

accordingly, not reimbursable by the Government; and

- Making several editorial changes.

Three respondents submitted public comments to the proposed rule. The Councils considered all comments before agreeing to convert the proposed rule to a final rule without change.

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 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 most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule.

#### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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 31

Government procurement.

Dated: July 19, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 31 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. Revise section 31.205–48 to read as follows:

##### 31.205–48 Deferred research and development costs.

*Research and development*, as used in this section, means the type of technical effort described in 31.205–18 but sponsored by a grant or required in the performance of a contract. When costs are incurred in excess of either the price

of a contract or amount of a grant for research and development effort, the excess is unallowable under any other Government contract.

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#### DEPARTMENT OF DEFENSE

##### GENERAL SERVICES ADMINISTRATION

##### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 43 and 52

[FAC 97–19; FAR Case 1999–606; Item VIII]  
RIN 9000–AI65

#### Federal Acquisition Regulation; Time-and-Materials or Labor-Hours

**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 (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify the requirements regarding changes to time-and-materials and labor-hour contracts.

**DATES:** *Effective Date:* September 25, 2000.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501–3775. Please cite FAC 97–19, FAR case 1999–606.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This final rule clarifies the requirements regarding changes to time-and-materials and labor-hour contracts. The rule changes the clause at FAR 52.243–3, Changes—Time-and-Materials or Labor-Hours, to be consistent with Alternate II of the clause at FAR 52.243–1, Changes—Fixed-Price. Alternate II is used in service contracts and most of the work performed under time-and-materials or labor-hour contracts also involves services.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 3762, January 24, 2000. One respondent submitted comments on the proposed rule. The comments were

considered in the development of the final rule.

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 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 contractors are entitled to an equitable adjustment to contract terms and conditions if a change order is issued under the Changes clause of the contract.

#### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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 Parts 43 and 52

Government procurement.

Dated: July 19, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 43 and 52 as set forth below:

1. The authority citation for 48 CFR parts 43 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 43—CONTRACT MODIFICATIONS

2. Amend section 43.205 by revising paragraph (c) to read as follows:

##### 43.205 Contract clauses.

\* \* \* \* \*

(c) Insert the clause at 52.243–3, Changes—Time-and-Materials or Labor-Hours, in solicitations and contracts when a time-and-materials or labor-hour contract is contemplated. The contracting officer may vary the 30-day period in paragraph (c) of the clause according to agency procedures.

\* \* \* \* \*

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

3. Revise section 52.243–3 to read as follows:

**52.243–3 Changes—Time-and-Materials or Labor-Hours.**

As prescribed in 43.205(c), insert the following clause:

Changes—Time-and-Materials or Labor-Hours (Sept 2000)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (*i.e.*, hours of the day, days of the week, etc.).
- (3) Place of performance of the services.
- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.
- (5) Method of shipment or packing of supplies.
- (6) Place of delivery.
- (7) Amount of Government-furnished property.

(b) If any change causes an increase or decrease in any hourly rate, the ceiling price, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the Contracting Officer will make an equitable adjustment in any one or more of the following and will modify the contract accordingly:

- (1) Ceiling price.
- (2) Hourly rates.
- (3) Delivery schedule.
- (4) Other affected terms.

(c) The Contractor shall assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) Failure to agree to any adjustment will be a dispute under the Disputes clause. However, nothing in this clause excuses the Contractor from proceeding with the contract as changed.

(End of clause)

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**DEPARTMENT OF DEFENSE****GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Part 50**

[FAC 97–19; FAR Case 2000–006; Item IX]

RIN 9000–AI85

**Federal Acquisition Regulation; Repeal of Reporting Requirements under Public Law 85–804**

**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 (Councils) have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to implement paragraph 901(r)(1) of the Federal Reports Elimination Act of 1998 (Pub. L. 105–362), that repealed section 4 of Public Law 85–804 (50 U.S.C. 1434). Section 4 required each department and agency to report annually to Congress any contract action in excess of \$50,000 issued under the authority of this law.

**DATES:** *Effective Date:* September 25, 2000.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501–3775. Please cite FAC 97–19, FAR case 2000–006.

**SUPPLEMENTARY INFORMATION:****A. Background**

The final rule revises FAR 50.000 to update the reference to Public Law 85–804 and eliminates the reporting requirements at FAR 50.104. Agencies are no longer required to submit to Congress annually a report of actions taken on requests for relief under the authority of Public Law 85–804.

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 final rule does not constitute a significant FAR revision within the

meaning of FAR 1.501 and Pub. L. 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Part 50 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.* (FAC 97–19, FAR case 2000–006), in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the 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 50**

Government procurement.

Dated: July 19, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA amend 48 CFR part 50 as set forth below:

**PART 50—EXTRAORDINARY CONTRACTUAL ACTIONS**

1. The authority citation for 48 CFR part 50 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. Revise section 50.000 to read as follows:

**50.000 Scope of part.**

This part prescribes policies and procedures for entering into, amending, or modifying contracts in order to facilitate the national defense under the extraordinary emergency authority granted by Public Law 85–804 (50 U.S.C. 1431–1434), referred to in this part as the “Act”, and Executive Order 10789, dated November 14, 1958, referred to in this part as “the Executive order”. It does not cover advance payments (see subpart 32.4).

**50.104 [Removed and Reserved]**

3. Remove and reserve section 50.104.

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