

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Part 52****[FAR Case 2000-009]****RIN 9000-AJ34****Federal Acquisition Regulation;
Contract Terms and Conditions
Required To Implement Statute or
Executive Orders—Commercial Items**

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

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to update the clause regarding contract terms and conditions required to implement statute or Executive orders—commercial items.

DATES: Interested parties should submit comments in writing on or before May 20, 2002 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: farcase.2000-009@gsa.gov. Please submit comments only and cite FAR case 2000-009 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC., 20405, at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501-4764. Please cite FAR case 2000-009.

SUPPLEMENTARY INFORMATION:**A. Background**

Federal Acquisition Regulation Part 12, Acquisition of Commercial Items, was developed to implement Title VIII of the Federal Acquisition Streamlining Act of 1994 (FASA) (Pub. L. 103-355). The regulations became effective on October 1, 1995. Several areas have been identified that need updating and clarification. This rule addresses some of those changes.

The list of contract terms and conditions required to implement statutes or Executive orders in the clause at FAR 52.212-5 is amended to ensure that required statutes enacted subsequent to FASA that contain civil or criminal penalties or specifically cite their applicability to commercial items are included on the list, and to ensure that any post-FASA items that did not meet this criteria are deleted from the list. In addition, the pre-FASA clauses and alternates that were inadvertently left off the list are added. The date of each clause is added to the list to identify what revision of the listed clause applies when this clause is added to a contract.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to 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 merely clarifies existing language and does not change existing policy. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Part 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2000-009), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that 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 52

Government procurement.

Dated: March 13, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 52 set forth below:

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

1. The authority citation for 48 CFR part 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).

2. Amend section 52.212-5 by revising the date of the clause and paragraphs (a), (b), (c), and (e) to read as follows:

**52.212-5 Contract Terms and Conditions
Required to Implement Statutes or
Executive Orders—Commercial Items.**

* * * * *

**Contract Terms and Conditions Required To
Implement Statutes or Executive Orders
Commercial Items (Date)**

(a) The Contractor agrees to comply with the following Federal Acquisition Regulation (FAR) clause, which is incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items: 52.233-3, Protest After Award (AUG 1996) (31 U.S.C. 3553).

(b) The Contractor agrees to comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

[Contracting Officer check as appropriate.]

- (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (Jul 1995), with Alternate I (Oct 1995) (41 U.S.C. 253g and 10 U.S.C. 2402).
- (2) 52.219-3, Notice of Total HUBZone Set-Aside (Jan 1999) (15 U.S.C. 657a).
- (3) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jan 1999) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).
- (4)(i) 52.219-5, Very Small Business Set-Aside (Mar 1999) (Pub. L. 103-403, section 304, Small Business Reauthorization and Amendments Act of 1994).
- (ii) Alternate I to 52.219-5 (Mar 1999).
- (iii) Alternate II to 52.219-5 (Mar 1999).
- (5)(i) 52.219-6, Notice of Total Small Business Set-Aside (Jul 1996) (15 U.S.C. 644).
- (ii) Alternate I to 52.219-6 (Oct 1995).
- (6)(i) 52.219-7, Notice of Partial Small Business Set-Aside (Jul 1996) (15 U.S.C. 644).
- (ii) Alternate I to 52.219-7 (Oct 1995).
- (7) 52.219-8, Utilization of Small Business Concerns (Oct 2000) (15 U.S.C. 637(d)(2) and (3)).
- (8)(i) 52.219-9, Small Business Subcontracting Plan (Jan 2002) (15 U.S.C. 637(d)(4)).
- (ii) Alternate I to 52.219-9 (Oct 2001).
- (iii) Alternate II to 52.219-9 (Oct 2001).
- (9) 52.219-14, Limitations on Subcontracting (Dec 1996) (15 U.S.C. 637(a)(14)).
- (10)(i) 52.219-23, Notice of Price Evaluation Adjustment for Small

Disadvantaged Business Concerns (May 2001) (Pub. L. 103–355, section 7102, and 10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).

(ii) Alternate I to 52.219–23 (Oct 1998).

(11) 52.219–25, Small Disadvantaged Business Participation Program Disadvantaged Status and Reporting (Oct 1999) (Pub. L. 103–355, section 7102, and 10 U.S.C. 2323).

(12) 52.219–26, Small Disadvantaged Business Participation Program Incentive Subcontracting (Oct 2000) (Pub. L. 103–355, section 7102, and 10 U.S.C. 2323).

(13) 52.222–3, Convict Labor (Aug 1996) (E.O. 11755).

(14) 52.222–19, Child Labor—Cooperation with Authorities and Remedies (Dec 2001) (E.O. 13126).

(15) 52.222–21, Prohibition of Segregated Facilities (Feb 1999).

(16) 52.222–26, Equal Opportunity (Feb 1999) (E.O. 11246).

(17) 52.222–35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212).

(18) 52.222–36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793).

(19) 52.222–37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212).

(20)(i) 52.223–9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (Aug 2000) (42 U.S.C. 6962(c)(3)(A)(ii)).

(ii) Alternate I to 52.223–9 (Aug 2000) (42 U.S.C. 6962(i)(2)(C)).

(21) 52.225–1, Buy American Act—Balance of Payments Program—Supplies (Feb 2002) (41 U.S.C. 10a–10d).

(22)(i) 52.225–3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program (Feb 2002) (41 U.S.C. 10a–10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note).

(ii) Alternate I to 52.225–3 (Feb 2000).

(iii) Alternate II to 52.225–3 (Feb 2000).

(23) 52.225–5, Trade Agreements (Feb 2002) (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).

(24) 52.225–13, Restriction on Certain Foreign Purchases (Jul 2000) (E.O. 12722, 12724, 13059, 13067, 13121, and 13129).

(25) 52.225–15, Sanctioned European Union Country End Products (Feb 2000) (E.O. 12849).

(26) 52.225–16, Sanctioned European Union Country Services (Feb 2000) (E.O. 12849).

(27) 52.232–29, Terms for Financing of Purchases of Commercial Items (Feb 2002) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

(28) 52.232–30, Installment Payments for Commercial Items (Oct 1995) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

(29) 52.232–33, Payment by Electronic Funds Transfer—Central Contractor Registration (May 1999) (31 U.S.C. 3332).

(30) 52.232–34, Payment by Electronic Funds Transfer Other than Central Contractor Registration (May 1999) (31 U.S.C. 3332).

(31) 52.232–36, Payment by Third Party (May 1999) (31 U.S.C. 3332).

(32) 52.239–1, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).

(33)(i) 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Jun 2000) (46 U.S.C. Appx 1241).

(ii) Alternate I to 52.247–64 (Apr 1984).

(c) The Contractor agrees to comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

Contracting Officer check as appropriate.

(1) 52.222–41, Service Contract Act of 1965, as Amended (May 1989) (41 U.S.C. 351, *et seq.*).

(2) 52.222–42, Statement of Equivalent Rates for Federal Hires (May 1989) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

(3) 52.222–43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option

Contracts) (May 1989) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

(4) 52.222–44, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Feb 2002) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

(5) 52.222–47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contractor Pursuant to Predecessor Contractor Collective Bargaining Agreements (CBA) (May 1989) (41 U.S.C. 351, *et seq.*).

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(e) The following clauses must be included in subcontracts:

(1) 52.219–8, Utilization of Small Business Concerns (Oct 2000) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219–8 in lower tier subcontracts that offer subcontracting opportunities.

(2) 52.222–26, Equal Opportunity (Feb 1999) (E.O. 11246).

(3) 52.222–35, Equal Opportunity for Disabled Special Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212(a)).

(4) 52.222–36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793).

(5) 52.222–41, Service Contract Act of 1965, as Amended (May 1989) (41 U.S.C. 351, *et seq.*).

(6) 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Jun 2000) (46 U.S.C. Appx 1241) (flowdown not required for subcontracts awarded beginning May 1, 1996).

While not required, a prime contractor may include in its subcontracts a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

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