

**TITLE: CIB 95-5 Implementation of Federal Acquisition Streamlining Act (FASA) Provisions**

February 8, 1995

MEMORANDUM FOR ALL CONTRACTING OFFICERS AND NEGOTIATORS

FROM:DAA/M, Michael Sherwin, Procurement Executive

SUBJECT:Implementation of Federal Acquisition Streamlining Act (FASA) Provisions

**CONTRACT INFORMATION BULLETIN 95-5**

The Federal Acquisition Streamlining Act (FASA) became law October 13, 1994. While most of the law will become effective upon implementation in the FAR, certain provisions were made effective upon enactment, and an additional provision became effective January 13, 1995 as an interim FAR rule. The following attached FASA provisions should be implemented immediately:

1. **Increase in the threshold for requiring certified cost or pricing data** for contracts, subcontracts, and modifications thereto--**from \$100,000 to \$500,000**. See the interim rule in FAC 90-22 which implements this provision.

2. **Repeal of the requirement for a determination prior to using cost or incentive contracts**. See the interim rule in FAC 90-24, Item I, which implements this provision.

3. **Exemption of purchases not exceeding the \$2500 maximum for micro purchases from the Buy American Act and the small business reserve** of the Small Business Act. However, under FASA, these purchases may still be reserved for small businesses and 8(a) firms at the purchasing office's discretion. Further, **end users of services and supplies may be authorized to make these purchases**<sup>1</sup>. If their delegations of authority do not exceed \$2500 and if the head of the procuring activity determines that their estimated total purchases are not likely to exceed \$20,000 in any 12-month period, these personnel are not considered "procurement officials" with regard to these actions for purposes of the procurement integrity provisions of the OFPP Act. See the interim rule in FAC 90-24, Item II, which implements these provisions.

4. **Repeal of the requirement for travel charged to cost reimbursement contracts to be subject to the U.S. Government's maximum per diem rates**. Though it was not issued as an interim rule, **interim USAID implementation should be based on FAR Case 94-753** (described below) if a contractor proposes alternative per diem rates.

---

<sup>1</sup> Direct inquiries to M/AS/AP on the VISA charge card program that allows end users in USAID/W to make OE-funded purchases.

5. **Restrictions on Entertainment, Gift, and Recreation Costs for Contractor Employees** in FASA became effective on January 13, 1995. See the interim rule in FAC 90-25 which implements this provision.

FAR implementation of the remaining sections of FASA will be published for comment shortly: the following FAR cases seeking comment on aspects of FASA implementation have been published in the Federal Register and E-mailed to contracting personnel:

Reg		Case	Fed
		Title	
		No.	
		Date	
<hr/>			
(Synopsis)			
<hr/>			
94-701	Jan 9	Contract Award Implementation (Specifies revisions to requirements for competition, publicizing actions, award notices, and debriefings.)	
94-721	Jan 6	Truth in Negotiations Act Changes and Related Changes (Revises requirements for cost and pricing data and related items.)	
94-730	Jan 10	Protests, Disputes, and Appeals (Revises suspension of performance requirement in GAO protests, increases thresholds for BCA small claims and accelerated procedures, et al.)	
94-740	Dec 23	Consolidation and Revision of Authority to Examine Records (Authorizes storage of records in electronic or photographic form, revises audit clause requirements, and prohibits preaward audit of indirect costs if another agency's recent audit will suffice.)	
94-751	Dec 19	Penalties on Unallowable Indirect Costs	
94-752	Dec 19	Contractor Overhead Certification	
94-753	Dec 14	Travel Costs (Permits use of alternative maximum contractor per diem rates that will be subject to prior Contracting Officer approval, based upon the contractor's demonstration that the rates are (1) reasonable, (2) derived from the	

contractor's normal travel cost reimbursement system, and (3) not in excess of amounts normally paid under that system.)

94--780	Jan 6	Small Business (Revises provisions for (1) a small business reserve range of \$2500 to \$100,000, (2) deletion of labor surplus areas in priority for awards, (3) up to a 10 percent evaluation preference for SDB's in unrestricted competitions, (4) set-asides to be reserved for SDB's, and (5) a 5-percent goal for awards to women-owned businesses.)
94-801	Dec 20	Debarment, Suspension, and Ineligibility (Requires reciprocal government-wide use of procurement and nonprocurement lists.)
94-802	Dec 1	Officials Not to Benefit (Deletes contract clause.)
94-803	Dec 1	Whistleblower Protection for Contractor Employees
94-804	Dec 1	Procurement Integrity (Deletes certification requirement for commercial item procurements.)

Contact M/OP/P for further information or to make comments on the above FAC's and FAR cases.

Under the FAR Council's FASA implementation schedule, the final FAR rules that fully implement FASA should become effective by April 22, 1995.

Attachments: a/s

Attachment I -- FAC 90-22, December 4a 1994

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 14, 15, and 52

Federal Acquisition Regulation; Certified Cost or Pricing Data Threshold; Interim Rule

Federal Register / Vol. 59, No. 232 / Monday, December 5, 1994 / Rules and Regulations

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 14, 15, and 52

[FAC 90 - 22; FAR Case 94 - 720]

RIN 9000 - AG19

Federal Acquisition Regulation; Certified Cost or Pricing Data Threshold

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 Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration have agreed to an interim rule to increase the threshold for certified cost or pricing data from \$100,000 to \$500,000 for civilian agencies and to remove the requirements for commercial pricing certificates. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: Effective Date: December 5, 1994.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or

before February 3, 1995, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405, Phone: (202) 501 - 4755.

Please cite FAC 90 - 22, FAR case 94 - 720 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Al Winston, Truth in Negotiations Act (TINA) Team Leader, at (703) 602 - 2119 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 - 22, FAR case 94 - 720.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994 (the Act), Pub. L. 103 - 355, provides authorities that streamline the acquisition process and minimize burdensome government-unique requirements. Major changes that can be expected in the acquisition process as a result of the Act's implementation include changes in the areas of Commercial Item Acquisition, Simplified Acquisition Procedures, the Truth in Negotiations Act, and introduction of the Federal Acquisition Computer Network.

This notice announces FAR revisions developed under FAR case 94 - 720, which was based on provisions in the Act that increased the threshold for obtaining certified cost or pricing data from \$100,000 to \$500,000 for civilian agencies. This matches the threshold previously applicable only to the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard. The Act also repealed the requirements to obtain commercial pricing certification for certain items under civilian agency contracts. This interim rule is intended solely to make the changes necessary to implement those limited portions of the Act. Further, more extensive changes to implement other portions of the Act will be made subsequently.

The FAR Council is interested in an exchange of ideas and opinions with respect to the regulatory implementation of the Act. For that reason, the FAR Council is conducting a series of public meetings. However, the FAR Council has not scheduled a public

meeting on this rule (FAR case 94 - 720) because of the clarity and non-controversial nature of the rule. If the public believes such a meeting is needed with respect to this rule, a letter requesting a public meeting and outlining the nature of the requested meeting shall be submitted to and received by the FAR Secretariat (see ADDRESSES caption, above) on or before January 4, 1995. The FAR Council will consider such requests in determining whether a public meeting on this rule should be scheduled.

#### B. Regulatory Flexibility Act

The interim rule is not expected 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 nearly all contracts awarded to small business are awarded on the basis of competition for a firm fixed price and submittal of cost or pricing data is not required. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. 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 - 22, FAR case 94 - 720), in correspondence.

#### C. Paperwork Reduction Act

The paperwork burden estimate applicable to the requirements for certified cost or pricing data (9000 - 0013) has been reduced to reflect the reduced numbers of submittals of certified cost or pricing data by civilian agency contractors. The reduction in the estimated burden for cost or pricing data requirements stems from the reduced number of submittals of cost or pricing data due to the increase in the threshold from \$100,000 to \$500,000. The paperwork burden applicable to the Commercial Pricing Certification requirements (9000 - 0105) has been eliminated. Inquiries should be directed to the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501 - 4755 and cite FAC 90 - 22, OMB Clearance No. 9000 - 0013 or 9000 - 0105.

#### 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 the portion of the Federal

Acquisition Streamlining Act of 1994 that increases the certified cost or pricing data threshold for civilian agencies is effective upon enactment. Additionally, the Act repeals the requirements for commercial pricing certifications and the unnecessary regulatory burden related to commercial pricing certificates should be eliminated as quickly as possible to reduce administrative costs within the Government and at contractor locations.

List of Subjects in 48 CFR Parts 14, 15 and 52

Government procurement.

Dated: November 29, 1994.

Capt. Barry L. Cohen, SC, USN,

Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90 - 22 are effective December 5, 1994.

Dated: November 17, 1994.

Albert A. Vicchiolla

Acting Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: November 23, 1994.

Thomas Luedtke,

Deputy Associate Administrator for Procurement, NASA.

Dated: November 28, 1994.

Eleanor R. Spector,

Director, Defense Procurement.

Therefore, 48 CFR Parts 14, 15 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 14, 15 and 52 continues to read as follows:

Authority Citation

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## PART 14 -- SEALED BIDDING

2. Section 14.201 - 7 is amended in paragraphs (a), (b)(1), and (c)(1) by removing ``\$100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, is expected to exceed \$500,000.'' and inserting ``the threshold for submission of cost or pricing data at 15.804 - 2(a)(1).'' in its place, by redesignating paragraph (d) as (e), and adding a new (d) to read as follows:

14.201 - 7 Contract clauses.

\* \* \* \* \*

(d) Contracting officers shall, if requested by the prime contractor, modify contracts to change the threshold in the contract to the cost or pricing data threshold in 15.804 - 2(a)(1), without requiring consideration. The contract modification shall be accomplished by inserting into the contract the current version of clauses 52.214 - 27, Price Reduction for Defective Cost or Pricing Data -- Modifications -- Sealed Bidding, and 52.214 - 28, Subcontractor Cost or Pricing Data -- Modifications - - Sealed Bidding. These new contract clauses shall apply only to contract modifications and subcontracts for which agreement on price occurs after the contracting officer has inserted the new clauses.

\* \* \* \* \*

14.214 [Reserved]

3. Section 14.214 is removed and reserved.

## PART 15 -- CONTRACTING BY NEGOTIATION

4. Section 15.804 - 2 is amended by revising paragraphs (a)(1) and (2) to read as follows:

15.804 - 2 Requiring cost or pricing data.

(a)(1) The threshold for obtaining cost or pricing data is \$500,000. This amount will be subject to adjustment, effective October 1, 1995, and every five years thereafter. Except as provided in 15.804 - 3, certified cost or pricing data are required before accomplishing any of the following actions expected to exceed the threshold in effect at time of agreement on price or, in the case of existing contracts, the threshold specified in the contract --

(i) The award of any negotiated contract (except for undefinitized actions such as letter contracts);

(ii) The award of a subcontract at any tier, if the contractor and each higher tier subcontractor have been required to furnish cost or pricing data (see 15.804 - 3(i); or

(iii) The modification of any sealed bid or negotiated contract (whether or not cost or pricing data were initially required) or subcontract covered by paragraph (a)(1)(ii) of this subsection.

Price adjustment amounts shall consider both increases and decreases. (For example, a \$150,000 modification resulting from a reduction of \$350,000 and an increase of \$200,000 is a pricing adjustment exceeding \$500,000.) This requirement does not apply when unrelated and separately priced changes for which cost or pricing data would not otherwise be required are included for administrative convenience in the same modification.

(2) Contracting officers shall, if requested by the prime contractor, modify contracts to change the threshold in the contract to the cost or pricing data threshold in paragraph (a)(1) of this subsection, without requiring consideration. The contract modification shall be accomplished by inserting into the contract the current version of the clauses 52.215 - 23, Price Reduction for Defective Cost or Pricing Data -- Modifications, and 52.215 - 25, Subcontractor Cost or Pricing Data -- Modifications, or 52.215 - 24, Subcontractor Cost or Pricing Data, as applicable. These new contract clauses shall apply only to contract modifications and subcontracts for which agreement on price occurs after the contracting officer has inserted the new clauses.

\* \* \* \* \*

15.813 [Reserved]

5. Section 15.813 is removed and reserved, and subsections 15.813 - 1 through 15.813 - 7 are removed.

PART 52 -- SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 52.214 - 27 is amended by revising the clause date and the introductory text of paragraph (a) to read as follows:

52.214 - 27 Price Reduction for Defective Cost or Pricing Data -- Modifications -- Sealed Bidding

\* \* \* \* \*

Price Reduction for Defective Cost or Pricing Data -- Modifications -- Sealed Bidding (Nov 1994)

(a) This clause shall become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, of more than the threshold for submission of cost or pricing data at (FAR) 48 CFR 15.804 - 2(a)(1), except that this clause does not apply to any modification for which the price is --

\* \* \* \* \*

7. Section 52.214 - 28 is amended:

(a) By revising the clause date and the introductory text of paragraph (b);

(b) In paragraph (a) by removing ``\$100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, expected to exceed \$500,000'' and inserting ``the threshold for submission of cost or pricing data at (FAR) 48 CFR 15.804 - 2(a)(1)'' in its place; and

(c) In (d) by removing ``\$100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, in each subcontract that exceeds \$500,000'' and inserting ``the threshold for submission of cost or pricing data at (FAR) 48 CFR 15.804 - 2(a)(1)'' in its place.

The revised text is to read as follows:

52.214 - 28 Subcontractor Cost or Pricing Data -- Modifications -- Sealed Bidding.

\* \* \* \* \*

Subcontractor Cost or Pricing Data -- Modifications - Sealed Bidding (Nov 1994)

\* \* \* \* \*

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at (FAR) 48 CFR 15.804 - 2(a)(1) when entered into, or pricing any subcontract modification involving aggregate increases and/or decreases in

costs, plus applicable profits, expected to exceed the threshold for submission of cost or pricing data at (FAR) 48 CFR 15.804 - 2(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price is --

\* \* \* \* \*

52.214 - 29 [Amended]

8. Section 52.214 - 29 is amended in the introductory paragraph by revising ``14.201 - 7(d)'' to read ``14.201 - 7(e)''.

52.215 - 23 [Amended]

9. Section 52.215 - 23 is amended by revising the clause date to read ``(NOV 1994)'' and in the introductory text of paragraph (a) by removing ``\$100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, expected to exceed \$500,000'' and inserting ``the threshold for submission of cost or pricing data at FAR 15.804 - 2(a)(1)'' in its place.

52.215 - 24 [Amended]

10. Section 52.215 - 24 is amended by revising the clause date to read ``(NOV 1994)'' and twice in the introductory text of paragraph (a) and once in the introductory text of (c) by removing ``\$100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, expected to exceed \$500,000'' and inserting ``the threshold for submission of cost or pricing data at FAR 15.804 - 2(a)(1)'' in its place.

11. Section 52.215 - 25 is amended by revising the clause date, paragraph (a), the introductory text of (b), and (d) to read as follows:

52.215 - 25 Subcontractor Cost or Pricing Data -- Modifications.

\* \* \* \* \*

Subcontractor Cost or Pricing Data -- Modifications  
(Nov 1994)

(a) The requirements of paragraphs (b) and (c) of this clause shall (1) become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at (FAR) 48

CFR 15.804 - 2(a)(1); and (2) be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at (FAR) 48 CFR 15.804 - 2(a)(1) when entered into, or pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at (FAR) 48 CFR 15.804 - 2(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price is --

\* \* \* \* \*

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of cost or pricing data at (FAR) 48 CFR 15.804 - 2(a)(1), when entered into.

(End of clause)

52.215 - 32 [Removed and Reserved]

12. Section 52.215 - 32 is removed and reserved.

52.215 - 37 [Removed and Reserved]

13. Section 52.215 - 37 is removed and reserved.

Back Trash

[FR Doc. 94 - 29811 Filed 12 - 2 - 94; 8:45 am]

BILLING CODE 6820 - 34 - U

Monday

December 5, 1994

Attachment III -- FAR Case 94-753, December 14, 1994

14a Attachment II -- FAC 90-24, December 15, 1994

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Federal Acquisition Circular 90 - 24]

Federal Acquisition Regulation; Introduction of  
Miscellaneous Amendments

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

ACTION: Summary of interim rules and technical  
corrections.

SUMMARY: This document introduces the documents, set  
forth below, which comprise Federal Acquisition  
Circular (FAC) 90 - 24. The Department of Defense,  
General Services Administration and National  
Aeronautics and Space Administration are issuing FAC  
90 - 24 pursuant to the Federal Acquisition  
Streamlining Act of 1994 (the Act). These Federal  
Acquisition Regulation (FAR)  
)revisions are implemented in the following subject  
areas:

EFFECTIVE DATES: FAC 90 - 24 is effective December  
15, 1994.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat,  
Room 4041, GS Building, Washington, DC 20405, (202)  
501 - 4755. For specific information contact the team  
leader whose name appears in relation to each FAR  
case or subject area (see table under SUMMARY).  
Please cite FAC 90 - 24 and applicable FAR case  
number(s).

SUPPLEMENTARY INFORMATION: Federal Acquisition  
Circular 90 - 24 amends the Federal Acquisition  
Regulation (FAR) as specified below:

Item I -- Repeal of Requirement for  
Secretarial/Agency Head Determinations Regarding Use  
of Cost Type or Incentive Contracts (FAR Case 94 -  
700)

This interim rule deletes the requirement for  
a ``determination and findings'' before using a cost

type or incentive contract and to delete references to 10 U.S.C. 2301.

Item II -- Micro-Purchase Procedures (FAR Case 94 - 771)

This interim rule implements the new micro-purchase requirements of the Act.

Dated: December 8, 1994.

Edward Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Federal Acquisition Circular

Number 90 - 24

Federal Acquisition Circular (FAC) 90 - 24 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90 - 24 is effective December 15, 1994.

Dated: December 8, 1994.

Ida M. Ustad,

Associate Administrator for Acquisition Policy, GSA.

Dated: December 8, 1994.

Colonel Roland A. Hassebrock,

Deputy Director, Defense Procurement, DOD.

Dated: December 8, 1994.

Deidre A. Lee,

Associate Administrator for Procurement, NASA.

[FR Doc. 94 - 30603 Filed 12 - 13 - 94; 10:43 am]

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 7, 11, 16, and 19

[FAC 90 - 24; FAR Case 94 - 700; Item I]

RIN 9000 - AG25

Federal Acquisition Regulation; Repeal of Requirement for Secretarial/Agency Head Determinations Regarding Use of Cost Type or Incentive Contracts

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

ACTION: Interim rule with request for comment.

SUMMARY: This interim rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994 to delete the requirement for a ``determination and findings'' before using a cost type or incentive contract and to delete references to 10 U.S.C. 2301. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: Effective Date: December 15, 1994.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before February 13, 1995 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4037, Attn: Ms. Beverly Fayson, Washington, DC 20405.

Please cite FAC 90 - 24, FAR case 94 - 700 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rider, Contract Award Team Leader, at (703) 614 - 1634 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 - 24, FAR case 94 - 700.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994 (the Act), Pub. L. 103 - 355, provides

authorities that streamline the acquisition process and minimize burdensome Government-unique requirements. Major changes that can be expected in the acquisition process as a result of the Act's implementation include changes in the areas of Commercial Item Acquisition, Simplified Acquisition Procedures, the Truth in Negotiations Act, and introduction of the Federal Acquisition Computer Network.

This notice announces proposed FAR revisions developed under FAR case 94 - 700, Repeal of Requirement for Secretarial/Agency Head Determinations Regarding Use of Cost Type or Incentive Contracts. Sections 1021 and 1071 repealed the requirement for a determination regarding use of a cost type or incentive contract. Therefore, the FAR at 16.301 - 3, 16.403, 16.403 - 1, and 16.403 - 2 has been amended to delete the requirement. Section 1501 repealed Section 2301 of Title 10, United States Code. The references to 10 U.S.C. 2301 at FAR 7.102, 11.002 and 19.000 have been deleted.

The FAR Council is interested in an exchange of ideas and opinions with respect to the regulatory implementation of the Act. For that reason, the FAR Council is conducting a series of public meetings. However, the FAR Council has not scheduled a public meeting on this rule (FAR case 94 - 700) because of the clarity and non-controversial nature of the rule. If the public believes such a meeting is needed with respect to this rule, a letter requesting a public meeting and outlining the nature of the requested meeting shall be submitted to and received by the FAR Secretariat (see ADDRESSES caption, above) on or before January 17, 1995. The FAR Council will consider such requests in determining whether a public meeting on this rule should be scheduled.

#### B. Regulatory Flexibility Act

This interim rule is not expected to have 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 it affects internal operating procedures of the Federal Government. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR Subparts will also 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 - 24, FAR case 94 - 700) 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 collection 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, pursuant to 41 U.S.C. 418b, urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. The Federal Acquisition Streamlining Act provided that sections 1021, 1071, and 1501 are effective upon enactment. However, public comments received in response to this interim rule will be considered in formulating the final rule. This rule is necessary to implement Sections 1021 and 1071 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103 - 355) which repealed the requirement for a determination regarding use of a cost type or incentive contract.

List of Subjects in 48 CFR Parts 7, 11, 16, and 19

Government procurement.

Dated: December 8, 1994.

Edward Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, 48 CFR Parts 7, 11, 16, and 19 are amended as set forth below:

1. The authority citation for 48 CFR Parts 7, 11, 16, and 19 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 7 -- ACQUISITION PLANNING

7.102 [Amended]

2. Section 7.102 is amended by removing from the second parenthetical ``10 U.S.C. 2301(a) (5) and''.

\* \* \* \* \*

PART 11 -- ACQUISITION AND DISTRIBUTION OF COMMERCIAL PRODUCTS

11.002 Policy.

3. Section 11.002 is amended by removing the last sentence.

PART 16 -- TYPES OF CONTRACTS

16.301 - 3 [Amended]

4. Section 16.301 - 3 is amended by removing from the end of paragraph (b) ``and'' and inserting it at the end of paragraph (a); by removing the semicolon from the end of paragraph (b) and inserting a period in its place; and by removing paragraph (c) and redesignating paragraph (d) as (c).

16.403 [Amended]

5. Section 16.403 is amended by removing paragraph (c) and redesignating paragraph (d) as (c).

16.403 - 1 and 16.403 - 2 [Amended]

6. Sections 16.403 - 1 and 16.403 - 2 are both amended at the end of paragraph (c)(1) by adding the word ``and'' after the semicolon; at the end of paragraph (c)(2) by removing ``; and'' and inserting a period; and by removing paragraph (c)(3).

PART 19 -- SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

19.000 [Amended]

7. Section 19.000 is amended in the introductory text of paragraph (a) by removing the parenthetical ``(10 U.S.C. 2301, et seq.)'' and inserting ``(10 U.S.C. 2302, et seq.)''.

[FR Doc. 94 - 30604 Filed 12 - 13 - 94; 10:44 am]

BILLING CODE 6820 - 34 - P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 3, 4, 13 and 25

[FAC 90 - 24, FAR Case 94 - 771, Item II]

RIN 9000 - AG26

Federal Acquisition Regulation; Micro-Purchase Procedures

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 Department of Defense, General Services Administration, and the National Aeronautics and Space Administration have agreed to an interim rule to implement the new micro-purchase requirements of the Federal Acquisition Streamlining Act of 1994 (the Act). This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: Effective Date: December 15, 1994.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before February 13, 1995 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405.

Please cite FAC 90 - 24, FAR case 94 - 771 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms. Diana Maykowskyj, the team leader of the Simplified Acquisition Procedures/FACNET Team, at (703) 274 - 6307 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 - 24, FAR case 94 - 771.

SUPPLEMENTARY INFORMATION:

A. Background

The Act, Pub. L. 103 - 355, provides the authority to streamline the acquisition process and minimize burdensome requirements unique to the Federal Government. Major changes that can be expected in the acquisition process as a result of the Act's implementation include changes in the areas

of Commercial Item Acquisition, Simplified Acquisition Procedures, the Truth in Negotiations Act, and introduction of the Federal Acquisition Computer Network (FACNET).

This notice announces FAR revisions developed under FAR case 94 - 771. This interim rule implements the micro-purchase requirements of Pub. L. 103 - 355. The term ``micro-purchase'' is coined and defined by Pub. L. 103 - 355. Pub. L. 103 - 355 establishes the micro-purchase threshold at \$2,500 and exempts purchases not exceeding the micro-purchase threshold from the Buy American Act and certain small business requirements. It is noted that construction requirements are limited to \$2,000 under the FAR 13.101 definition for micro-purchase to accommodate the Davis-Bacon Act requirements under Subpart 22.4. FAR 13.105(a) has been amended to exempt micro-purchases from the requirement for small business set-asides. A more extensive revision to 13.105 will be included in implementation of the full requirements of Pub. L. 103 - 355 pertaining to acquisitions not exceeding the simplified acquisition threshold. For micro-purchases, Pub. L. 103 - 355 requires competition only if prices are not considered reasonable. This rule provides for expanded use of the governmentwide commercial purchase card to take maximum advantage of the micro-purchase authority provided in Pub. L. 103 - 355 by delegating the authority, to the maximum extent practicable, to individuals in the offices that will be using the supplies or services to be purchased. Your attention is directed to the provisions at FAR 13.601(d) which indicates that such individuals are considered ``contracting officers'' within the meaning of FAR 2.101. The individuals, generally non-acquisition personnel, may be appointed under delegations of procurement authority in accordance with agency procedures.

The FAR Council is interested in an exchange of ideas and opinions with respect to the regulatory implementation of the Act. For that reason, the FAR Council is conducting a series of public meetings. However, the FAR Council has not scheduled a public meeting on this rule (FAR case 94 - 771) because of the clarifying and non-controversial nature of the rule. If the public believes such a meeting is needed with respect to this rule, a letter requesting a public meeting and outlining the nature of the requested meeting shall be submitted to and received by the FAR Secretariat (see ADDRESSES caption, above) on or before January 17, 1995. The FAR Council will consider such requests in determining whether a public meeting on this rule should be scheduled.

#### B. Regulatory Flexibility Act

The changes 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 it implements the portion of the Act which eliminates the small business setaside for purchases not exceeding the micro-purchase threshold. However, full implementation of the Federal Acquisition Streamlining Act of 1994 will require that all actions exceeding the micro-purchase threshold but not exceeding the simplified acquisition threshold, \$100,000, be set aside for small businesses. This will be an increase from the current requirement that all acquisitions less than \$25,000 be set aside for small businesses. 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 94 - 771), 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 collection 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 the Federal Acquisition Streamlining Act of 1994 requires implementation of the micro-purchase portion of the Act within 60 days of enactment. 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 1, 3, 4, 13 and 25

Government procurement.

Dated: December 8, 1994.

Edward Loeb,

Deputy Project Manager for the Implementation of the  
Federal Acquisition Streamlining Act of 1994.

Therefore, 48 CFR Parts 1, 3, 4, 13 and 25  
are amended as set forth below:

1. The authority citation for 48 CFR Parts 1,  
3, 4, 13 and 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).

PART 1 -- FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1.603 - 3 is revised to read as  
follows:

1.603 - 3 Appointment.

Contracting officers whose authority will be  
limited to micro-purchases (see subpart 13.6) shall  
be appointed in writing in accordance with agency  
procedures. Other contracting officers shall be  
appointed in writing on a ``Certificate of  
Appointment'', SF 1402, which shall state any  
limitation on the scope of authority to be exercised,  
other than limitations contained in applicable law or  
regulation. Appointing officials shall maintain files  
containing copies of all Certificates of Appointment  
that have not been terminated.

PART 3 -- IMPROPER BUSINESS PRACTICES AND PERSONAL  
CONFLICTS OF INTEREST

3. Section 3.104 - 4 is amended by adding  
paragraph (h) (5) to read as follows:

3.104 - 4 Definitions.

\* \* \* \* \*

(h) \* \* \*

(5) For purposes of 3.104 - 4(h) the term  
procurement official does not include contracting  
officers if their contracting authority is limited to  
the micro-purchase threshold (see 13.101) and the  
head of the contracting activity determines that it  
is unlikely that the individual will conduct  
acquisitions in a total amount greater than \$20,000  
in any 12-month period.

\* \* \* \* \*

PART 4 -- ADMINISTRATIVE MATTERS

4.800 [Amended]

4. Section 4.800 is amended by revising the reference ``13.106(c)'' to ``13.106(b)''.

PART 13 -- SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

5. Section 13.101 is amended by adding the following definitions in alphabetical order to read as follows:

13.101 Definitions.

\* \* \* \* \*

Governmentwide commercial purchase card means a purchase card, similar in nature to a commercial credit card, issued to authorized agency officials for their use in acquiring supplies and services.

Micro-purchase means an acquisition of supplies or services (except construction), the aggregate amount of which does not exceed \$2,500. Micro-purchases for construction are limited to \$2,000.

Micro-purchase threshold means \$2,500.

\* \* \* \* \*

6. Section 13.105 is amended by revising paragraph (a); in (d) (3) by removing ``(see 13.106(c))'' and inserting ``(see 13.106(b))'' in its place, and in (d) (4) by removing ``(see 13.106(b) (4))'' and inserting ``(see 13.106(a) (4))''. The revised text reads as follows:

13.105 Small business -- small purchase set-asides.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, each acquisition of supplies or services that has an anticipated dollar value exceeding \$2,500, but not exceeding \$25,000, and is subject to small purchase procedures, shall be reserved exclusively for small business concerns. This shall be accomplished by using the category of set-asides established by Pub. L. 95 - 507, specifically for small purchases, identified as small business -- small purchase set-asides established by

Section 15(j) of the Small Business Act (15 U.S.C. 644(j)) (see Pub. L. 95 - 507).

\* \* \* \* \*

13.106 [Amended]

6. Section 13.106 is amended by removing paragraph (a) and redesignating paragraphs (b) and (c) as (a) and (b), respectively.

13.502 [Amended]

7. Section 13.502(c) is amended in the last sentence by removing `` (see 13.106(c)) '' and inserting `` (see 13.106(b)) '' in its place.

8. Part 13 is amended by adding Subpart 13.6 to read as follows:

Subpart 13.6 -- Micro-Purchase

Sec.

13.601 General.

13.602 Policy.

13.603 Soliciting competition, evaluation of quotes, and award.

Subpart 13.6 -- Micro-Purchase

13.601 General.

(a) This subpart applies to purchases of supplies or services (except for construction) at or below the micro-purchase threshold. Micro-purchases for construction are limited to \$2,000.

(b) Micro-purchases may be awarded using any of the purchasing methods covered by part 13.

(c) Agencies are encouraged to use the governmentwide commercial purchase card and electronic purchasing techniques, to the maximum extent practicable. The governmentwide commercial purchase card may be used to purchase and pay for micro-purchases in accordance with agency procedures. This is not intended to limit use of the purchase card to micro-purchases, if otherwise authorized under agency procedures.

(d) Agency heads are encouraged to delegate micro-purchase authority to individuals who will be using the supplies or services being purchased (see

1.603 - 3). Individuals delegated this authority are contracting officers within the meaning of 2.101. See 3.104 - 4(h) (5) for procurement integrity requirements.

13.602 Policy.

(a) Contracting officers shall comply with the requirements of part 8, Required Sources of Supplies and Services.

(b) Micro-purchases shall be distributed equitably among qualified suppliers.

(c) Requirements aggregating more than the micro-purchase threshold shall not be broken down into several purchases that are less than the threshold merely to permit purchase under this subpart.

13.603 Soliciting competition, evaluation of quotes, and award.

(a) Micro-purchases may be awarded without soliciting competitive quotations if the contracting officer determines that the price is reasonable.

(b) The administrative cost of verifying the reasonableness of the price for purchases at or below the micro-purchase threshold may more than offset potential savings from detecting instances of overpricing. Therefore, action to verify price reasonableness need only be taken if --

(1) The contracting officer suspects or has information to indicate that the price may not be reasonable (e.g., comparison to the previous price paid or personal knowledge of the supply or service); or

(2) Purchasing a supply or service for which no comparable pricing information is readily available (e.g., a supply or service that is not the same as, or is not similar to, other supplies or services that have recently been purchased on a competitive basis).

(c) Prompt payment discounts should be solicited.

PART 25 -- FOREIGN ACQUISITION

9. Section 25.100 is revised to read as follows:

25.100 Scope of subpart.

This subpart implements the Buy American Act (41 U.S.C. 10) and Executive Order 10582, December 17, 1954 (as amended). It applies to (a) supply contracts exceeding the micro-purchase threshold; and (b) contracts for services that involve the furnishing of supplies when the supply portion of the contract exceeds the micro-purchase threshold.

[FR Doc. 94 - 30605 Filed 12 - 13 - 94; 10:45 am]

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAR Case 94 - 753]

RIN 9000 - AG27

Federal Acquisition Regulation; Travel Costs

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

ACTION: Proposed rule.

SUMMARY: This proposed rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994, Public Law 103 - 355 (the Act). The Federal Acquisition Regulatory Council is considering amending the Federal Acquisition Regulation (FAR) as a result of changes to 41 U.S.C. 22 by Section 2191 of the Act. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: Comments should be submitted on or before February 13, 1995. To be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405.

Please cite FAR case 94 - 753 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Clarence Belton at (703) 602 - 2357 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 FAR case 94 - 753.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103 - 355, provides authorities that streamline the acquisition process and minimize burdensome government-unique requirements. Major

changes that can be expected in the acquisition process as a result of Federal Acquisition Streamlining Act implementation include changes in the areas of Commercial Item Acquisition, Simplified Acquisition Procedures, the Truth in Negotiations Act, and introduction of the Federal Acquisition Computer Network. In order to promptly achieve the benefits of the provisions of the Act, the Government is issuing implementing regulations on an expedited basis. We believe prompt publication of proposed rules provides the public the opportunity to participate more fully in the process of developing regulations.

This notice announces FAR revisions developed under FAR case 94 - 753. The recommended revisions to the cost principle, FAR 31.205 - 46, are proposed as a result of Section 2191 of the Federal Acquisition Streamlining Act of 1994, which repealed Section 24 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 420). Generally, Section 24 of the OFPP Act required that costs incurred by contractor personnel for travel be considered reasonable and allowable only to the extent that they did not exceed the maximum per diem rates permitted by the Federal Travel Regulation (FTR) or the Joint Travel Regulations (JTR).

Simply returning to the prior standard of reasonableness could create severe administrative burdens for both the contractor and the Government and could lead to Government reimbursement of excessive costs. However, it is recognized that industry has valid concerns regarding travel costs, such as separate accounting systems for Government versus commercial work and the unavailability of Government rates at certain locations.

Accordingly, it is recommended that the FTR/JTR rates be used as a baseline from which both the contractor and the Government can proceed. However, the proposed rule would permit contractors to propose alternative rates to those prescribed in the FTR/JTR.

The FAR Council is interested in an exchange of ideas and opinions with respect to the regulatory implementation of the Act. For that reason, the FAR Council is conducting a series of public meetings. However, the FAR Council has not scheduled a public meeting on this rule (FAR case 94 - 753). If the public believes such a meeting is needed with respect to this rule, a letter requesting a public meeting and outlining the nature of the requested meeting shall be submitted to and received by the FAR

Secretariat (see ADDRESSES caption) on or before January 13, 1995.

The FAR Council will consider such requests in determining whether a public meeting on this rule should be scheduled.

#### B. Regulatory Flexibility Act

This proposed rule is not expected 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 most contracts awarded to small businesses are awarded through sealed bidding on a firm fixed price basis. The cost principles apply only where contracts are based on cost or pricing data; accordingly, no Initial Regulatory Flexibility Analysis has been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, et seq. (FAR case 94 - 753), in correspondence.

#### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed 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: December 8, 1994.

Capt. Barry L. Cohen, SC, USN,

Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, it is proposed that 48 CFR part 31 be 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 - 46 is amended in the introductory text of paragraph (a)(2) by removing ``paragraph (a)(3)'' and inserting in its place ``paragraphs (a)(3) and (a)(7)''; and adding (a)(7) to read as follows:

31.205 - 46 Travel costs.

(a) \* \* \*

(7) Contractors may propose an alternative set of maximum per diem rates to replace the rates prescribed by subparagraph (a)(2) of this subsection. The contracting officer may approve alternative rates if the contractor demonstrates that the alternative rates are reasonable, are derived from the contractor's normal travel cost reimbursement system, and do not exceed amounts normally paid under that system. In order to be allowable, the alternative rates must be approved prior to the incurrence of the travel costs.

\* \* \* \* \*

[FR Doc. 94 - 30698 Filed 12 - 13 - 94; 8:45 am]

BILLING CODE 6820 - 34 - D

Attachment IV -- FAC 90-25, January 31, 1995

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 90 - 25, FAR Case 94 - 750]

RIN 9000 - AG33

Federal Acquisition Regulation; Entertainment, Gift,  
and Recreation Costs for Contractor Employees

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

ACTION: Interim rule with request for comment.

SUMMARY: This interim rule amends the Federal  
Acquisition Regulation to revise the cost principles  
governing entertainment, gift and recreation costs  
for contractor employees. This regulatory action was  
not subject to Office of Management and Budget review  
under Executive Order 12866, dated September 30,  
1993.

DATES: Effective Date: January 13, 1995.

Comment Date: Comments should be submitted to  
the FAR Secretariat at the address shown below on or  
before March 14, 1995 to be considered in the  
formulation of a final rule.

ADDRESSES: All interested parties should submit  
written comments to: General Services Administration,  
FAR Secretariat (VRS), 18th & F Streets, NW, Room  
4035, Attn: Ms. Beverly Fayson, Washington, DC 20405.

Please cite FAC 90 - 25, FAR case 94 - 750 in  
all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Clarence M.  
Belton, Team Leader, Cost Principles Team, at (703)  
602 - 2357, 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 - 25, FAR case 94 -  
750.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103 - 355, provides authorities that streamline the acquisition process and minimize burdensome government-unique requirements. Major changes that can be expected in the acquisition process as a result of the Act's implementation include changes in the areas of Commercial Item Acquisition, Simplified Acquisition Procedures, the Truth in Negotiations Act, and introduction of the Federal Acquisition Computer Network.

This notice announces Federal Acquisition Regulation (FAR) revisions developed under FAR case 94 - 750 to implement Section 2192 of the Act. This interim rule revises the cost principles at FAR 31.205 - 13 and 31.205 - 14.

To comply with the requirements of paragraph (a) (1) of Section 2192 of the Act, the interim rule provides that the costs of gifts are expressly unallowable and that the costs of recreation are expressly unallowable, except for the costs of employee sports teams. The allowability of costs for employee sports teams is further limited to off-duty activities and to a nominal cost per participating employee. ``Recreation'' is removed from the examples of allowable costs at 31.205 - 13, and ``wellness/fitness centers'' are added to that listing to differentiate them from recreation costs. The entire listing of allowable costs for morale, health, welfare, food service, and dormitory costs is further limited in allowability to reasonable amounts per employee.

To comply with the requirements of paragraph (a) (2) of Section 2192 of the Act, the interim rule revises the cost principle at 31.205 - 14 to incorporate the statutory wording relating to unallowability of entertainment costs under any other cost principle.

These revisions specifically disallow gift, recreation, and entertainment costs which some may have previously considered allowable.

Paragraph (c) of Section 2192 of the Act states that ``[a]ny amendments to the FAR made pursuant to subsection (a) shall apply with respect to costs incurred after the date on which the amendments made by Section 2101 apply (as provided in Section 10001) or the date on which the amendments made by Section 2151 apply (as provided in Section 10001), whichever is later.'' Therefore, this interim rule is being published now in order to meet the statutory deadlines imposed by paragraph (a) of

Section 2192 and is effective immediately. However, the revised cost principles will apply only to costs incurred after all of the proposed rules implementing requirements of Sections 2101 and 2151 become effective. The proposed rules at issue are being processed under FAR cases 94 - 751, 94 - 752, and 94 - 754.

The FAR Council is interested in an exchange of ideas and opinions with respect to the regulatory implementation of the Act. For that reason, the FAR Council is conducting a series of public meetings. However, the FAR Council has not scheduled a public meeting on this rule (FAR case 94 - 750). If the public believes such a meeting is needed with respect to this rule, a letter requesting a public meeting and outlining the nature of the requested meeting shall be submitted to and received by the FAR Secretariat (see ADDRESSES caption) on or before February 13, 1995. The FAR Council will consider such requests in determining whether a public meeting on this rule should be scheduled.

#### B. Regulatory Flexibility Act

The interim rule is not expected 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 most contracts awarded to small businesses are awarded through sealed bidding on a firm fixed price basis. The cost principles apply only where contracts are based on cost or pricing data. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. 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 94 - 750), 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 collection 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 2192 of the Federal Acquisition Streamlining Act of 1994 specifically requires that the cost principle at FAR 31.205 - 14 be amended not later than 90 days after enactment of the Act and that other FAR revisions addressing contractor costs of gifts or recreation to improve employee morale or welfare be made within 120 days of enactment of the Act. Pubic Law 103 - 355 was enacted October 13, 1994.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: January 9, 1995.

Edward Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Federal Acquisition Circular

Number 90 - 25

Federal Acquisition Circular (FAC) 90 - 25 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90 - 25 is effective January 13, 1995.

Dated: January 4, 1995.

Thomas S. Luedtke,

Deputy Associate Administrator for Procurement, NASA.

Dated: January 9, 1995.

Ida M. Ustad,

Associate Administrator, Office of Acquisition Policy.

Dated: January 8, 1995.

Eleanor R. Spector,

Director, Defense Procurement.

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 Citation

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205 - 13 is revised to read as follows:

31.205 - 13 Employee morale, health, welfare, food service, and dormitory costs and credits.

(a) This paragraph (a) applies to costs incurred before the effective date of implementation in FAR of sections 2101 and 2151 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103 - 355).

(1) Aggregate costs incurred on activities designed to improve working conditions, employer-employee relations, employee morale, and employee performance (less income generated by these activities) are allowable, except as limited by paragraph (a)(2) of this section, and to the extent that the net amount is reasonable. Some examples are house publications, health clinics, recreation, employee counseling services, and food and dormitory services, which include operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations, or similar types of services for the contractor's employees at or near the contractor's facilities.

(2) Losses from operating food and dormitory services may be included as costs only if the contractor's objective is to operate such services on a break-even basis. Losses sustained because food services or lodging accommodations are furnished without charge or at prices or rates which obviously would not be conducive to the accomplishment of the above objective are not allowable. A loss may be allowed, however, to the extent that the contractor can demonstrate that unusual circumstances exist (e.g., (i) where the contractor must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available,

or (ii) where charged but unproductive labor costs would be excessive but for the services provided or where cessation or reduction of food or dormitory operations will not otherwise yield net cost savings) such that even with efficient management, operating the services on a break-even basis would require charging inordinately high prices, or prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas. Costs of food and dormitory services shall include an allocable share of indirect expenses pertaining to these activities.

(3) When the contractor has an arrangement authorizing an employee association to provide or operate a service, such as vending machines in the contractor's plant and retain the profits, such profits shall be treated in the same manner as if the contractor were providing the service (but see paragraph (a)(4) of this section).

(4) Contributions by the contractor to an employee organization, including funds from vending machine receipts or similar sources, may be included as costs incurred under paragraph (a)(1) of this section only to the extent that the contractor demonstrates that an equivalent amount of the costs incurred by the employee organization would be allowable if directly incurred by the contractor.

(b) This paragraph (b) implements section 2192 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103 - 355). It applies to costs incurred after the effective date of implementation in FAR of sections 2101 and 2151 of Pub. L. 103 - 355.

(1) Aggregate costs incurred on activities designed to improve working conditions, employer-employee relations, employee morale, and employee performance (less income generated by these activities) are allowable, except as limited by paragraphs (b)(2), (3), and (4) of this section, and to the extent that the net amount per employee is reasonable. Some examples of allowable activities are house publications, health clinics, wellness/fitness centers, employee counseling services, and food and dormitory services, which include operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations, or similar types of services for the contractor's employees at or near the contractor's facilities.

(2) Costs of gifts are unallowable.

(3) Costs of recreation are unallowable, except for the costs of contractor employees' participation in sports teams designed to improve company loyalty, team work, or employee physical fitness, conducted during off duty hours at a nominal cost per participating employee.

(4) Losses from operating food and dormitory services may be included as costs only if the contractor's objective is to operate such services on a break-even basis. Losses sustained because food services or lodging accommodations are furnished without charge or at prices or rates which obviously would not be conducive to the accomplishment of the above objective are not allowable. A loss may be allowed, however, to the extent that the contractor can demonstrate that unusual circumstances exist (e.g., (i) where the contractor must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available, or (ii) where charged but unproductive labor costs would be excessive but for the services provided or where cessation or reduction of food or dormitory operations will not otherwise yield net cost savings) such that even with efficient management, operating the services on a break-even basis would require charging inordinately high prices, establishments offering the same services in the same geographical areas. Costs of food and dormitory services shall include an allocable share of indirect expenses pertaining to these activities.

(5) When the contractor has an arrangement authorizing an employee association to provide or operate a service, such as vending machines in the contractor's plant and retain the profits, such profits shall be treated in the same manner as if the contractor were providing the service (but see paragraph (b)(6) of this section).

(6) Contributions by the contractor to an employee organization, including funds from vending machine receipts or similar sources, may be included as costs incurred under paragraph (b)(1) of this section only to the extent that the contractor demonstrates that an equivalent amount of the costs incurred by the employee organization would be allowable if directly incurred by the contractor.

3. Section 31.205 - 14 is revised to read as follows:

31.205 - 14 Entertainment costs.

(a) This paragraph (a) applies to costs incurred before the effective date of implementation

in FAR of sections 2101 and 2151 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103 - 355). Costs of amusement, diversion, social activities, and any directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities are unallowable (but see 31.205 - 1 and 31.205 - 13). Costs of membership in social, dining, or country clubs or other organizations having the same purposes are also unallowable, regardless of whether the cost is reported as taxable income to the employees.

(b) This paragraph (b) implements section 2192 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103 - 355). It applies to costs incurred after the effective date of implementation in FAR of sections 2101 and 2151 of Pub. L. 103 - 355. Costs of amusement, diversion, social activities, and any directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities are unallowable. Costs made specifically unallowable under this cost principle are not allowable under any other cost principle. Costs of membership in social, dining, or country clubs or other organizations having the same purposes are also unallowable, regardless of whether the cost is reported as taxable income to the employees.

[FR Doc. 95 - 849 Filed 1 - 12 - 95; 8:45 am]