**

Government procurement.

Dated: August 2, 1996.

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

Therefore, 48 CFR Part 31 is amended as set forth below:

**PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES**

1. The authority citation for 48 CFR Part 31 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 31.205-47 is amended by adding paragraph (f)(8) to read as follows:

**31.205-47 Costs related to legal and other proceedings.**

\* \* \* \* \*

(f) \* \* \*

(8) Protests of Federal Government solicitations or contract awards, or the defense against protests of such solicitations or contract awards, unless the costs of defending against a protest are incurred pursuant to a written request from the cognizant contracting officer.

\* \* \* \* \*

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**DEPARTMENT OF DEFENSE****GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****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.

**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 (Pub. L. 104-121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 90-41 which amend the FAR. Further information regarding these rules may be obtained by referring to FAC 90-41 which precedes this notice. This document may be obtained from the Internet at <http://www.gsa.gov/far/compliance>.

**FOR FURTHER INFORMATION CONTACT:** Beverly Fayson, FAR Secretariat, (202) 501-4755.

**SUPPLEMENTARY INFORMATION:**

**LIST OF RULES IN FAC 90-41**

Item	Subject	FAR case
I	Information Technology Management Reform Act of 1996.	96-319

**LIST OF RULES IN FAC 90-41—Continued**

Item	Subject	FAR case
II	Compliance with Immigration and Nationality Act Provisions.	96-320
III	Federal Acquisition and Community Right-to-Know.	95-305
IV	Restrictions on Certain Foreign Purchases.	95-303
V	Legal Proceedings Costs.	93-010

Item I—Information Technology Management Reform Act of 1996 (FAR Case 96-319)

This interim rule implements the Information Technology Management Reform Act (ITMRA) of 1996 (Division E of Public Law 104-106). ITMRA seeks to improve Federal information management and to facilitate acquisition of state-of-the-art information technology that is critical for improving the efficiency and effectiveness of Government operations. Under ITMRA, each executive agency is authorized to acquire information technology, including entering into contracts that provide for multi-agency acquisitions of information technology in accordance with guidance issued by the Office of Management and Budget. This interim rule also contains certain policies and procedures from the Federal Information Resources Management Regulation (FIRMR). The changes to the FAR include (1) addition of a definition of "information technology" at 2.101; (2) relocation of the definition of "major system" from 34.001 to 2.101; (3) addition of a new Subpart 8.9, Financial Management Systems Software (FMSS) Mandatory Multiple Award Schedule (MAS) Contracts Program; (4) revision of Part 39, Acquisition of Information Technology; (5) addition of a new clause at 52.239-1, Privacy or Security Safeguards; and (6) various conforming amendments in other parts of the FAR.

Item II—Compliance With Immigration and Nationality Act Provisions (FAR Case 96-320)

This interim rule amends FAR 9.406 to implement Executive Order 12989 of February 13, 1996, Economy and Efficiency in Government Procurement Through Compliance with Certain Immigration and Nationality Act Provisions. The Executive Order provides that a contractor may be debarred upon a determination by the Attorney General that the contractor is not in compliance with the employment