

(A) The Contractor defaults; or  
(B) The subcontractor becomes bankrupt or insolvent.

(5) If the financing payments are in the form of commercial item financing payments, the terms of the subcontract or interdivisional order concerning payments—

(i) Are constructed in accordance with FAR 32.206(c) and included in a subcontract for a commercial item purchase that meets the definition and standards for acquisition of commercial items in FAR Parts 2 and 12;

(ii) Are in conformance with the requirements of FAR 32.504(g); and

(iii) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if—

(A) The Contractor defaults; or

(B) The subcontractor becomes bankrupt or insolvent.

(6) If financing is in the form of progress payments, the progress payment rate in the subcontract is the customary rate used by the contracting agency, depending on whether the subcontractor is or is not a small business concern.

(7) Concerning any proceeds received by the Government for property to which title has vested in the Government under the subcontract terms, the parties agree that the proceeds shall be applied to reducing any unliquidated financing payments by the Government to the Contractor under this contract.

(8) If no unliquidated financing payments to the Contractor remain, but there are unliquidated financing payments that the Contractor has made to any subcontractor, the Contractor shall be subrogated to all the rights the Government obtained through the terms required by this clause to be in any subcontract, as if all such rights had been assigned and transferred to the Contractor.

(9) To facilitate small business participation in subcontracting under this contract, the Contractor shall provide financing payments to small business concerns, in conformity with the standards for customary contract financing payments stated in FAR 32.113. The Contractor shall not consider the need for such financing payments as a handicap or adverse factor in the award of subcontracts.

\* \* \* \* \*

(End of clause)

*Alternate I (Mar 2000).* If the contract is with a small business concern, change each mention of the progress payment and liquidation rates excepting paragraph (k) to the customary rate of 85 percent for small business concerns (see FAR 32.501-1).

\* \* \* \* \*

*Alternate III (Mar 2000).* As prescribed in 32.502-4(d), add the following paragraph (l) to the basic clause. If Alternate II is also being used, redesignate the following paragraph as paragraph (n):

(l) The provisions of this clause will not be applicable to individual orders at or below the simplified acquisition threshold.

29. Add section 52.232-28 to read as follows:

#### **52.232-28 Invitation to Propose Performance-Based Payments.**

As prescribed in 32.1005(b)(1), insert the following provision:

#### **Invitation to Propose Performance-Based Payments (Mar 2000)**

(a) The Government invites the offeror to propose terms under which the Government will make performance-based contract financing payments during contract performance. The Government will consider performance-based payment financing terms proposed by the offeror in the evaluation of the offeror's proposal. The Contracting Officer will incorporate the financing terms of the successful offeror and the FAR clause, Performance-Based Payments, at FAR 52.232-32, in any resulting contract.

(b) In the event of any conflict between the terms proposed by the offeror and the terms in the clause at FAR 52.232-32, Performance-Based Payments, the terms of the clause at FAR 52.232-32 shall govern.

(c) The Contracting Officer will not accept the offeror's proposed performance-based payment financing if the financing does not conform to the following limitations:

(1) The Government will make delivery payments only for supplies delivered and accepted, or services rendered and accepted in accordance with the payment terms of this contract.

(2) The terms and conditions of the performance-based payments must—

(i) Comply with FAR 32.1004;

(ii) Be reasonable and consistent with all other technical and cost information included in the offeror's proposal; and

(iii) Their total shall not exceed 90 percent of the contract price if on a whole contract basis, or 90 percent of the delivery item price if on a delivery item basis.

(3) The terms and conditions of the performance-based financing must be in the best interests of the Government.

(d) The offeror's proposal of performance-based payment financing shall include the following:

(1) The proposed contractual language describing the performance-based payments (see FAR 32.1004 for appropriate criteria for establishing performance bases and performance-based finance payment amounts).

(2) A listing of—

(i) The projected performance-based payment dates and the projected payment amounts; and

(ii) The projected delivery date and the projected payment amount.

(3) Information addressing the Contractor's investment in the contract.

(e) Evaluation of the offeror's proposed prices and financing terms will include whether the offeror's proposed performance-based payment events and payment amounts are reasonable and consistent with all other terms and conditions of the offeror's proposal.

(End of provision)

*Alternate I (Mar 2000).* As prescribed in FAR 32.1005(b)(2), add the following paragraph (f) to the basic provision:

(f) The Government will adjust each proposed price to reflect the cost of providing

the proposed performance-based payments to determine the total cost to the Government of that particular combination of price and performance-based financing. The Government will make the adjustment using the procedure described in FAR 32.205(c).

[FR Doc. 00-7309 Filed 3-24-00; 8:45 am]

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## **DEPARTMENT OF DEFENSE**

### **GENERAL SERVICES ADMINISTRATION**

### **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

#### **48 CFR Parts 1, 6, 9, 15, and 52**

[FAC 97-16; Item III]

#### **Federal Acquisition Regulation; Technical Amendments**

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

**ACTION:** Technical amendments.

**SUMMARY:** This document makes amendments to the Federal Acquisition Regulation in order to update references and make editorial changes.

**EFFECTIVE DATE:** March 27, 2000.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755.

#### **List of Subjects in 48 CFR Parts 1, 6, 9, 15, and 52**

Government procurement.

Dated: March 20, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA amend 48 CFR Parts 1, 6, 9, 15, and 52 as set forth below:

1. The authority citation for 48 CFR Parts 1, 6, 9, 15, 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 1—FEDERAL ACQUISITION REGULATIONS SYSTEM**

2. Amend section 1.106 in the table following the introductory paragraph by adding entries 23.9, 52.223-13, and 52.223-14, and by revising entry 52.247-64 to read as follows:

#### **1.106 OMB approval under the Paperwork Reduction Act.**

\* \* \* \* \*

FAR segment	OMB control no.
23.9 .....	9000-0139
52.223-13 .....	9000-0139
52.223-14 .....	9000-0139
52.247-64 .....	9000-0061

**1.201-1 [Amended]**

3. Amend section 1.201-1(a) by removing "1.102" and adding "1.103" in its place.

**1.304 [Amended]**

4. Amend section 1.304(a) by removing "1.301(c)" and adding "1.301(d)" in its place.

**PART 6—COMPETITION REQUIREMENTS****6.305 [Amended]**

5. In section 6.305 redesignate paragraphs (1) and (2) as (a) and (b), respectively; and in the newly redesignated paragraph (a) remove "41 U.S.C. 303(f)(4)" and add "41 U.S.C. 253(f)(4)" in its place.

**PART 9—CONTRACTOR QUALIFICATIONS**

6. Revise section 9.404 to read as follows:

**9.404 List of Parties Excluded from Federal Procurement and Nonprocurement Programs.**

(a) The General Services Administration (GSA)—

(1) Compiles and maintains a current list of all parties debarred, suspended, proposed for debarment, or declared ineligible by agencies or by the General Accounting Office;

(2) Periodically revises and distributes the list and issues supplements, if necessary, to all agencies and the General Accounting Office; and

(3) Includes in the list the name and telephone number of the official responsible for its maintenance and distribution.

(b) The List of Parties Excluded from Federal Procurement and Nonprocurement Programs includes the—

(1) Names and addresses of all contractors debarred, suspended, proposed for debarment, or declared ineligible, in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) Name of the agency or other authority taking the action;

(3) Cause for the action (see 9.406-2 and 9.407-2 for causes authorized under this subpart) or other statutory or regulatory authority;

(4) Effect of the action;

(5) Termination date for each listing;

(6) DUNS No.; and

(7) Name and telephone number of the point of contact for the action.

(c) Each agency must—

(1) Provide GSA with the information required by paragraph (b) of this section within 5 working days after the action becomes effective;

(2) Notify GSA within 5 working days after modifying or rescinding an action;

(3) Notify GSA of the names and addresses of agency organizations that are to receive the list and the number of copies to be furnished to each;

(4) In accordance with internal retention procedures, maintain records relating to each debarment, suspension, or proposed debarment taken by the agency;

(5) Establish procedures to provide for the effective use of the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, including internal distribution thereof, to ensure that the agency does not solicit offers from, award contracts to, or consent to subcontracts with contractors on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, except as otherwise provided in this subpart; and

(6) Direct inquiries concerning listed contractors to the agency or other authority that took the action.

(d) The List of Parties Excluded from Federal Procurement and Nonprocurement Programs is available as follows:

(1) The printed version is published monthly. Copies may be obtained by purchasing a yearly subscription.

(i) Federal agencies may subscribe through their organization's printing and distribution office.

(ii) The public may subscribe by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by calling the Government Printing Office Inquiry and Order Desk at (202) 512-1800.

(2) The electronic version is updated daily and is available via—

(i) The internet at <http://epls.arnet.gov>; or

(ii) Electronic bulletin board. Dial (202) 219-0132. The settings are N-8-1-F.

(e) For general questions about entries on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs or additional information on accessing the electronic bulletin board, call GSA at (202) 501-4873 or 501-4740.

**9.405 [Amended]**

7. Amend section 9.405 in paragraph (d)(4) by removing the word "List" and adding "List of Parties Excluded from Federal Procurement and Nonprocurement Programs" in its place.

**PART 15—CONTRACTING BY NEGOTIATION**

8. Amend section 15.404-1 by revising the last sentence of paragraph (a)(7) to read as follows:

**15.404-1 Proposal analysis techniques.**

(a) \* \* \*

(7) \* \* \* They are available via the internet at <http://www.acq.osd.mil/dp/cpf>.

\* \* \* \* \*

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES****52.212-1 [Amended]**

9. Amend section 52.212-1 by revising the date of the clause to read "(MAR 2000)"; and in paragraph (i)(2)(ii)(B) by removing "<http://www.dodssp.daps.mil>" and adding "<http://assist.daps.mil>" in its place.

**52.217-9 [Amended]**

10. Amend section 52.217-9 by revising the date of the clause to read "(MAR 2000)"; and in paragraph (b) by removing "provision" and adding "clause" in its place.

**52.219-23 [Amended]**

11. Amend the introductory text of Alternate II in section 52.219-23 by removing "(b)(i)" both times it appears and adding "(b)(1)(i)" in their places.

[FR Doc. 00-7310 Filed 3-24-00; 8:45 am]

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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.