

TITLE: CIB 95-20 Implementation of Simplified Acquisition Procedures and FAR Guiding Principles

July 25, 1995

MEMORANDUM FOR ALL CONTRACTING OFFICERS AND NEGOTIATORS

TO: Distribution List FAC

FROM: DAA/M, Michael Sherwin, Procurement Executive

SUBJECT: Implementation of Simplified Acquisition Procedures and FAR Guiding Principles

CONTRACT INFORMATION BULLETIN 95-20

In place of the longstanding small purchases procedures in FAR Part 13, the Federal Acquisition Streamlining Act of 1994 (FASA) provided for simplified acquisition procedures for procurements up to \$100,000--but this amount is limited to \$50,000 until a contracting activity receives a FACNET certification of its electronic contracting capability. These procedures became effective upon the July 3, 1995 publication of the attached FAC 90-29.

Pending formal revision of the USAID Acquisition Regulation (AIDAR), USAID is implementing interim, corollary changes relating to the simplified acquisition procedures, effective immediately, as follows:

1. Heads of contracting activities that were previously authorized by AIDAR 701.601 to execute small purchases up to \$25,000 and/or to warrant individuals on their staffs to execute small purchases up to \$25,000 are authorized to execute simplified acquisitions up to the amount permitted by FAR 13.101 and 13.103(b) (currently \$50,000) and to redelegate this authority to qualified U.S.-citizen direct-hire employees on their staffs;
2. AIDAR 701.601(b) (4) is revised to read:
 - (4) Deputy Assistant Administrator for the Center for Human Capacity Development. Authority to execute simplified acquisitions up to \$10,000. Unlimited authority for procuring participant training based on published catalog prices, using M/OP/E approved forms; and
3. The AIDAR 713.000 ceiling of \$25,000 on the cost of goods and services is revised to the simplified acquisition threshold, as addressed by FAR 13.101 and 13.103(b).

Please note that the following requirements are not changed by the simplified acquisition procedures:

1. FAR 8.001: Priorities for use of Government supply sources;
2. FAR 13.103(c): Prohibition on not splitting an order into multiple orders to avoid exceeding the simplified acquisition threshold;
3. FAR 5.101(a) (1): CBD synopsis of procurements estimated to exceed \$25,000;

4. FAR 5.101(a)(2): Public posting of procurements estimated to be between \$10,000 and \$25,000;
5. FAR 19.501: Small business set-asides; and
6. FAR 4.6: Contract reporting.

In addition to the primary focus of FAC 90-29, I should also note that Item I of the circular sets out for the first time in the FAR a statement of guiding principles. You should particularly observe that the capstone principle is the empowerment of each member of the acquisition team: within the constraints of law and regulation, you are specifically empowered to exercise initiative and sound business judgement in providing the best value product or service to meet the customer's needs. I commend these principles to you as an excellent statement of my vision for USAID's procurement function and urge you to continually bear them in mind in upholding the standards of your profession.

Attachment: FAC 90-29

FAC 90-29

[Federal Register: July 19, 1995 (Volume 60, Number 138)]
[Rules and Regulations]
[Page 37291-37292]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]

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Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Ch. I

Federal Acquisition Regulation; Shortening Comment Period; Final Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[FAC 90-29; FAR Cases 91-104 and 94-770]

Federal Acquisition Regulation; Shortening Comment Period

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

ACTION: Federal Acquisition Circular 90-29; Shortening Comment Period.

SUMMARY: On July 3, 1995, FAC 90-29, consisting of three rules, was published in the Federal Register. This notice advises the public that the public comment period on FAR case 91-104, Electronic Contracting, and 94-770, Simplified Acquisition Procedures/FACNET, is being shortened from September 1, 1995, to August 15, 1995. The interim rules were previously published as proposed rules in the Federal Register at 60 FR 12366, March 6, 1995. The comment period is being shortened to facilitate promulgation of a final rule prior to the statutory implementation date for the Federal Acquisition Streamlining Act. Late comments received from the public before the end of August will be considered if at all practicable.

DATES: The comment period on the two interim rules published on July 3, 1995 (60 FR 34735 and 34741) will close on August 15, 1995.

ADDRESSES: All interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th and F Sts. NW, Room 4035, ATTN: Ms. Beverly Fayson, Washington, DC 20405. Please cite FAC 90-29 in all correspondence.

FOR FURTHER INFORMATION CONTACT:
Mr. Edward Loeb, Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994, at (202) 501-4547. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 90-29.

Dated: July 13, 1995.
Edward C. Loeb,
Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.
[FR Doc. 95-17717 Filed 7-18-95; 8:45 am]
BILLING CODE 6820-34-M

[Federal Register: July 3, 1995 (Volume 60, Number 127)]
[Rules and Regulations]
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Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 1, et al.

Federal Acquisition Regulations; Final Rules

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 3, 4, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 19, 20,
22, 23, 25, 27, 28, 32, 33, 36, 41, 42, 43, 44, 45, 46, 47, 49, 52,
and 53

[Federal Acquisition Circular 90-29]

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 presentation of interim rules.

SUMMARY: This document serves to introduce the documents which follow and which comprise Federal Acquisition Circular (FAC) 90-29. The Federal Acquisition Regulatory Council is issuing FAC 90-29 to amend the Federal Acquisition Regulation (FAR) to implement changes in the following subject areas:

Item case	Rule type	Subject Team leader	FAR
I.....	FAR guiding principles.....		
95-010.....	Final.....	O'Neill	
II....	Electronic contracting.....		
91-104.....	Interim.....	Loeb	
III...	Simplified acquisition procedures/FACNET.....		
94-770.....	Interim.....	Maykowskyj	

DATES: Effective Date: July 3, 1995.
Comment Closing Date: September 1, 1995.

FOR FURTHER INFORMATION CONTACT:
The team leader whose name appears in relation to each FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC, 20405 (202) 501-4755. Please cite FAC 90-29 and FAR case numbers(s).

SUPPLEMENTARY INFORMATION: Federal Acquisition Circular 90-29 amends the Federal Acquisition Regulation (FAR) as specified below:
For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Item I--FAR Guiding Principles (FAR Case 95-010)

This final rule amends the FAR at 1.102 to incorporate the Statement of Guiding Principles for the FAR as agreed to by the FAR Council.

Item II--Electronic Contracting (FAR Case 91-104)

This interim rule amends the FAR to address the use of electronic commerce/electronic data interchange in Government contracting. This rule is intended to remove any barriers that existed in the FAR to use of electronic contracting/electronic data interchange.

Item III--Simplified Acquisition Procedures/FACNET (FAR Case 94-770)

This interim rule implements the simplified acquisition and Federal Acquisition Computer Network (FACNET) requirements of the Federal Acquisition Streamlining Act (the Act). The Act defines the simplified acquisition threshold as \$100,000. However, the FAR and the Act limit the use of simplified acquisition procedures by procurement activities not having certified interim FACNET to procurements not exceeding \$50,000.

FACNET is a universal electronic capability that will permit potential contractors to, as a minimum, obtain information on proposed procurements, submit responses, query the system, and receive awards on a Governmentwide basis.

The reader should note the key features represented in FAR case 94-770 which will change the acquisition process significantly upon implementation and continue to do so as contracting offices/activities and agencies begin to certify and implement the use of FACNET. These key features are: the small purchase limitation of \$25,000 becomes the simplified acquisition threshold of \$100,000 (see 13.101); use of the simplified acquisition procedures is tied to FACNET--simplified acquisition procedures may be used up to \$50,000 upon FAR implementation without FACNET and up to \$100,000 upon interim FACNET certification (see 13.103(b)); for non-FACNET acquisitions over \$25,000, a synopsis for 15 days is still required; solicitation response time must provide a reasonable amount of time to afford potential offerors a reasonable opportunity to respond; the regulation exempts simplified acquisition procedures from 15 statutes and from certain provisions and clauses; contracting officers need to add any necessary clauses to the back of the purchase order form; and all purchases between \$2,500 and \$100,000 are reserved for small business (see 19.502-2).

In addition to what the Act provided, the SAT/FACNET Team has incorporated coverage that provides flexibility and latitude that encourages the contracting officer to use innovative approaches in awarding contracts, seek the ``best value'' for the Government which includes past performance and quality; permits use of other than fixed price orders/contracts, when authorized by the agency; encourages the use of options; and increases the property clause threshold to be commensurate with the implementation and certification of FACNET.

The most significant change in this rule is the implementation of FACNET which is addressed primarily in Subpart 4.5. FACNET will provide the capability of existing computer hardware and software to perform certain functions in a standard manner in order to provide one face to industry for the entire Government. FACNET is the preferred means for conducting all purchases under the simplified acquisition threshold (\$100,000) and above the micro-purchase threshold (\$2,500). Contracting offices/activities may not conduct acquisitions using simplified

acquisition procedures between \$50,000 and \$100,000, until they have certified and implemented interim FACNET.

However, it is also significant to highlight what requirements did not change with FASA, such as the compliance with Part 8, required sources of supply; the policy on not splitting orders; requirement for posting \$10,000 (\$5,000 DOD); the need to synopsise over \$25,000; the requirement for small business set-asides; and contracting reporting.

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Dated: June 26, 1995.
C. Allen Olson,
Director, Office of Federal Acquisition Policy.
Federal Acquisition Circular

Number 90-29

Federal Acquisition Circular (FAC) 90-29 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 90-29 is effective July 3, 1995.

Dated: June 23, 1995.
Roland A. Hassebrock,
Col., USAF Director, Defense Procurement (Acting).

Dated: June 16, 1995.
Ida M. Ustad,
Associate Administrator for Acquisition Policy General Services Administration.

Dated: June 9, 1995.
Thomas S. Luedtke,
Deputy Associate Administrator for Procurement NASA.
[FR Doc. 95-16079 Filed 6-30-95; 8:45 am]
BILLING CODE 6820-EP-M

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[Rules and Regulations]
[Page 34733-34734]
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DEPARTMENT OF DEFENSE
GENERAL SERVICES ADMINISTRATION
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1

[FAC 90-29; FAR Case 95-10, Item I]
RIN 9000-AG55

Federal Acquisition Regulation; FAR Guiding Principles

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

ACTION: Final rule.

SUMMARY: The Federal Acquisition Regulatory Council agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to incorporate the Statement of Guiding Principles. This regulatory action was not subject to Office of Management and Budget review under Executive Order

12866, dated September 30, 1993.

EFFECTIVE DATE: July 3, 1995.

FOR FURTHER INFORMATION CONTACT:

Mr. Jack O'Neill at 202-501-3856 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 90-29, FAR case 95-10.

SUPPLEMENTARY INFORMATION:

A. Background

On Friday, January 20, 1995, the Office of Federal Procurement Policy (OFPP), Office of Management and Budget, published in the Federal Register at 60 FR 4205, a Notice of Core Guiding Principles for the Federal Acquisition System. The OFPP, in accordance with a decision of the FAR Rewrite Board of Directors, then requested that the Core Guiding Principles be incorporated into the regulation. This final rule completes the action requested by the Board of Directors.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected 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 90-29, FAR case 95-10), 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 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 1

Government procurement.

Dated: June 26, 1995.

C. Allen Olson,
Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR Part 1 is amended as set forth below:

1. The authority citation for 48 CFR Part 1 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

1.102-1.105 [Redesignated as 1.103-1.106]

2. Subpart 1.1 is amended by redesignating sections 1.102 through 1.105 as 1.103 through 1.106 and adding new sections 1.102 through 1.02-4 to read as follows:

1.102 Statement of guiding principles for the federal acquisition system.

(a) The vision for the Federal Acquisition System is to deliver on a timely basis the best value product or service to the customer, while maintaining the public's trust and fulfilling public policy objectives.

Participants in the acquisition process should work together as a team and should be empowered to make decisions within their area of responsibility.

(b) The Federal Acquisition System will--

(1) Satisfy the customer in terms of cost, quality, and timeliness of the delivered product or service by, for example--

(i) Maximizing the use of commercial products and services;

(ii) Using contractors who have a track record of successful past performance or who demonstrate a current superior ability to perform; and

(iii) Promoting competition;

(2) Minimize administrative operating costs;

(3) Conduct business with integrity, fairness, and openness; and

(4) Fulfill public policy objectives.

(c) The Acquisition Team consists of all participants in Government acquisition including not only representatives of the technical, supply, and procurement communities but also the customers they serve, and the contractors who provide the products and services.

(d) The role of each member of the Acquisition Team is to exercise personal initiative and sound business judgment in providing the best value product or service to meet the customer's needs. In exercising initiative, Government members of the Acquisition Team may assume if a specific strategy, practice, policy or procedure is in the best interests of the Government and is not addressed in the FAR nor prohibited by law (statute or case law), Executive order or other regulation, that the strategy, practice, policy or procedure is a permissible exercise of authority.

1.102-1 Discussion

(a) Introduction. The statement of Guiding Principles for the Federal Acquisition System (System) represents a concise statement designed to be user-friendly for all participants in Government acquisition. The following discussion of the principles is provided in order to illuminate the meaning of the terms and phrases used. The framework for the System includes the Guiding Principles for the System and

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the supporting policies and procedures in the FAR.

(b) Vision. All participants in the System are responsible for making acquisition decisions that deliver the best value product or service to the customer. Best value must be viewed from a broad perspective and is achieved by balancing the many competing interests in the System. The result is a system which works better and costs less.

1.102-2 Performance standards.

(a) Satisfy the customer in terms of cost, quality, and timeliness of the delivered product or service. (1) The principal customers for the product or service provided by the System are the users and line managers, acting on behalf of the American taxpayer.

(2) The System must be responsive and adaptive to customer needs, concerns, and feedback. Implementation of acquisition policies and procedures, as well as consideration of timeliness, quality and cost throughout the process, must take into account the perspective of the user of the product or service.

(3) When selecting contractors to provide products or perform services the Government will use contractors who have a track record of successful past performance or who demonstrate a current superior ability to perform.

(4) The Government must not hesitate to communicate with the commercial sector as early as possible in the acquisition cycle to help the Government determine the capabilities available in the commercial marketplace. The Government will maximize its use of commercial products and services in meeting Government requirements.

(5) It is the policy of the System to promote competition in the acquisition process.

(6) The System must perform in a timely, high quality, and cost-effective manner.

(7) All members of the Team are required to employ planning as an integral part of the overall process of acquiring products or services.

Although advance planning is required, each member of the Team must be flexible in order to accommodate changing or unforeseen mission needs. Planning is a tool for the accomplishment of tasks, and application of its discipline should be commensurate with the size and nature of a given task.

(b) Minimize administrative operating costs. (1) In order to ensure that maximum efficiency is obtained, rules, regulations, and policies should be promulgated only when their benefits clearly exceed the costs of their development, implementation, administration, and enforcement. This applies to internal administrative processes, including reviews, and to rules and procedures applied to the contractor community.

(2) The System must provide uniformity where it contributes to efficiency or where fairness or predictability is essential. The System should also, however, encourage innovation, and local adaptation where uniformity is not essential.

(c) Conduct business with integrity, fairness, and openness. (1) An

essential consideration in every aspect of the System is maintaining the public's trust. Not only must the System have integrity, but the actions of each member of the Team must reflect integrity, fairness, and openness. The foundation of integrity within the System is a competent, experienced, and well-trained, professional workforce. Accordingly each member of the Team is responsible and accountable for the wise use of public resources as well as acting in a manner which maintains the public's trust. Fairness and openness require open communication among team members, internal and external customers, and the public.

(2) To achieve efficient operations, the System must shift its focus from ``risk avoidance'' to one of ``risk management.'' The cost to the taxpayer of attempting to eliminate all risk is prohibitive. The

Executive Branch will accept and manage the risk associated with empowering local procurement officials to take independent action based on their professional judgment.

(d) Fulfill public policy objectives. The System must support the attainment of public policy goals adopted by the Congress and the President. In attaining these goals, and in its overall operations, the process shall ensure the efficient use of public resources.

Sec. 1.102-3 Acquisition team.

The purpose of defining the Federal Acquisition Team (Team) in the Guiding Principles is to ensure that participants in the System are identified--beginning with the customer and ending with the contractor of the product or service. By identifying the team members in this manner, teamwork, unity of purpose, and open communication among the members of the Team in sharing the vision and achieving the goal of the System are encouraged. Individual team members will participate in the acquisition process at the appropriate time.

Sec. 1.102-4 Role of the acquisition team.

(a) Government members of the Team must be empowered to make acquisition decisions within their areas of responsibility, including selection, negotiation, and administration of contracts consistent with

the Guiding Principles. In particular, the contracting officer must have the authority to the maximum extent practicable and consistent with law, to determine the application of rules, regulations, and policies, on a specific contract.

(b) The authority to make decisions and the accountability for the decision made will be delegated to the lowest level within the System, consistent with law.

(c) The Team must be prepared to perform the functions and duties

assigned. The Government is committed to provide training, professional development, and other resources necessary for maintaining and improving the knowledge, skills, and abilities for all Government participants on the Team, both with regard to their particular area of responsibility within the System, and their respective role as a team member. The contractor community is encouraged to do likewise.

(d) The System will foster cooperative relationships between the Government and its contractors consistent with its overriding responsibility to the taxpayers.

(e) The FAR outlines procurement policies and procedures that are used by members of the Acquisition Team. If a policy or procedure, or a particular strategy or practice, is in the best interest of the Government and is not specifically addressed in the FAR, nor prohibited by law (statute or case law), Executive order or other regulation, Government members of the Team should not assume it is prohibited. Rather, absence of direction should be interpreted as permitting the Team to innovative and use sound business judgment that is otherwise consistent with law and within the limits of their authority.
[FR Doc. 95-16080 Filed 6-30-95; 8:45 am]
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DEPARTMENT OF DEFENSE
DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 4, 5, 7, 8, 9, 12, 14, 15, 16, 19, 20, 25, 28, 32, 36, 45, 52, and 53

[FAC 90-29; FAR Case 91-104; Item II]
RIN 9000-AE46

Federal Acquisition Regulation; Electronic Contracting

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

ACTION: Interim rule with request for comment.

SUMMARY: The Federal Acquisition Regulatory Council (FARC) is issuing an interim rule to amend the Federal Acquisition Regulation (FAR) to address the use of electronic commerce/electronic data interchange in Government contracting. This regulatory action was subject to Office of

Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: Effective Date: July 3, 1995.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before September 1, 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 90-29, FAR case 91-104 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT:

Mr. Edward Loeb at (202) 501-4547 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 90-29 (FAR Case 91-104).

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule was published in the Federal Register at 58 FR 69588, December 30, 1993. The rule proposed amendments to the FAR to remove any barriers to the use of electronic data interchange in Government contracting. Thirty-six comments from ten respondents were received during the public comment period. After evaluating the public comments, another proposed rule was published because significant changes to the rule published on December 30, 1993, were deemed to be necessary.

A revised proposed rule was published in the Federal Register at 60 FR 12384, March 6, 1995. Eighteen comments were received in response to the proposed rule.

This interim rule and the interim rule published elsewhere in this issue under FAR case 94-770, Simplified Acquisition Procedures/FACENET, are interdependent and are meant to be considered jointly.

B. Regulatory Flexibility Act

This interim rule is 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 it encourages broader use of electronic contracting, thereby improving industry access to Federal contracting opportunities. The implementation of Electronic Contracting and use of the Federal Acquisition Computer Network (FACENET) will provide for electronic

exchange of acquisition information between the private sector and the Federal Government that will increase the opportunities for vendors currently doing business with the Government, particularly small businesses. It is recognized that an initial start-up cost will be incurred for the purchase of a personal computer, modem, software, and telephone lines, estimated to be \$1,500. Additionally, it is anticipated that most small businesses will subscribe to third party value added network (VAN) services to facilitate their communications with the Government's computers. The cost of an advance subscription ranges from approximately \$30 to \$100 per month, depending on the type of services obtained. The interim rule does not duplicate, overlap, or conflict with any other Federal rules. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and may be obtained from the FAR Secretariat. A copy of the IRFA will be submitted to the Chief Counsel for Advocacy of the Small Business Administration. Comments are

invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR parts will also be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, et seq. (FAR case 91-104) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not impose any information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

D. Determination to Issue an Interim Rule

A determination has been made by the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) under the authority provided by section 22 of the Office of Federal Procurement Policy Act (41 U.S.C. 418b) to issue this regulation as an interim rule.

The Simplified Acquisition Threshold Procedures/Federal Acquisition Computer Network (SAT/FACNET) rule (FAR Case 94-770) and the Electronic Contracting (EC) rule (FAR Case 91-104) benefit industry and Government by enhancing efficiency of contracting in an environment of declining personnel staffing and resulting increase in workload for contracting personnel. The rules are linked and require simultaneous promulgation. The proposed rules were published simultaneously in the Federal Register on March 6, 1995, with the public comment period closing on May 5, 1995. A public meeting was held on these rules on April 3, 1995, and no substantive comments were presented at the meeting.

Section 22 of the Office of Federal Procurement Policy Act permits issuance of procurement policies, regulations, procedures, or forms as

interim rules prior to consideration of public comments when urgent and compelling circumstances make it impracticable to do otherwise. Urgent and compelling reasons exist to make these rules effective prior to full consideration of public comment. Proceeding with these interim rules is required to permit the Federal Government to cope with the fundamental downsizing of its acquisition workforce and the large end-of-fiscal-year workload, with diminished resources. The Federal Acquisition Streamlining Act of 1994 (FASA) and its provisions on SAT/FACNET, provide relief from various burdens that affect the Government acquisition process. For example, purchases under the new simplified acquisition approach will become far less complex than today. Using figures from the Department of Defense for

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illustrative purposes, large purchase solicitations run 29 pages on the

average whereas non-automated small purchases are about 12 pages in length, and automated small purchase solicitations, used by some DoD purchasing activities, are even less, 1 to 2 pages. The beneficial results of implementing these FASA provisions are evidenced further by the time saved in awarding orders under the existing small purchase procedures as opposed to contracts above the small purchase threshold of \$25,000. The current average lead-time for awards below \$25,000 is 26 days, while above \$25,000 the average lead-time is 90 days for sealed bids and 210 days for competitive negotiations. These timeframes

will be reduced further by implementation of the simplified acquisition

authority in this rule by establishing reasonable timeframes for submission of offers for simplified acquisitions in lieu of a rigid 30 days period. Through use of the simplified acquisition procedures for actions not exceeding \$50,000, the lead-time for approximately 30,000 contracts per year will be reduced to a fraction of the current lead-time. Use of electronic commerce/electronic data interchange capabilities at procurement activities certified to use FACNET will reduce lead-times even further and will increase the number of contracts affected to approximately 45,000, since FACNET users will be able to use the newly authorized simplified acquisition threshold of \$100,000 rather than only \$50,000 where FACNET has not been certified. Use of electronic commerce/electronic data interchange at a DoD test site reduced lead-time to 11 days. Reducing the lead-time will allow the contracting community to be more responsive in spite of the already

reduced personnel resources, focus its efforts on more complex procurements, reduce the cost of the procurement process for both Government and industry, and provide better service to the direct users

of the acquisition system, and ultimately to the public.

FASA called for its implementation in the FAR by October 1, 1995, or earlier. Due to the time required to fully consider, analyze, and document the analysis of public comments received in response to these proposed rules, it is unlikely that the rules could be published in the

FAR, promulgated to procurement personnel and contractors, have procurement personnel and contractors trained, and have the new rules in use by the beginning of the last quarter of the fiscal year. It is essential that these rules be made effective by the beginning of the last quarter of the fiscal year because of personnel downsizing that has already occurred and that is expected before the end of the fiscal year. Additionally, the workload in the last quarter of the fiscal year

is the most demanding of the fiscal year. Introduction of new procedures and processes in the middle of that quarter would be counterproductive to efficiency and would require operations to be suspended while retraining of the workforce is accomplished. Therefore,

the regulations in FAC 90-29 must be effective no later than July 3,

1995, to provide the Federal acquisition workforce the labor and cost saving benefits provided by the statute, or they must be delayed until the end of the fiscal year so as not to interfere with acquisition operations. Immediate implementation as an interim rule will permit time for training of the acquisition workforce and FAR acquisition procedures to be fully operational before the final quarter of FY 1995.

Pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to these interim rules and the prior proposed rules will be considered in formulating the final rules.

List of Subjects in 48 CFR Parts 1, 2, 4, 5, 7, 8, 9, 12, 14, 15, 16, 19, 20, 25, 28, 32, 36, 45, 52, and 53

Government procurement.

Dated: June 26, 1995.

C. Allen Olson,
Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR Parts 1, 2, 4, 5, 7, 8, 9, 12, 14, 15, 16, 19, 20, 25, 28, 32, 36, 45, 52, and 53 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 2, 4, 5, 7, 8, 9, 12, 14, 15, 16, 19, 20, 25, 28, 32, 45, 52, and 53 continues to read as follows:

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

PART 1--FEDERAL ACQUISITION REGULATIONS SYSTEM

1.105 [Amended]

2. Section 1.105 is amended in the FAR segment column by removing entry ``14.406'' and inserting ``14.407'' in its place.

PART 2--DEFINITIONS OF WORDS AND TERMS

3. Section 2.101 is amended by adding, in alphabetical order, the definitions ``In writing'' or written'' and signature'' or ``Signature'' or ``signed'' to read as follows:

2.101 Definitions.

* * * * *

In writing or written means any worded or numbered expression which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

* * * * *

Signature or signed means the discrete, verifiable symbol of an individual which, when affixed to a writing with the knowledge and consent of the individual, indicates a present intention to authenticate the writing. This includes electronic systems.

* * * * *

PART 4--ADMINISTRATIVE MATTERS

4. Section 4.101 is revised to read as follows:

4.101 Contracting officer's signature.

Only contracting officers shall sign contracts on behalf of the United States. The contracting officer's name and official title shall be typed, stamped, or printed on the contract. The contracting officer normally signs the contract after it has been signed by the contractor.

The contracting officer shall ensure that the signer(s) have authority to bind the contractor (see specific requirements in 4.102 of this subpart).

4.201 [Amended]

5 & 6. Section 4.201 is amended in paragraph (a) by removing the parenthetical ``(see 4.101(b)),''; in paragraph (b) (1) by removing the parenthetical ``(stamped ``DUPLICATE ORIGINAL,'' see 4.101(b))''; and in paragraph (d) by revising the parenthetical ``(see 30.401(b)) to read ``(see 30.601(b))''.

PART 5--PUBLICIZING CONTRACT ACTIONS

7. Section 5.101 is amended by adding paragraph (a) (2) (iv) to read as follows:

5.101 Methods of disseminating information.

* * * * *

(a) * * *

(2) * * *

(iv) Electronic dissemination available to the public at the contracting office may be used to satisfy the public display requirement. Contracting offices utilizing electronic systems for public posting shall periodically publicize the methods for accessing such information.

* * * * *

8. Section 5.102(a) (4) (i) is revised to read as follows:

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5.102 availability of solicitations.

(a) * * *

(4) * * *

(i) A copy of the solicitation specifications. In the case of solicitations disseminated by electronic data interchange,

solicitations may be furnished directly to the electronic address of the small business concern;

* * * * *

(9) Section 5.207 is amended by adding a new paragraph (c) (2) (xvii)

to read as follows:

5.207 Preparation and transmittal of synopses.

* * * * *

(c) * * *

(2) * * *

(xvii) If the solicitation will be made available to interested parties through electronic data interchange, provide any information necessary to obtain and respond to the solicitation electronically.

* * * * *

PART 7--ACQUISITION PLANNING

7.30 [Amended]

10. Section 7.304(b) (3) is amended in the first sentence by adding'', or electronic equivalent, '' after the word ``envelope''.

11. Section 7.306(a) (1) (i) is revised to read as follows:

7.306 Evaluation.

* * * * *

(a) (1) * * *

(i) Open the sealed cost comparison on which the cost estimate for Government performance has been entered;

* * * * *

7.307 [Amended]

12. Section 7.307 is amended in the first sentence of paragraph (b) by removing ``14.407-8'' and inserting ``14.408-8'' in its place.

PART 8--REQUIRED SOURCES OF SUPPLIES AND SERVICES

13. Section 8.405-2 is amended by revising the first sentence of the introductory text to read as follows:

8.405-2 Order placement.

Ordering offices may use Optional Form 347, an agency-prescribed form, or an established electronic communications format to order items

from schedules and shall place orders directly with the contractor within the limitations specified in each schedule. * * *

* * * * *

8.705-3 [Amended]

14. Section 8.705-3(a) is amended in the first sentence by removing the word ``letter'' and inserting ``written'' in its place.
PART 9--CONTRACTOR QUALIFICATIONS

9.206-3 [Amended]

15. Section 9.206-3(b) is amended in the first sentence by removing ``requested copies of the solicitation'' and inserting ``expressed interest in the acquisition'' in its place.

PART 12--CONTRACT DELIVERY OR PERFORMANCE

16. Section 12.103(e) is revised to read as follows:

12.103 Supplies or services.

* * * * *

(e) In invitations for bids, if the delivery schedule is based on the date of the contract, and a bid offers delivery based on the date the contractor receives the contract or notice of award, the contracting officer shall evaluate the bid by adding 5 calendar days (as representing the normal time for arrival through ordinary mail). If

the contract or notice of award will be transmitted electronically, (1)

the solicitation shall so state; and (2) the contracting officer shall evaluate delivery schedule based on the date of contract receipt or notice of award, by adding one working day. (The term ``working day'' excludes weekends and U.S. Federal holidays.) If the offered delivery date computed with mailing or transmittal time is later than the delivery date required by the invitation for bids, the bid shall be considered nonresponsive and rejected. If award is made, the delivery date will be the number of days offered in the bid after the contractor

actually receives the notice of award.

PART 14--SEALED BIDDING

17. Section 14.201-6(e) (1) is revised to read as follows:

14.201-6 Solicitation provisions.

* * * * *

(e) * * *

(1) 52.214-9, Failure to Submit Bid, except when using electronic data interchange methods not requiring solicitation mailing lists; and

* * * * *

14.202-1 Bidding time.

18. Section 14.202-1(b) (6) is amended by removing the word ``mailing'' and inserting ``transmittal'' in its place.

19. Section 14.202-2(a) (1) is revised to read as follows:

14.202-2 Telegraphic bids.

(a) * * *

(1) The date for the opening of bids will not allow bidders sufficient time to submit bids in the prescribed format; or

* * * * *

20. Section 14.202-8 is added to read as follows:

14.202-8 Electronic bids.

In accordance with subpart 4.5, contracting officers may authorize use of electronic commerce for submission of bids. If electronic bids are authorized, the solicitation shall specify the electronic commerce method(s) that bidders may use.

21. Section 14.203-1 is revised to read as follows:

14.203-1 Transmittal to prospective bidders.

Invitations for bids or presolicitation notices shall be transmitted as specified in 14.205, and shall be provided to others in accordance with 5.102. When a contracting office is located in the United States, any solicitation sent to a prospective bidder located at

a foreign address shall be sent by electronic data interchange or international air mail if security classification permits.

22. Section 14.205-1(a) is revised to read as follows:

14.205-1 Establishment of lists.

(a) Solicitation mailing lists shall be established by contracting activities to assure access to adequate sources of supplies and services. This rule need not be followed, however, when (1) the requirements of the contracting office can be obtained through use of simplified acquisition procedures (see part 13), (2) the requirements are nonrecurring, or (3) electronic commerce methods are used which transmit solicitations or presolicitation notices automatically to all interested sources participating in electronic contracting with the purchasing activity. Lists may be established as a central list for use

by all contracting offices within the contracting activity, or as local lists maintained by each contracting office.

* * * * *

23. Section 14.209(b) is amended by adding a second sentence to read as follows:

14.209 Cancellation of invitations before opening.

* * * * *

(b) * * * For bids received electronically, the data received shall not be viewed and shall be purged from primary and backup data storage systems.

* * * * *

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24. Section 14.301 is amended by adding paragraph (e) to read as follows:

14.301 Responsiveness of bids.

* * * * *

(e) Bids submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

25. Section 14.303 is amended by revising the first sentence of paragraph (a) and adding (c) to read as follows:

14.303 Modification or withdrawal of bids.

(a) Bids may be modified or withdrawn by any method authorized by the solicitation, if notice is received in the office designated in the solicitation not later than the exact time set for opening of bids. * *

*

* * * * *

(c) Upon withdrawal of an electronically transmitted bid, the data received shall not be viewed and shall be purged from primary and backup data storage systems.

26. Section 14.304-1 is amended by removing the word ``either'' at the end of paragraph (a) introductory text, by removing the word ``or''

at the end of paragraph (a) (2), by removing the period at the end of paragraph (a) (3) and inserting ``; or'' in its place, and adding paragraph (a) (4) to read as follows:

14.304-1 General.

* * * * *

(a) * * *

(4) It was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one working day prior to the date specified for

receipt of bids.

* * * * *

27. Section 14.401(a) is amended by revising the second sentence to read as follows:

14.401 Receipt and safeguarding of bids.

(a) * * * Except as provided in paragraph (b) of this section, the bids shall not be opened or viewed, and shall remain in a locked bid box, a safe, or in a secured, restricted-access electronic bid box. * *

*

* * * * *

28. Section 14.402-3(a) (1) is revised to read as follows:

14.402-3 Postponement of openings.

(a) * * *

(1) The contracting officer has reason to believe that the bids of an important segment of bidders have been delayed in the mails, or in the communications system specified for transmission of bids, for causes beyond their control and without their fault or negligence (e.g., flood, fire, accident, weather conditions, strikes, or Government equipment blackout or malfunction when bids are due); or

* * * * *

14.406 through 14.408-2 [Redesignated as 14.407 through 14.409-2; new 14.406 added]

29. Sections 14.406 through 14.406-4; 14.407 through 14.407-8; and 14.408, 14.408-1, and 14.408-2 are redesignated as 14.407 through 14.407-4; 14.408 through 14.408-8; and 14.409, 14.409-1, and 14.409-2, respectively, and a new section 14.406 is added to read as follows:

14.406 Receipt of an unreadable electronic bid.

If a bid received at the Government facility by electronic data interchange is unreadable to the degree that conformance to the essential requirements of the invitation for bids cannot be ascertained, the contracting officer immediately shall notify the bidder that the bid will be rejected unless the bidder provides clear and convincing evidence--

(a) Of the content of the bid as originally submitted; and

(b) That the unreadable condition of the bid was caused by Government software or hardware error, malfunction, or other Government mishandling.

30. Newly-redesignated section 14.407-2 is amended by adding paragraph (c) to read as follows:

14.407-2 Apparent clerical mistakes.

* * * * *

(c) Correction of bids submitted by electronic data interchange shall be effected by including in the electronic solicitation file the original bid, the verification request, and the bid verification.

14.407-1, 14.407-3, 14.407-4, 14.408-6, and 14.409-2 [Amended]

30a. In addition to the amendments set forth above, newly-redesignated sections 14.407-1 through 14.409-2 are amended by updating the internal references as follows:

Section	Remove	Insert
14.407-1.....	14.406	
14.407		
14.407-3 intro. text.....	14.406-3	
	14.406-2	
14.407-3		
14.407-2		

14.407-3(e), (h) & (i).....	14.406-3
14.407-3	
14.407-4(f).....	14.406-4
14.407-4	
14.408-6(c).....	14.407-6
14.408-6	
14.409-2.....	14.408-1
14.409-1	

 -

PART 15--CONTRACTING BY NEGOTIATION

31. Section 15.402 is amended by adding paragraph (k) to read as follows:

15.402 General.

* * * * *

(k) In accordance with subpart 4.5, contracting officers may authorize use of electronic commerce for submission of offers. If electronic offers are authorized, the solicitation shall specify the electronic commerce method(s) that offerors may use.

32. Section 15.407(d) (3) is revised to read as follows:

15.407 Solicitation provisions.

* * * * *

(d) * * *

(3) Insert in RFP's the provision at 52.215-15, Failure to Submit Offer, except when using electronic data interchange methods not requiring solicitation mailing lists; and

* * * * *

33. Section 15.410(b) is revised to read as follows:

15.410 Amendment of solicitations before closing date.

* * * * *

(b) The contracting officer shall determine if the closing date needs to be changed when amending a solicitation. If the time available

before closing is insufficient, prospective offerors or quoters shall be notified by electronic data interchange, telegram, or telephone of an extension of the closing date. Telephonic and telegraphic notices shall be confirmed in the written amendment to the solicitation. The contracting officer shall not award a contract unless any amendments made to an RFP have been issued in sufficient time to be considered by prospective offerors.

* * * * *

34. Section 15.412 is amended by revising the heading and adding paragraph (h) to read as follows:

15.412 Late proposals, modifications, and withdrawals of proposals.

* * * * *

(h) Upon withdrawal of an electronically transmitted proposal, the data received shall not be viewed and shall be purged from primary and backup data storage systems.

35. Section 15.607 is amended by adding paragraph (d) to read as follows:

15.607 Disclosure of mistakes before award.

* * * * *

(d) If a proposal received at the Government facility in electronic format is unreadable to the degree that

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conformance to the essential requirements of the solicitation cannot be ascertained from the document, the contracting officer immediately shall notify the offeror and provide the opportunity for the offeror to submit clear and convincing evidence--

(1) Of the content of the proposal as originally submitted; and

(2) That the unreadable condition of the proposal was caused by Government software or hardware error, malfunction, or other Government mishandling.

15.607, 15.608, and 15.1005 [Amended]

36. In addition to the amendments set forth above, sections 15.607, 15.608 and 15.1005 are amended by updating the internal references as follows:

Section	Remove	Insert
15.607 (a)	14.406	
14.407		
15.608 (c)	14.407-3	
14.408-3		
15.1005	14.406-4	
14.407-4		

PART 16--TYPES OF CONTRACTS

16.203-2 [Amended]

37. Section 16.203-2 is amended in the last sentence of the introductory text by removing ``14.407-4'' and inserting ``14.408-4'' in its place.

38. Section 16.506(c) is revised to read as follows:

16.506 Ordering.

* * * * *

(c) Orders may be placed by electronic commerce methods when permitted under the contract.

* * * * *

PART 19--SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

19.811-2 [Amended]

39. Section 19.811-2 is amended in the introductory text of paragraph (a) by removing ``14.407-1(d)'' and inserting ``14.408-1(d)'' in its place.

PART 20--LABOR SURPLUS AREA CONCERNS

20.104 [Amended]

40. Section 20.104 is amended in paragraph (f) by removing ``14.407-6'' and inserting ``14.408-6'' in its place.

PART 25--FOREIGN ACQUISITION

25.405 [Amended]

41. Section 25.405 is amended in paragraph (e) by removing ``14.408-1(a)(2)'' and inserting ``14.409-1(a)(2)'' in its place.

PART 28--BONDS AND INSURANCE

28.101-4 [Amended]

42. Section 28.101-4 is amended in paragraph (c)(5) by removing ``14.406'' and inserting ``14.407'' in its place.

PART 32--CONTRACTING FINANCING

43. Section 32.503-1(b) is revised to read as follows:

32.503-1 Contractor requests.

* * * * *

(b) Comply with the instructions appropriate to the applicable form, and the contract terms; and

* * * * *

PART 36--CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.304 [Amended]

44. Section 36.304 is amended in the introductory text by removing ``14.407'' and inserting ``14.408'' in its place.

PART 45--GOVERNMENT PROPERTY

45. Section 45.606-5 is amended by revising paragraphs (b) (3) and (b) (4) to read as follows:

45.606-5 Instructions for preparing and submitting schedules of contractor inventory.

* * * * *

(b) * * *

(3) The standard inventory schedule forms may be electronically reproduced by contractors pursuant to 53.105, provided no change is made to the name, content or sequence of the data elements. All essential elements of data must be included and the form must be signed.

(4) The appropriate continuation sheet shall be used when more space is needed.

* * * * *

PART 52--SOLICITATION PROVISIONS AND CONTRACT CLAUSES

46. Section 52.212-1 is amended by revising the date in the heading of the clause and the fourth sentence in paragraph (b), and removing ``(R 7-104.92(b) 1974 APR)'', ``(R 1-1.316-5)'' and ``(R 1-1316-4(c))'' after ``(End of clause)'' to read as follows:

52.212-1 Time of Delivery.

* * * * *

Time of Delivery (Jul 1995)

* * * * *

(b) * * * However, the Government will evaluate an offer that proposes delivery based on the Contractor's date of receipt of the

contract or notice of award by adding (i) five calendar days for delivery of the award through the ordinary mails, or (ii) one working day if the solicitation states that the contract or notice of award will be transmitted electronically. (The term ``working day'' excludes weekends and U.S. Federal holidays.) * * *

(End of clause)

* * * * *

47. Section 52.212-2 is amended by revising the date in the heading of the clause and the fourth sentence in paragraph (b), and removing ``(R 7-104.92(c) 1974 APR)'', ``(R 1-1.316-5(c))'' and ``(R 1-1.316-4(c))'' following ``(End of clause)'' to read as follows:

52.212-2 Desired and Required Time of Delivery.

* * * * *

Desired and Required Time of Delivery (Jul 1995)

* * * * *

(b) * * * However, the Government will evaluate an offer that proposes delivery based on the Contractor's date of receipt of the contract or notice of award by adding (i) five calendar days for delivery of the award through the ordinary mails, or (ii) one working day if the solicitation states that the contract or notice of award will be transmitted electronically. (The term ``working day'' excludes weekends and U.S. Federal holidays.) * * *

(End of clause)

* * * * *

48. Section 52.214-5 is amended by revising the date in the heading of the provision and adding paragraph (d) to read as follows:

52.214-5 Submission of Bids.

* * * * *

Submission of Bids (Jul 1995)

* * * * *

(d) Bids submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

49. Section 52.214-7 is amended by revising the date in the provision heading, at the end of paragraph (a) (2) by removing ``or'', at the end of paragraph (a) (3) by removing the period and inserting '' ; or'' in its place, and adding paragraph (a) (4) to read as follows:

52.214-7 Late Submissions, Modifications, and Withdrawals of Bids.

* * * * *

Late Submissions, Modifications, and Withdrawals of Bids (Jul 1995)

(a) * * *

(4) Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m., one

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working day prior to the date specified for receipt of bids.

* * * * *

(End of provision)

50. Section 52.214-9 is amended by revising the introductory text, the date in the heading of the provision, and the second sentence of the provision, and by removing `` (R SF 33A, Para 6, 1978 JAN) '' after `` (End of provision) '' to read as follows:

52.214-9 Failure to Submit Bid.

As prescribed in 14.201-6(e) (1), insert the following provision in invitations for bids:

Failure to Submit Bid (Jul 1995)

* * * Instead, they should advise the issuing office by letter, postcard, or established electronic commerce methods, whether they want to receive future solicitations for similar requirements.* * *

(End of provision)

51. Section 52.214-23 is amended by revising the date in the heading of the provision, at the end of paragraph (a) (3) by removing `` or '' ; redesignating paragraph (a) (4) as (a) (5), and adding a new paragraph (a) (4) to read as follows:

52.214-23 Late Submissions, Modifications, and Withdrawals of Technical Proposals Under Two-Step Sealed Bidding.

* * * * *

Late Submissions, Modifications, and Withdrawals of Technical Proposals

Under Two-Step Sealed Bidding (Jul 1995)

(a) * * *

(4) Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one working day prior to the date specified for receipt of technical proposals; or

* * * * *

52. Section 52.214-32 is amended by revising the date in the heading of the provision and paragraph (a) to read as follows:

52.214-32 Late Submissions, Modifications, and Withdrawals of Bids (Overseas).

* * * * *

Late Submissions, Modifications, and Withdrawals of Bids (Overseas)
(Jul 1995)

(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it--

(1) Was sent by mail or, if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or

(2) Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one working day prior to the date specified for receipt of bids. The term ``working day'' excludes weekends and U.S. Federal holidays.

* * * * *

53. Section 52.214-33 is amended by revising the date in the heading of the provision, at the end of paragraph (a) (1) by removing the word ``or'', redesignating paragraph (a) (2) as (a) (3), and adding a new paragraph (a) (2) to read as follows:

52.214-33 Late Submissions, Modifications, and Withdrawals of Technical Proposals Under Two-Step Sealed Bidding (Overseas).

* * * * *

Late Submissions, Modifications, and Withdrawals of Technical Proposals Under Two-Step Sealed Bidding (Overseas) (Jul 1995)

(a) * * *

(2) Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one working day prior to the date specified for receipt of technical proposals. The term ``working day'' excludes weekends and U.S. Federal holidays; or

* * * * *

54. Section 52.215-9 is amended by revising the date in the provision heading, redesignating paragraph (d) as (e), and adding a new paragraph (d) to read as follows:

52.215-9 Submission of Offers.

* * * * *

Submission of Offers (Jul 1995)

(d) Offers submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

* * * * *

55. Section 52.215-10 is amended by revising the introductory text and the date in the provision heading, at the end of (a) (3) by removing the word ``or'', redesignating paragraph (a) (4) as (a) (5), and adding a new paragraph (a) (4) to read as follows:

52.215-10 Late Submissions, Modifications, and Withdrawals of Proposals.

As prescribed in 15.407(c) (6), insert the following provision:

Late Submissions, Modifications, and Withdrawals of Proposals (Jul 1995)

(a) * * *

(4) Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

* * * * *

56. Section 52.215-15 is revised to read as follows:

52.215-15 Failure to Submit Offer.

As prescribed in 15.407(d) (3), insert the following provision:

Failure to Submit Offer (Jul 1995)

Recipients of this solicitation not responding with an offer should not return this solicitation, unless it specifies otherwise. Instead, they should advise the issuing office by letter, postcard, or established electronic commerce methods, whether they want to receive future solicitations for similar requirements. If a recipient does not submit an offer and does not notify the issuing office that future solicitations are desired, the recipient's name may be removed from the applicable mailing list.

(End of provision)

57. Section 52.215-36 is amended by revising the date in the provision heading, at the end of paragraph (a) (1) by removing the word ``or'', redesignating paragraph (a) (2) as (a) (3), and adding a new paragraph (a) (2) to read as follows:

52.215-36 Late Submissions, Modifications, and Withdrawals of Proposals (Overseas).

* * * * *

Late Submissions, Modifications, and Withdrawals of Proposals (Overseas) (Jul 1995)

(a) * * *

(2) Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

* * * * *

(End of provision)

52.223-3 [Amended]

58. Section 52.223-3, Alternate I, is amended by removing `` (NOV 1991) '' and inserting `` (JUL 1995) '' in its place, and in the second sentence of paragraph (i) (1) by removing the word ``mail'' and inserting ``transmit'' in its place.

59. Section 52.242-12 is amended by revising the date in the clause

heading and the second and third sentences of the clause to read as follows:

52.242-12 Report of Shipment (REPSHIP).

* * * * *

Report of Shipment (Repship) (Jul 1995)

* * * The notice shall be transmitted by rapid means to be received by the consignee transportation officer at least 24 hours before the arrival of the shipment. The Government bill of lading, commercial bill of lading or letter or other document that contains all of

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the following shall be addressed and sent promptly to the receiving transportation officer. * * *

* * * * *

(End of clause)

60. Section 52.242-13 is amended by revising the date in the clause and the first sentence of the clause to read as follows:

52.242-13 Bankruptcy.

* * * * *

Bankruptcy (Jul 1995)

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. * * *

61. Section 52.247-48 is amended by revising the introductory text, the date in the clause heading, redesignating the introductory text of the clause and paragraphs (a), (b), and (c) as (a) introductory text (a) (1), (a) (2), and (a) (3), respectively, adding new paragraph (b), and removing `` (R 7-104.76 1968 JUN) '' after `` (End of clause) '' to read as follows:

52.247-48 F.o.b. Destination--Evidence of Shipment.

As prescribed in 47.305-4(c), insert the following clause:

F.O.B. Destination--Evidence of Shipment (Jul 1995)

* * * * *

(b) Electronic transmission of the information required by paragraph (a) of this clause is acceptable.

(End of clause)

PART 53--FORMS

62. Section 53.105 is revised to read as follows:

53.105 Computer generation.

(a) Agencies may computer-generate the Standard and Optional Forms prescribed in the FAR without exception approval (see 53.103), provided--

(1) The form is in an electronic format that complies with Federal Information Processing Standard Number 161; or

(2) There is no change to the name, content, or sequence of the data elements, and the form carries the Standard or Optional Form number and edition date.

(b) The forms prescribed by this part may be computer generated by the public. Unless prohibited by agency regulations, forms prescribed by agency FAR supplements may also be computer generated by the public.

Computer generated forms shall either comply with Federal Information Processing Standard Number 161 or shall retain the name, content, or

sequence of the data elements, and shall carry the Standard or Optional Form or agency number and edition date (see 53.111).

53.214 [Amended]

63. Section 53.214 is amended in paragraph (a) by removing ``14.407-1(d)'' and inserting ``14.408-1(d)(1)'' in its place.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 3, 4, 5, 6, 8, 9, 13, 15, 16, 19, 20, 22, 23, 25, 27, 28, 29, 32, 36, 41, 42, 43, 44, 45, 46, 47, 49, 52, and 53

[FAC 90-29; FAR Case 94-770; Item III]
RIN 9000-AG18

Federal Acquisition Regulation; Simplified Acquisition Procedures/FACNET

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 new simplified acquisition and Federal Acquisition Computer Network (FACNET) requirements of the Federal Acquisition Streamlining Act of 1994 (the Act). This regulatory action was subject to Office of Management and Budget review under Executive Order 12866 dated September 30, 1993.

DATES: Effective Date: July 3, 1995.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before September 1, 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 90-29, FAR case 94-770 in all correspondence
related to this case.

FOR FURTHER INFORMATION CONTACT:

Diana Maykowskyj, Team Leader, Simplified Acquisition Procedures/FACNET

Team, on (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 90-29, FAR Case
94-770, Simplified Acquisition Procedures.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103-355
(FASA), provides authorities that streamline the acquisition process
and minimize burdensome Government-unique requirements. Major changes
in the acquisition process as a result of the Act's implementation
include the areas of commercial item acquisition, simplified
acquisition procedures, the Truth in Negotiations Act and Federal
Acquisition Computer Network (FACNET).

The terms ``simplified acquisition'' and ``Federal Acquisition
Computer Network (FACNET)'' are defined by FASA. FASA defines the
simplified acquisition threshold as \$100,000. It limits use of
simplified acquisition procedures by procurement activities not having
certified Interim FACNET to procurements not exceeding \$50,000. Use of
simplified acquisition procedures is also limited to procurements not
exceeding \$50,000 if any agency does not have certified Full FACNET by
January 1, 2000.

Review of the law and this implementing rule requires that the
difference between the simplified acquisition threshold and the use of
simplified acquisition procedures be recognized. The simplified
acquisition threshold is \$100,000. The authority to use simplified
acquisition procedures at the \$100,000 level depends on implementation
and proper certification of FACNET.

This rule, the vast majority of which was published as a proposed
rule in the Federal Register at 60 FR 12366, March 6, 1995,
incorporates FAR Subpart 4.5 for FACNET information and guidance. FAR
Subpart 4.5 provides definitions, certification information, and
exemptions in accordance with FASA. FAR case 91-104 (``Electronic
Commerce'') and this implementation of FASA are interdependent and are
meant to be considered jointly. Reviewers are advised that FACNET is
not a single electronic system that will be used by

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all executive agencies. It is, however, a universal electronic
capability that will permit potential contractors to, at a minimum,
obtain information on proposed procurements, submit responses, query
the system, and receive awards on a government-wide basis. Each agency
will determine the system(s) that will be used by its procuring
activities so that they can certify Interim FACNET for those activities

and Full FACNET for the agency. The Act and this rule also provide for exempting individual procurements and procuring activities from the use

of FACNET. This becomes significant when agencies certify Full FACNET which is based, in part, on the percentage of non-exempt transactions which were made through FACNET during the previous fiscal year.

Implementation of FACNET includes a vendor registration requirement

for any business entity wishing to do business with the Government electronically. Contractor information will be submitted to the Central

Contractor Registration in accordance with the Federal implementation conventions.

There are technical requirements and other procedures with respect to FACNET that are not appropriate for coverage in the FAR but are needed by executive agencies to fully implement FACNET. This information will be disseminated via other appropriate means.

Further, be advised that the micro-purchase coverage that appeared in the Federal Register on December 15, 1994, FAR case 94-771 will be merged with the SAT/FACNET coverage in the final rule. This will incorporate all of the FASA changes under simplified acquisition procedures.

This rule also implements section 4004 of FASA to reserve each contract for the purchase of goods or services that have an anticipated

value greater than \$2,500, but not greater than \$100,000, for exclusive

small business participation unless the contracting officer determines there is no reasonable expectation of obtaining offers from two or more

small businesses that are competitive with market price, quality and delivery.

In implementing section 4004, the issue of the nonmanufacturer rule

arose. Existing regulations allow a small business to furnish ``any domestic end product'' under procurements set-aside for small business and utilizing small purchase procedures. Based upon discussion with SBA's Office of Size Standards, it was determined that this automatic waiver of the non-manufacturers rule would not apply to acquisitions under the simplified acquisition threshold and its perpetuation would be in conflict with SBA's Size Regulations, which govern this issue. Based upon this advice, the rule requires all dealers submitting a bid or quotation on a procurement reserved for small business to furnish the product of a small business manufacturer unless the Small Business Administration has issued a waiver.

The reader should note the key features represented in FAR case 94-770 which will change the acquisition process significantly upon implementation and continue to do so as contracting offices/activities and agencies begin to certify and implement the use of FACNET. These key features are: the small purchase limitation of \$25,000 becomes the simplified acquisition threshold of \$100,000 (see 13.101); use of the simplified acquisition procedures is tied to FACNET--simplified acquisition procedures may be used up to \$50,000 upon FAR implementation without FACNET and up to \$100,000 upon interim FACNET certification (see 13.103)(b)); for non-FACNET acquisitions over \$25,000, a synopsis for 15 days is still required; solicitation

response time must provide a reasonable amount of time to afford potential offerors a reasonable opportunity to respond; the regulation exempts simplified acquisition procedures from 15 statutes and from certain provisions and clauses; contracting officers need to add any necessary clauses to the back of the purchase order form; and all purchases between \$2,500 and \$100,000 are reserved for small business (see 19.502-2).

In addition to what the Act provided, the SAT/FACNET Team has incorporated coverage that provides flexibility and latitude that encourages the contracting officer to use innovative approaches in awarding contracts, seek the "best value" for the Government which includes past performance and quality; permits use of other than fixed price orders/contracts, when authorized by the agency; encourages the use of options; and increases the property clause threshold to be commensurate with the implementation and certification of FACNET.

The most significant change in this rule is the implementation of FACNET which is addressed primarily in Subpart 4.5. FACNET will provide

the capability of existing computer hardware and software to perform certain functions in a standard manner in order to provide one face to industry for the entire Government. FACNET is the preferred means for conducting all purchases under the simplified acquisition threshold (\$100,000) and above the micro-purchase threshold (\$2,500). Contracting

offices/activities may not conduct acquisitions using simplified acquisition procedures between \$50,000 and \$100,000, until they have certified and implemented interim FACNET.

However, it is also significant to highlight what requirements did not change with FASA, such as the compliance with Part 8, required sources of supply; the policy on not splitting orders; requirement for posting \$10,000 (\$5,000 DOD); the need to synopsise over \$25,000; the requirement for small business setasides; and contracting reporting.

This interim rule and the interim rule published elsewhere in this issue under FAR case 91-104, Electronic Contracting, are interdependent

and are meant to be considered jointly.

B. Regulatory Flexibility Act

This rule is 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. This interim rule is designated to reduce the burden on entities desiring to do business with the Government and will apply to all large and small business entities, and all educational and nonprofit organizations who are interested in participating in Government acquisitions. The interim rule establishes the simplified acquisition threshold and sets forth policies and guidance for the implementation of FACNET pursuant to the Act. The implementation of Electronic Contracting and use of the Federal Acquisition Computer Network (FACNET) will provide for electronic exchange of acquisition information between the private sector and the Federal Government that will increase the opportunities for vendors currently doing business with the Government, particularly small businesses. It is recognized that an initial start-up cost will be incurred for the purchase of personal computer, modem, software, and

telephone lines, estimated to be \$1,500. Additionally, it is anticipated that most small businesses will subscribe to third party value added network (VAN) services to facilitate their communications with the Government's computers. The cost of advance subscription ranges from approximately \$30 to \$100 per month, depending on the type of services obtained. The interim rule does not duplicate, overlap, or conflict with any other Federal rules.

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An initial Regulatory Flexibility Analysis (IRFA) in support of the interim rule has been prepared and will be provided to the Chief Council for Advocacy for the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments from small entities concerning the affected FAR parts 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., (FAR case 94-770), in correspondence.

C. Paperwork Reduction Act

This interim rule does impose an additional reporting or recordkeeping requirement on the public which requires the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq. Contractors will be required to electronically register with the Central Contractor Registration operated by the Defense Information Megacenter. The information to be provided is information currently reported under several existing forms including the SF-129, Solicitation Mailing List Application, the SF-3881, ACH Vendor/Miscellaneous Payment Enrollment Form, and the DD-1052, Request for Assignment of a Commercial and Government Entity (CAGE) Code. Contractors will also be required to provide information pertaining to their electronic data interchange (EDI) capabilities. Establishment of a central registration system should eliminate the need to submit multiple registrations with each contracting office the contractor is doing business with.

A request for approval of the information collection requirement concerning simplified acquisition procedures was submitted to OMB and approved through April 30, 1998, OMB Control 9000-0137. Public comments

concerning this request were invited through a Federal Register notice at 60 FR 11659, March 2, 1995.

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) pursuant to section 22 of the Office of Federal Procurement Policy Act (41 U.S.C. 418b) that compelling reasons exist to promulgate

this regulation as an interim rule.

The Simplified Acquisition Threshold Procedures/Federal Acquisition

Computer Network (SAT/FACNET) rule (FAR Case 94-770) and the Electronic Contracting (EC) rule (FAR Case 91-104) benefit industry and Government

by enhancing efficiency of contracting in an environment of declining personnel staffing and resulting increase in workload for contracting personnel. The rules are linked and require simultaneous promulgation. The proposed rules were published simultaneously in the Federal Register on March 6, 1995, with the public comment period closing on May 5, 1995. A public meeting was held on these rules on April 3, 1995,

and no substantive comments were presented at the meeting.

Section 22 of the Office of Federal Procurement Policy Act permits issuance of procurement policies, regulations, procedures, or forms as interim rules prior to consideration of public comments when urgent and

compelling circumstances make it impracticable to do otherwise. Urgent and compelling reasons exist to make these rules effective prior to full consideration of public comment. Proceeding with these interim rules is required to permit the Federal Government to cope with the fundamental downsizing of its acquisition workforce and the large end of fiscal year workload with diminished resources. The Federal Acquisition Streamlining Act of 1994 (FASA), and its provisions on SAT/FACNET, provide relief from various burdens that affect the Government acquisition process. For example, purchases under the new simplified acquisition approach will become far less complex than today. Using figures from the Department of Defense for illustrative purposes, large

purchase solicitations run 29 pages on the average whereas non-automated small purchases are about 12 pages in length, and automated small purchase solicitations, used by some DOD purchasing activities, are even less, 1 to 2 pages. The beneficial results of implementing these FASA provisions are evidenced further by the time saved in awarding orders under the existing small purchase procedures as opposed

to contracts above the small purchase threshold of \$25,000. The current

average lead-time for awards below \$25,000 is 26 days, while above \$25,000 the average lead-time is 90 days for sealed bids and 210 days for competitive negotiations. These timeframes will be reduced further by implementation of the simplified acquisition authority in this rule by establishing reasonable timeframes for submission of offers for simplified acquisitions in lieu of a rigid 30-day period. Through use of the simplified acquisition procedures for actions not exceeding \$50,000, the lead-time for approximately 30,000 contracts per year will

be reduced to a fraction of the current lead-time. Use of electronic commerce/electronic data interchange capabilities at procurement activities certified to use FACNET will reduce lead-times even further and will increase the number of contracts affected to approximately 45,000, since FACNET users will be able to use the newly authorized simplified acquisition threshold of \$100,000 rather than only \$50,000 where FACNET has not been certified. Use of electronic commerce/electronic data interchange at a DOD test site reduced lead-time to 11 days. Reducing the lead-time will allow the contracting community to be

more responsive in spite of the already reduced personnel resources, focus its efforts on more complex procurements, reduce the cost of the procurement process for both Government and industry, and provide better service to the direct users of the acquisition system, and ultimately to the public.

FASA called for its implementation in the FAR by October 1, 1995, or earlier. Due to the time required to fully consider, analyze, and document the analysis of public comments received in response to these proposed rules, it is unlikely that the rules could be published in the

FAR, promulgated to procurement personnel and contractors, have procurement personnel and contractors trained, and have the new rules in use by the beginning of the last quarter of the fiscal year. It is essential that these rules be made effective by the beginning of the last quarter of the fiscal year because of personnel downsizing that has already occurred and that is expected before the end of the fiscal year. Additionally, the workload in the last quarter of the fiscal year

is the most demanding of the fiscal year. Introduction of new procedures and processes in the middle of that quarter would be counterproductive to efficiency and would require operations to be suspended while retraining of the workforce is accomplished. Therefore,

the regulations in FAC 90-29 must be effective no later than July 3, 1995, to provide the Federal acquisition workforce the labor and cost saving benefits provided by the statute, or they must be delayed until the end of the fiscal year so as not to interfere with acquisition operations. Immediate implementation as an interim rule will permit time for training of the acquisition workforce, and FAR acquisition procedures to be fully

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operational before the final quarter of FY 1995.

Pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to these interim rules and the prior proposed rules will be considered in formulating the final rules.

List of Subjects in 48 CFR Parts 2, 3, 4, 5, 6, 8, 9, 13, 15, 16, 19, 20, 22, 23, 25, 27, 28, 29, 32, 33, 36, 41, 42, 43, 44, 45, 46, 47, 49, 52, and 53

Government procurement.

Dated: June 26, 1995.

Jeremy F. Olson,
Acting Deputy Project Manager for Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, 48 CFR Chapter 1 is amended as set forth below:

1. The authority citation for 48 CFR parts 2, 3, 4, 5, 6, 8, 9, 13, 15, 16, 19, 20, 23, 25, 27, 28, 29, 32, 33, 36, 41, 42, 43, 44, 45, 46, 47, 49, 52, and 53 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 2--DEFINITIONS OF WORDS AND TERMS

2. Section 2.201 is revised to read as follows:

2.201 Contract clause.

The contracting officer shall insert the clause at 52.202-1, Definitions, in solicitations and contracts except when the contract is not expected to exceed the simplified acquisition threshold in part 13.

If the contract is for personal services, construction, architect-engineer services, or dismantling, demolition, or removal of improvements, the contracting officer shall use the clause with its Alternate I. Additional definitions may be included, provided they are consistent with the clause and the FAR.

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

3.102-2 [Amended]

2a. Section 3.102-2 is amended by revising the phrase ``in solicitations and contracts,`` to read ``in solicitations and contracts exceeding the simplified acquisition threshold,``.

3. Section 3.103-1 is amended by revising paragraph (a) to read as follows:

3.103-1 Solicitation provision.

* * * * *

(a) The acquisition is to be made under the simplified acquisition procedures in part 13;

* * * * *

4. Section 3.104-10 is amended by revising paragraph (c) to read as follows:

3.104-10 Solicitation provision and contract clauses.

* * * * *

(c) The contracting officer shall insert the clause at 52.203-10, Price or Fee Adjustment for Illegal for Improper Activity, in all solicitations where the resultant contract award is expected to exceed the simplified acquisition threshold (see part 13) and all contracts and modifications to contracts exceeding that threshold which do not already contain the clause when the modification is expected to exceed that threshold.

* * * * *

5. Section 3.404 is amended by revising paragraphs (b) (1) and (c) to read as follows:

3.404 Solicitation provision and contract clause.

* * * * *

(b) * * *

(1) The contract amount is expected to be at or below the simplified acquisition threshold in part 13;

* * * * *

(c) The contracting officer shall insert the clause at 52.203-5, Covenant Against Contingent Fees, in solicitations and contracts exceeding the simplified acquisition threshold in part 13.

6. Section 3.502-3 is revised to read as follows:

3.502-3 Contract clause.

The contracting officer shall insert the clause at 52.203-7, Anti-Kickback Procedures, in solicitations and contracts exceeding the simplified acquisition threshold in part 13.

7. Section 3.503-2 is revised to read as follows:

3.503-2 Contract clause.

The contracting officer shall insert the clause at 52.203-6, Restrictions on Subcontractor Sales to the Government, in solicitations and contracts exceeding the simplified acquisition threshold in part 13.

PART 4--ADMINISTRATIVE MATTERS

4.304 [Amended]

8. Section 4.304 is amended by adding the phrase ``greater than the simplified acquisition threshold'' at the end of the sentence.

9. Part 4 is amended by adding Subpart 4.5, consisting of sections 4.500 through 4.507, to read as follows:

Subpart 4.5--Electronic Commerce in Contracting

Sec.

4.505 Scope of subpart.

4.501 Definitions.

4.502 Policy.

4.503 Contractor registration.

4.504 FACNET functions.

4.505 FACNET certification.

4.505-1 Interim certification.

4.505-2 Full certification.

4.505-3 Governmentwide certification.

- 4.505-4 Contract actions excluded.
- 4.506 Exemptions.
- 4.507 Contract actions using simplified acquisition procedures.

4.500 Scope of subpart.

This subpart provides policy and procedures for the establishment and use of the Federal Acquisition Computer Network (FACNET) as required by Section 30 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 426).

4.501 Definitions.

ANSI X.12 means the designation assigned by the American National Standards Institute (ANSI) for the structure, format, and content of electronic business transactions conducted through Electronic Data Interchange (EDI). ANSI is the coordinator and clearinghouse for national standards in the United States.

Electronic commerce (EC) means a paperless process including electronic mail, electronic bulletin boards, electronic funds transfer, electronic data interchange, and similar techniques for accomplishing business transactions. The use of terms commonly associated with paper transactions (e.g., ``copy'', ``document'', ``page'', ``printed'', ``sealed envelope'' and ``stamped'') shall not be interpreted to restrict the use of electronic commerce.

Electronic data interchange (EDI) means a technique for electronically transferring and string formatted information between computers utilizing established and published formats and codes, as authorized by the applicable Federal Information Processing Standards.

Federal Acquisition Computer Network (FACNET) means the Governmentwide Electronic Commerce/Electronic Data Interchange (EC/EDI) systems architecture for the acquisition of supplies and services that provides for electronic data interchange of acquisition information between the Government and the private sector, employs nationally and internationally recognized data formats, and provides universal user access.

Full FACNET means an agency has certified that it has implemented all of

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the FACNET functions outlined in 4.504, and more than 75 percent of eligible contracts (not otherwise exempted from FACNET) in amounts exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold (see Part 13), were entered into by the agency during the preceding fiscal year using FACNET.

Governmentwide FACNET means that the Federal Government has certified its FACNET capability, and more than 75 percent of eligible contracts (not otherwise exempted from FACNET) in amounts exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold (see part 13), entered into by the executive agencies during the preceding fiscal year were made through full FACNET.

Interim FACNET means a contracting office has been certified as having implemented a capability to provide widespread public notice of, issue solicitations, and receive responses to solicitations and associated requests for information through FACNET. Such capability must allow the private sector to access notices of solicitations, access and review solicitations, and respond to solicitations.

Transaction Set means the data that is exchanged to convey meaning between Trading Partners engaged in EC/EDI.

Value-Added Network (VAN) means an entity that provides communications services, electronic mailboxing and other communications services for EDI transmissions.

Value-Added Service (VAS) means an entity that provides services beyond communications to its customers. These services may range from translation and segregation of the data to complete turn-key business system support for customers.

4.502 Policy.

(a) The Federal Government shall use FACNET whenever practicable or cost effective.

(b) FACNET is the preferred method of soliciting and receiving quotes and providing notice of Government purchase requirements exceeding the micro-purchase threshold and not exceeding the simplified acquisition threshold (see 13.103 (b)).

(c) Contracting officers may use FACNET for any contract action governed by the FAR, unless specifically exempted (see 4.506 and 13.106-1(a)(2)).

(d) Before using FACNET, or any other method of electronic data interchange, The agency head shall ensure that the electronic data interchange system is capable of ensuring authentication and confidentiality commensurate with the risk and magnitude of the harm from loss, misuse, or unauthorized access to or modification of the information.

4.503 Contractor registration.

(a) In order for a contractor to conduct electronic commerce with the Federal Government, the contractor must provide registration information to the Central Contractor Registration.

(b) The contractor will be required to submit information in accordance with the Federal implementation conventions of the ASC ANSI X.12 transaction set for contractor registration.

4.504 FACNET functions.

(a) FACNET will permit agencies to do the following electronically--

(1) Provide widespread public notice of contracting opportunities, and issue solicitations;

(2) Receive responses to solicitations and associated requests for information;

(3) Provide widespread public notice of contract awards and issuance of orders (including price);

(4) Receive questions regarding solicitations, if practicable;

(5) Issue contracts and orders, if practicable;

(6) Initiate payments to contractors, if practicable; and

(7) Archive data relating to each procurement action.

(b) FACNET will permit the private sector to do the following electronically--

(1) Access notices of solicitation;

(2) Access and review solicitations;

(3) Respond to solicitations;

(4) Receive contracts and orders, if practicable;

(5) Access information on contract awards and issuance of orders;

and

(6) Receive payment by purchase card, electronic funds transfer, or

other automated means, if practicable.

4.505 FACNET certification.

4.505-1 Interim certification.

(a) A contracting office is considered to have implemented interim FACNET if--

(1) The contracting office--

(i) Has implemented the FACNET functions described in 4.504(a)(1) and (2), and (b)(1), (2), and (3); and

(ii) Issues notices of solicitations and receives responses to solicitations in a system having those functions;

(2) The contracting office can use FACNET for contracts, not otherwise exempted (see 4.506), that exceed the micro-purchase threshold but do not exceed the simplified acquisition threshold; and

(3) the senior procurement executive of the agency, or the Under Secretary of Defense for Acquisition and Technology for the military departments and defense agencies, has certified to the Administrator of

OFPP that the contracting office has implemented interim FACNET.

(b) The senior procurement executive of the agency, or the Under Secretary of Defense for Acquisition and Technology for the military departments and defense agencies, shall notify the private sector via the Commerce Business Daily that a contracting office of the agency has

certified interim FACNET. The notice shall establish a date after which

it will be required that all responses to solicitations issued by the contracting office through FACNET, must be submitted through FACNET, unless otherwise authorized.

4.505-2 Full certification.

(a) An agency is considered to have implemented full FACNET if--

(1) The agency has implemented all of the FACNET functions described in 4.504;

(2) During the entire preceding fiscal year, more than 75 percent of the agency's eligible contracts, not otherwise exempted (see 4.506),

that exceeded the micro-purchase threshold but did not exceed the simplified acquisition threshold, were entered into via FACNET; and.

(3) The head of the agency, with the concurrence of the Administrator of OFPP, has certified to the Congress that the agency has implemented full FACNET. For the Department of Defense, the certification shall be made by the Secretary of Defense for the Department as a whole.

(b) Eligible contracts do not include any class or classes of contracts that the Federal Acquisition Regulatory Council determines, after October 13, 1997, are not suitable for acquisition through FACNET.

4.505-3 Governmentwide certification.

The Federal Government is considered to have implemented Governmentwide FACNET if--

(a) During the preceding fiscal year, at least 75 percent of eligible contracts entered into by executive agencies, that exceeded the micro-purchase threshold but did not exceed the simplified acquisition threshold, were made via full FACNET; and

(b) the Administrator of OFPP has certified implementation of Governmentwide FACNET to the Congress.

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4.505-4 Contract actions excluded.

For purposes of calculating the percentage of FACNET use referred to in 4.505-2 and 4.505-3, actions issued against established contracts, such as delivery orders, task orders, and in-scope modifications, shall not be included.

4.506 Exemptions.

The following are exempted from the use of FACNET as specified and shall not be considered when determining compliance with the requirements to implement FACNET:

(a) Interim FACNET. (1) Classes of procurements exempted by the head of the contracting activity after a written determination is made that FACNET processing of those procurements is not cost-effective or practicable; and specific purchases for which the contracting officer determines that it is not practicable or cost-effective to process via FACNET. Such determinations shall be centrally maintained at the contracting office.

(2) Contracts that do not require notice under subpart 5.2.

(b) Full FACNET. Contracts awarded by a contracting office (or a

portion of a contracting office), if the office is exempted from use of FACNET by the head of the agency, or the Secretary of Defense for the military departments and defense agencies. Any such exemption shall be based on a written determination that FACNET processing is not cost-effective or practicable for the contracting office, or portions thereof. Determinations shall be maintained in the office of the senior procurement executive, or the Under Secretary of Defense for Acquisition and Technology for the military departments and defense agencies.

4.507 Contract actions using simplified acquisition procedures.

Contracting officers shall refer to section 12.106 for evaluation and documentation requirements when awarding contracts using simplified acquisition procedures.

10. Section 4.800 is revised to read as follows:

4.800 Scope of subpart.

This subpart prescribes requirements for establishing, maintaining, an disposing of contract files for all contractual actions. The application of this subpart to contracts awarded using the simplified acquisition procedures covered by part 13 is optional. (See also documentation requirements in 12.106-2.)

11. Section 4.804-1 is amended by revising paragraphs (a) (1) and (a) (2) to read as follows:

4.804-1 Closeout by the office administering the contract.

(a) * * *

(1) Files for contracts using simplified acquisition procedures should be considered closed when the contracting officer receives evidence of receipt of property and final payment, unless otherwise specified by agency regulations.

(2) Files for firm-fixed-price contracts, other than those using simplified acquisition procedures, should be closed within 6 months after the date on which the contracting officer receives evidence of physical completion.

* * * * *

12. Section 4.804-2 is amended by revising paragraph (a) to read as follows:

4.804-2 Closeout of the contracting office files if another office administers the contract.

(a) Contract files for contracts using simplified acquisition procedures should be considered closed when the contracting officer

receives evidence of receipt of property and final payment, unless otherwise specified by agency regulation.

* * * * *

13. Section 4.805 is amended in the table in paragraph (b) by revising the entries in the ``Document'' column of paragraphs (b) (5), (10), (11), and the introductory text of (b) (13) to read as follows:

4.805 Storage, handling and disposal of contract files.

* * * * *

(b) * * *

Period	Document	Retention
	* * * * *	
(5) Unsuccessful offers or quotations that pertain to contracts using simplified acquisition procedures....		* * * *
	* * * * *	
(10) Records or documents other than those in paragraphs 4.805(b) (1)-(9) of this section pertaining to contracts using simplified acquisition procedures.....		* * * *
	* * * * *	
(11) Records or documents other than those in paragraphs 4.805(b) (1)-(10) of this section pertaining to contracts not using simplified acquisition procedures.....		* * * *

* * * * *

(13) Solicited and unsolicited unsuccessful offers and quotations above the simplified acquisition threshold

in part 13:..... * * * * *

* * * * *

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PART 5--PUBLICIZING CONTRACT ACTIONS

14. Section 5.101 is amended by revising paragraphs (a) (1), (a) (2) introductory text, and (a) (2) (ii) to read as follows:

5.101 Methods of disseminating information.

* * * * *

(a) * * *

(1) For proposed contract actions expected to exceed \$25,000, by synopsisizing in the Commerce Business Daily (CBD) (see 5.201); and

(2) For proposed contract actions expected to exceed \$10,000 (\$5,000 for Defense activities), but not expected to exceed \$25,000, by

displaying in a public place at the contracting office issuing the solicitation, an unclassified notice of the solicitation or a copy of the solicitation satisfying the requirements of 5.207 (c) and (f). The notice shall include a statement that all responsible sources may submit a quotation which, if timely received, shall be considered by the agency. Such information shall be posted not later than the date the solicitation is issued, and shall remain posted for at least 10 days or until after quotations have been opened, whichever is later.

* * * * *

(ii) The contracting officer need not comply with the display requirements of this section when the exemptions at 5.202(a) (1), (5) through (9), or (11) apply, or when oral or FACNET solicitations are used. The exemption from display requirements does not relieve the contracting officer from the responsibility to consider all quotations timely received from responsible sources.

* * * * *

15. Section 5.202 is amended by removing ``or'' at the end of (a) (11) and the period at the end of (a) (12) and inserting a semicolon in its place; and adding paragraphs (a) (13) and (a) (14) to read as follows:

5.202 Exceptions.

* * * * *

(a) * * *

(13) The contract action is for an amount expected to exceed \$25,000 but

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not expected to exceed the simplified acquisition threshold and is made by a contracting activity that has been certified as having implemented a system with interim (until December 31, 1999) or full (after December 31, 1999) FACNET and the contract action will be made through FACNET; or

(14) The contract action is for an amount at or below \$250,000 and is made through certified FACNET after Governmentwide FACNET has been certified. This exception does not apply when the contract action is not made through certified FACNET (see subpart 4.5).

* * * * *

16. Section 5.203 is amended by redesignating paragraphs (b) through (f) as (c) through (g), adding a new paragraph (b) and revising newly designated (c), (d), and (e) to read as follows:

5.203 Publicizing and response time.

* * * * *

(b) The contracting officer shall establish a solicitation response time which will afford potential offerors a reasonable opportunity to respond for each contract action, including actions via FACNET, in an amount estimated to be greater than \$25,000, but not greater than the simplified acquisition threshold. The contracting officer should consider the circumstances of the individual procurement, such as the complexity, commerciality, availability, and urgency, when establishing the solicitation response time.

(c) Agencies shall allow at least a 30 day response time for receipt of bids or proposals from the date of issuance of a solicitation if the contract action is expected to exceed the simplified acquisition threshold.

(d) Agencies shall allow at least a 30 day response time from the date of publication of a proper notice of intent to contract for architect-engineer services or before issuance of an order under a basic ordering agreement or similar arrangement if the contract action is expected to exceed the simplified acquisition threshold.

(e) Agencies shall allow at least a 45 day response time for receipt of bids or proposals from the date of publication of the notice required in 5.201 for contract actions categorized as research and development if the contract action is expected to exceed the simplified acquisition threshold.

* * * * *

17. Section 5.205 is amended by revising paragraph (d) (1) to read as follows:

5.205 Special situations.

* * * * *

(d) * * *

(1) Except when exempted by 5.202, contracting officers shall synopsise each proposed contract action for which the total fee (including phases and options) is expected to exceed \$25,000. Reference

shall be made to the appropriate CBD Numbered Note.

* * * * *

18. Section 5.207 is amended by redesignating paragraphs (c) (2) (xi)

through (c) (2) (xv) as (c) (2) (xii) through (c) (2) (xvi), adding new paragraph (c) (2) (xi), and revising newly redesignated (c) (2) (xiv) to read as follows:

5.207 Preparation and transmittal of synopses.

* * * * *

(c) * * *

(2) * * *

(xi) For a contract action in an amount estimated to be greater than \$25,000 but not greater than the simplified acquisition threshold,

enter (A) a description of the procedures to be used in awarding the contract (e.g., request for oral or written quotation or solicitation),

and (B) the anticipated award date.

* * * * *

(xiv) In the case of noncompetitive contract actions, insert a statement of the reason justifying other than full and open competition, and identify the intended source(s) (see 5.207(e) (3)).

* * * * *

19. Section 5.301 is amended by removing ``or'' after (b) (5); removing the period at the end of (b) (6) and inserting ``; or'' in its place; and adding a new (b) (7) to read as follows:

5.301 General.

* * * * *

(b) * * *

(7) The contract action is for an amount greater than \$25,000 but not greater than the simplified acquisition threshold, the contract action is made by a contracting office that has been certified as having implemented a system with interim (until December 31, 1999) or full (after December 31, 1999) FACNET, and the contract action has been

made through FACNET.

* * * * *

20. Section 5.303 is amended by revising the introductory text of paragraph (b) to read as follows:

5.303 Announcement of contract awards.

* * * * *

(b) Local announcement. Agencies may also release information on contract awards to the local press or other media. When local announcements are made for contract awards in excess of the simplified acquisition threshold in part 13, they shall include--

* * * * *

21. Section 5.503 is amended by revising paragraph (c)(1) to read as follows:

5.503 Procedures.

* * * * *

(c) Forms. (1) When contracting directly with the media for advertising, contracting officers--

(i) Shall use Standard Form 26, Award/Contract, or Standard Form 1447, Solicitation/Contract, when the dollar amount of the acquisition exceeds the simplified acquisition threshold; or

(ii) May use Optional Form 347, Order for Supplies or Services, or an approved agency form, when the dollar amount of the acquisition does

not exceed the threshold for use of simplified acquisition procedures (see part 13).

* * * * *

PART 6--COMPETITION REQUIREMENTS

22. Section 6.001 is amended by revising paragraph (a) to read as follows:

6.001 Applicability.

* * * * *

(a) Contracts awarded using the simplified acquisition procedures of part 13;

* * * * *

PART 8--REQUIRED SOURCES OF SUPPLIES AND SERVICES

23. Section 8.203-1 is amended by revising paragraph (a)(1) to read as follows:

8.203-1 Contract clause and solicitation provision.

(a) * * *

(1) Contract actions not exceeding the simplified acquisition threshold in part 13;

* * * * *

24. Section 8.404 is amended by revising the last sentence of paragraph (a) to read as follows:

8.404 Using schedules.

(a) * * * When placing orders under a Federal Supply Schedule, ordering activities need not seek further competition, synopsise the requirement, make a separate determination of fair and reasonable pricing, or consider small business set-asides in accordance with subpart 19.5.

* * * * *

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PART 9--CONTRACTOR QUALIFICATIONS

25. Section 9.405-2 is amended by revising the second sentence of paragraph (b) introductory text to read as follows:

9.405-2 Restrictions on subcontracting.

* * * * *

(b) * * * Contractors shall not enter into any subcontract in excess of \$25,000 with a contractor that has been debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

* * *
* * * * *

26. Section 9.409 is revised to read as follows:

9.409 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 52.209-5, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters, in solicitations where the contract value is expected to exceed the simplified acquisition threshold.

(b) The contracting officer shall insert the clause at 52.209-6, Protecting the Government's Interests when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, in solicitations and contracts where the contract value exceeds \$25,000.

27. Section 9.507-1 is amended by revising paragraph (c) to read as follows:

9.507-1 Solicitation provisions.

* * * * *

(c) The contracting officer shall insert the provision at 52.209-8, Organizational Conflicts of Interest Certificate--Advisory and Assistance Services, in solicitations for advisory and assistance

services if the contract is expected to exceed the simplified acquisition threshold.

* * * * *

PART 13--SIMPLIFIED ACQUISITION PROCEDURES

27a. The heading of part 13 is revised to read as set forth above.

28. Section 13.000 is revised to read as follows:

13.000 Scope of part.

This part prescribes policies and procedures for the acquisition of supplies and services, including construction and research and development, the aggregate amount of which does not exceed the simplified acquisition threshold (see 13.103(b)). See 36.602-5 for simplified procedures to be used when acquiring architect-engineering services.

29. Section 13.101 is amended by revising the definitions of ``delivery order'' and ``purchase order''; removing the definitions of ``small purchase'', and ``small purchase procedures''; and adding, in alphabetical order, definitions for ``imprest fund'', ``simplified acquisition procedures'', and ``simplified acquisition threshold''.

13.101 Definitions.

* * * * *

Delivery order means an order for supplies or services placed against an established contract or with Government sources of supply.

* * * * *

Imprest fund means a cash fund of a fixed amount established by an advance of funds, without charge to an appropriation, from an agency finance or disbursing officer to a duly appointed cashier, for disbursement as needed from time to time in making payment in cash for relatively small amounts.

* * * * *

Purchase order means an offer by the Government to buy supplies or services, including construction and research and development, upon specified terms and conditions, using simplified acquisition procedures.

Simplified acquisition procedures means the methods prescribed in this part for making purchases of supplies or services using imprest funds, purchase orders, blanket purchase agreements, Governmentwide commercial purchase cards, or any other appropriate authorized method.

Simplified acquisition threshold means \$100,000 (but see 13.103(b)). In the case of any contract to be awarded and performed, or

purchase to be made, outside the United States in support of a contingency operation, the term means \$200,000.

30. Section 13.102 is revised to read as follows:

13.102 Purpose.

The purpose of this part is to prescribe simplified acquisition procedures in order to--

- (a) Reduce administrative costs;
 - (b) Improve opportunities for small business and small disadvantaged business concerns to obtain a fair proportion of Government contracts;
 - (c) Promote efficiency and economy in contracting; and,
 - (d) Avoid unnecessary burdens for agencies and contractors.
31. Section 13.103 is revised to read as follows:

13.103 Policy.

(a) Simplified acquisition procedures shall be used to the maximum extent practicable for all purchases of supplies or services not exceeding the simplified acquisition threshold unless requirements can be met by using required sources of supply under part 8 (e.g., Federal Prison Industries, Committee for Purchase from People who are Blind or Severely Disabled, and Federal Supply Schedule contracts) or orders under Federal Information Processing multiple award schedule contracts.

(b) Simplified acquisition procedures may not be used for contract actions exceeding \$50,000, and not exceeding the simplified acquisition threshold, unless the contracting office making the purchase has been certified as having interim FACNET in accordance with 4.505-1. The contracting office shall not use simplified acquisition procedures for contract actions exceeding \$50,000 after December 31, 1999, unless the office's cognizant agency has certified full FACNET capability in accordance with 4.505-2.

(c) Simplified acquisition procedures shall not be used in the acquisition of supplies and services initially estimated to exceed the simplified acquisition threshold even though resulting awards do not exceed that threshold. Requirements aggregating more than the simplified acquisition threshold shall not be broken down into several purchases that are less than the threshold merely to permit use of simplified acquisition procedures.

(d) Simplified acquisition procedures may be used to acquire personal services if the agency has specific statutory authority to acquire personal services (see 37.104).

(e) FACNET is the preferred means for acquiring supplies and services, including construction and research and development, in amounts exceeding the micro-purchase threshold but not exceeding the simplified acquisition threshold.

(f) Contracting officers shall establish deadlines for the submission of responses to solicitations which afford contractors a reasonable opportunity to respond.

(g) Contracting officers are encouraged to use innovative approaches in awarding contracts using the simplified acquisition procedures under the authority of this part. For example, the procedures of other FAR parts may, as appropriate, be adapted for use in awarding contracts under this part. Other FAR parts that may be adapted include, but are not limited to--

- (1) Part 14, Sealed Bidding;

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- (2) Part 15, Contracting by Negotiation;
- (3) Part 11, Acquisition and Distribution of Commercial Products;

and

(4) Part 36, Construction and Architect-Engineer Contracts, including the use of Standard Form 1442, Solicitation, Offer and Award (Construction, Alteration, or Repair), for construction contracts (see 36.701(b)).

32. Section 13.104 is revised to read as follows:

13.104 Procedures.

(a) Contracting officers shall make awards under this part in the simplified manner that is most suitable, efficient, and economical in the circumstances of each acquisition. Contracting officers may use the

procedures in this part in acquisitions from Government supply sources (see part 8), if their use is authorized by the basic contract or concurred in by the source.

(b) Related items (such as small hardware items or spare parts for vehicles) may be included in one solicitation and the award made on an "all-or-none" basis if suppliers are so advised when quotations are requested.

(c) Agencies shall use bulk funding to the maximum extent practicable to reduce processing time, handling, and documentation. Bulk funding is particularly appropriate if numerous purchases using the same type of funds are to be made during a given period.

(d) Agencies shall inspect items or services acquired under simplified acquisition procedures as prescribed in 46.404.

(e) Agencies shall use United States-owned foreign currency, if appropriate, in making payments when using simplified acquisition procedures (see subpart 25.3).

(f) For proposed purchases covered by this part, see 5.101 for public display and synopsis requirements.

(g) When a quotation, oral or written, is to be rejected because a small business firm is determined to be nonresponsible (see subpart 9.1), see subpart 19.6 with respect to certificates of competency.

33. Section 13.105 is revised to read as follows:

13.105 Small business set-asides.

(a) Except as provided in paragraphs (b) and (c) of this section, each acquisition (non-FACNET and FACNET) of supplies or services that has an anticipated dollar value exceeding \$2,500 and not exceeding \$100,000, is reserved exclusively for small business concerns and shall

be set aside (see subpart 19.5).

(b) The requirements of this section apply only to purchases in the United States, its territories and possessions, Puerto Rico, and the Trust Territory of the Pacific Islands (see 19.000). Foreign concerns shall not be solicited for acquisitions set aside for small business concerns.

(c) (1) Each written solicitation under a set-aside shall contain the appropriate provisions or clauses prescribed by Part 19. If the solicitation is oral, however, information substantially identical to that which is in the provision or clause shall be given to potential

quoters.

(2) If the contracting officer determines there is no reasonable expectation of obtaining quotations from two or more responsible small business concerns that will be competitive in terms of market price, quality, and delivery, the contracting officer need not proceed with the small business set-aside and may purchase on an unrestricted basis.

If the SBA procurement center representative disagrees with a contracting officer's decision not to proceed with the small business set-aside, the SBA procurement center representative may appeal the decision in accordance with the procedures set forth in 19.505.

(3) If the contracting officer proceeds with the set-aside and receives a quotation from only one responsible small business concern at a reasonable price (see 13.106-2(a)), the contracting officer shall make an award to that concern. However, if the contracting officer does

not receive a reasonable quotation from a responsible small business concern, the contracting officer may cancel the set-aside and complete the purchase on an unrestricted basis.

(4) If the purchase is on an unrestricted basis under 13.105(c) (2), the contracting officer shall document in the file the reasons for the unrestricted purchase.

(5) See part 19 for policy concerning--

(i) Contracting with the Small Business Administration under the 8(a) Program (subpart 19.8);

(ii) Emerging small business set-aside (19.1006(c)); and

(iii) The Small Business Competitiveness Demonstration Program (subpart 19.10).

34. Section 13.106 text is removed and the heading is revised to read as follows:

13.106 Purchases exceeding the micro-purchase threshold.

35. Section 13.106-1 is added to read as follows:

13.106-1 Soliciting competition, evaluation of quotas, and award.

(a) Soliciting competition. (1) Contracting officers shall solicit a reasonable number of sources to promote competition to the maximum extent practicable, and to ensure that the purchase is advantageous to the Government, based, as appropriate, on either price alone or price and other factors (e.g., past performance and quality) including the administrative cost of the purchase. Requests for quotations or solicitations shall notify suppliers of the basis upon which award is to be made.

(2) FACNET is the preferred method of soliciting simplified acquisitions. However, if FACNET is not available, or if the contracting officer has made a determination that it is not practicable

or cost-effective to process a specific purchase via FACNET, or if the head of the contracting activity has made a determination that it is not practicable or cost-effective to process a class of purchases via FACNET (see 4.506), quotations may be solicited through other

appropriate means. Requests for quotations should be solicited orally to the maximum extent practicable for contract actions not expected to exceed \$25,000, when FACNET is not available or a determination has been made that it is not practicable or cost-effective to purchase via FACNET. Oral solicitations may not be practicable for most contract actions exceeding \$25,000 because of the synopsis requirement in 5.101.

A synopsis may incorporate enough information for the contracting officer to receive oral quotes. The contracting officer is not required

to issue a separate written solicitation. Paper solicitations for contract actions not expected to exceed \$25,000 should only be issued when obtaining electronic or oral quotations is not considered economical or practical. Solicitations for construction contracts over \$2,000 shall only be issued electronically or by paper solicitation.

(3) When not soliciting quotations electronically, maximum practicable competition ordinarily can be obtained without soliciting quotations or offers from sources outside the local trade area. Generally, solicitation of at least three sources may be considered to promote competition to the maximum extent practicable if the contract action does not exceed \$25,000. If practicable, two sources not included in the previous solicitation should be requested to furnish quotations. The following factors influence the number of quotations required in connection with any particular purchase:

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(i) The nature of the article or service to be purchased and whether it is highly competitive and readily available in several makes or brands, or is relatively noncompetitive.

(ii) Information obtained in making recent purchases of the same or similar item.

(iii) The urgency of the proposed purchase.

(iv) The dollar value of the proposed purchase.

(v) Past experience concerning specific dealers' prices.

(4) Contracting officers may solicit from one source if the contracting officer determines that the circumstances of the contract action deem only one source reasonably available (e.g., urgency).

(5) Contracting officers shall not limit solicitations to suppliers

of well known and widely distributed makes or brands, or solicit quotations on a personal preference basis. If it is necessary to maintain a list of sources, new supply sources disclosed through trade journals or other media shall be continuously reviewed and, if appropriate, added to the list.

(6) In accordance with 14.408-3, contracting officers shall make every effort to obtain trade and prompt payment discounts. However, prompt payment discounts shall not be considered in the evaluation of quotations.

(7) (i) Unless exempted from this requirement by the head of the contracting activity, or unless purchases are made through FACNET, each

contracting office should maintain a source list (or lists, if more convenient) and should record on the list the status of each source

(when the status is made known to the contracting office) in the following categories:

- (A) Small business.
- (B) Small disadvantaged business.
- (C) Women-owned small business.

(ii) The status information should be used to ensure that small business concerns are given opportunities to respond to solicitations issued using simplified acquisition procedures.

(b) Evaluation of quotes or offers. (1) Contracting officers may evaluate quotations or offers based on price alone or price and other factors (e.g., past performance, or quality). Formal evaluation plans, conduct of discussions, and scoring of quotes or offers are not required. Evaluation of other factors does not require the creation or existence of a formal data base, but may be based on such information as the contracting officer's knowledge, previous experience, or customer surveys.

(2) Standing price quotations may be used in lieu of obtaining individual quotations each time a purchase is contemplated. In such cases, the buyer shall ensure that the price information is current and

that the Government obtains the benefit of maximum discounts before award is made.

(3) Contracting officers shall evaluate quotations inclusive of transportation charges from the shipping point of the supplier to the delivery destination.

(4) Contracting officers shall comply with the policy in 7.202 relating to economic purchase quantities, when practicable.

(c) Award. (1) Occassionally an item can be obtained only from a supplier who quotes a minimum order price or quantity that either unreasonably exceeds stated quantity requirements or results in an unreasonable price for the quantities required. In these instances, the

contracting officer should inform the requiring activity of all facts regarding the quotation and ask it to confirm or alter its requirement.

The file shall be documented to support the final action taken.

(2) Notification to unsuccessful suppliers shall be given only if requested. When a supplier requests information on an award which was based on factors other than price alone, the notification shall include

a brief explanation of the basis for the contract award decision. (See 15.1001(c) (3).)

36. Section 13.106-2 is added to read as follows:

13.106-2 Data to support purchases.

(a) The determination that a proposed price is reasonable should be based on competitive quotations. If only one response is received, or the price variance between multiple responses reflects lack of adequate

competition, a statement shall be included in the contract file giving the basis of the determination of fair and reasonable price. The determination may be based on a comparison of the proposed price with prices found reasonable on previous purchases, current price lists,

catalogs, advertisements, similar items in a related industry, value analysis, the contracting officer's personal knowledge of the item being purchased or any other reasonable basis.

(b) When other than price related factors are considered in selecting the supplier (see 13.106-1(b)(1)), the contracting officer shall document the file to support the final contract award decision.

(c) If only one source is solicited, an additional notation shall be made to explain the absence of competition, except for acquisition of utility services available only from one source or of educational services from nonprofit institutions.

(d) Simplified documentation practices should be used. The following illustrate the extent to which quotation information should be recorded.

(1) Oral solicitations. The contracting office should establish and maintain informal records of oral price quotations in order to reflect clearly the propriety of placing the order at the price paid with the supplier concerned. In most cases this will consist merely of showing the names of the suppliers contacted and the prices and other terms and conditions quoted by each.

(2) Written solicitations (see 2.101). Written records of solicitations may be limited to notes or abstracts to show prices, delivery, references to printed price lists used, the supplier or suppliers contacted, and other pertinent data.

(e) Purchasing offices shall retain data supporting purchases using simplified acquisition procedures to the minimum extent and duration necessary for management review purposes (see Subpart 4.8).

37. Section 13.107 is revised to read as follows:

13.107 Solicitation forms.

(a) Except when quotations are solicited via FACNET or orally, Standard Form 18, Request for Quotations (53.301-18), is available, but not required, for use by all agencies.

(b) Optional Form 336, Continuation Sheet, may be used with Standard Form 18 when additional space is needed.

(c) If Standard Form 18 is not used for written solicitations, contracting officers may request quotations using an agency-designed form, an agency-approved automated format, or electronically.

(d) Each agency-designed request for quotations form shall conform with Standard Form 18, to the maximum extent practicable.

(e) When using an unsigned electronic purchase order (see 13.506) for transmission of a request for quotations, the provisions and clauses applicable to the solicitation shall be incorporated by reference.

38. Section 13.108 is revised to read as follows:

13.108 Legal effect of quotations.

(a) A quotation is not an offer and, consequently, cannot be accepted by the Government to form a binding contract (see 15.402(e)).

Therefore, issuance by the Government of an order for supplies or services in response to a supplier's quotation does not establish a contract. The order is an offer by the Government

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to the supplier to buy certain supplies or services upon specified terms and conditions. A contract is established when the supplier accepts the offer or begins performance.

(b) When appropriate, the contracting officer may ask the supplier to indicate acceptance of an order by notification to the Government, preferably in writing. In other circumstances, the supplier may indicate acceptance by furnishing the supplies or services ordered or by proceeding with the work to the point where substantial performance has occurred.

(c) If the Government issues an order resulting from a quotation, the Government may (by written notice to the supplier, at any time before acceptance occurs) withdraw, amend, or cancel its offer. (See 13.504 for procedures on termination or cancellation of purchase orders.)

38. Section 13.109 is revised to read as follows:

13.109 Agency use of indefinite delivery contracts.

Cost and processing time for acquisitions at or below the simplified acquisition threshold may be reduced through the use of indefinite delivery contracts (see subpart 16.5) that permit delivery orders to be placed by several contracting or ordering offices in one or more executive agencies. Therefore, contracting offices are encouraged to seek opportunities to cooperate with each other to achieve efficiency and economy through the use of indefinite delivery contracts.

40. Section 13.110 is added to read as follows:

13.110 Federal Acquisition Streamlining Act of 1994 (FASA) list of inapplicable laws.

(a) The following laws are inapplicable to all contracts and subcontracts (if otherwise applicable to subcontracts) at or below the simplified acquisition threshold:

(1) 41 U.S.C. 57 (a) and (b) (Anti-Kickback Act of 1986). (Only the

requirement for the incorporation of the contractor procedures for the prevention and detection of violations, and the contractual requirement

for contractor cooperation in investigations are inapplicable.)

(2) 40 U.S.C. 27 (Miller Act).

(3) 40 U.S.C. 329 (Contract Work Hours and Safety Standards Act-- Overtime Compensation).

(4) 41 U.S.C. 701(a)(1) (Section 5152 of the Drug Free Workplace Act of 1988), except for individuals.

(5) 42 U.S.C. 6962 (Solid Waste Disposal Act) (Only the requirement

for providing the estimate of recovered material utilized in the performance of the contract is inapplicable).

(6) 10 U.S.C. 2306(b) and 41 U.S.C. 254(a) (Contract Clause Regarding Contingent Fees).

(7) 10 U.S.C. 2313 and 41 U.S.C. 254(c) (Authority to Examine Books and Records of Contractors).

(8) 10 U.S.C. 2384(b) (Requirement to Identify Suppliers and Sources of Supply).

(9) 10 U.S.C. 2393(d) (Prohibition Against Doing Business with Certain Offerors or Contractors).

(10) 10 U.S.C. 2402 and 41 U.S.C. 253g (Prohibition on Limiting Subcontractor Direct Sales to the United States).

(11) 10 U.S.C. 2408(a) (Prohibition on Persons Convicted of Defense Related Felonies).

(12) 10 U.S.C. 2410b (Contractor Inventory Accounting System Standards).

(13) 10 U.S.C. 2534 (Miscellaneous Procurement Limitations).

(b) The Federal Acquisition Regulatory Council will include any law

enacted after October 13, 1994, that sets forth policies, procedures, requirements, or restrictions for the procurement of property or services, on the list set forth in 13.110(a), unless the FAR Council makes a written determination that it is in the best interests of the Government that the enactment should apply to contracts or subcontracts

not greater than the simplified acquisition threshold.

(c) The provisions of 13.110(b) do not apply to laws that--

(1) Provide for criminal or civil penalties; or

(2) Specifically state that notwithstanding the language of Section

4101, Pub. L. 103-355, the enactment will be applicable to contracts or subcontracts in amounts not greater than the simplified acquisition threshold.

(d) Any individual may petition the Administrator of the Office of Federal Procurement Policy to include any applicable provision of law not included on the list set forth in 13.110(a) unless the FAR Council has already determined in writing that the law is applicable. The Administrator of OFPP will include the law on the list in 13.110(a) unless the FAR Council makes a determination that it is applicable within sixty days of receiving the petition.

41. Section 13.111 is added to read as follows:

13.111 Inapplicable provisions and clauses.

Pursuant to Pub. L. 103-355, the following provisions and clauses are inapplicable to contracts and subcontracts at or below the simplified acquisition threshold--

(a) 28.102-3, Miller Act requirements;

(b) 52.203-1, Officials Not to Benefit;

(c) 52.203-4, Contingent Fee Representation and Agreement;

(d) 52.203-5, Covenant Against Contingent Fees;

(e) 52.203-6, Restrictions on Subcontractor Sales to the Government;

(f) 52.203-7, Anti-Kickback Procedures;

(g) 52.215-1, Examination of Records by Comptroller General;

(h) 52.222-4, Contract Work Hours and Safety Standards Act--

Overtime Compensation;

(i) 52.223-5, Certification Regarding a Drug-Free Workplace, except

for individuals; and

(j) 52.223-6, Drug-Free Workplace, except for individuals.

42. Section 13.112 is added to read as follows:

13.112 Use of options in acquisitions using simplified acquisition procedures.

Options may be included in acquisitions using simplified acquisition procedures provided that the requirements of subpart 17.2 are met, and that the aggregate value of the acquisition and all options does not exceed the dollar threshold for use of simplified acquisition procedures under this part.

43. Subpart 13.2 is revised to read as follows:

Subpart 13.2--Blanket Purchase Agreements

Sec.

13.201 General.

13.202 [Reserved]

13.203 Establishment of Blanket Purchase Agreements.

13.203-1 General.

13.203-2 Clauses.

13.204 Purchases under Blanket Purchase Agreements.

13.205 Review procedures.

13.206 Completion of Blanket Purchase Agreements.

13.201 General.

(a) A blanket purchase agreement (BPA) is a simplified method of filling anticipated repetitive needs for supplies or services by establishing ``charge accounts'' with qualified sources of supply (see subpart 16.7 for additional coverage of agreements).

(b) BPAs should be established for use by the level responsible for providing supplies for its own operations or for other offices, installations, projects, or functions. Such levels, for example, may be organized supply points, separate independent or detached field parties, or one-person posts or activities.

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(c) The use of BPAs does not exempt the agency from the responsibility for keeping obligations and expenditures within available funds.

13.202 [Reserved]

13.203 Establishment of Blanket Purchase Agreements.

13.203-1 General.

(a) The following are circumstances under which contracting officers may establish BPAs:

(1) If there is a wide variety of items in a broad class of goods (e.g., hardware) that are generally purchased but the exact items, quantities, and delivery requirements are not known in advance and may vary considerably.

(2) If there is a need to provide commercial sources of supply for one or more offices or projects in a given area that do not have or need authority to purchase otherwise.

(3) In any other case in which the writing of numerous purchase orders can be avoided through the use of this procedure.

(b) A BPA should be established without a purchase requisition.

(c) A BPA shall not cite accounting and appropriation data (see 13.204(e)(4)).

(d) BPAs should be made with firms from which numerous individual purchases will likely be made in a given period. For example, if past experience has shown that certain firms are dependable and consistently lower in price than other firms dealing in the same commodities, and if numerous purchases at or below the simplified acquisition threshold are usually made from such suppliers, it would be advantageous to establish BPAs with those firms.

(e) To the extent practical, BPAs for items of the same type should be placed concurrently with more than one supplier. All competitive sources should be given an equal opportunity to furnish supplies or services under BPAs.

(f) BPAs may also be established with Federal Supply Schedule contractors and Federal Information Processing Multiple Award Schedule contractors (see part 39), if not inconsistent with the terms of the applicable schedule contract.

(g) If it is determined that BPAs would be advantageous, suppliers should be contacted to make the necessary arrangements for securing maximum discounts, documenting the individual purchase transactions, periodic billing, and other necessary details.

(h) A BPA may be limited to furnishing individual items or commodity groups or classes, or it may be unlimited for all items or services that the source of supply is in a position to furnish.

(i) BPAs may be prepared and issued on any agency-authorized purchase order form.

(j) BPAs shall contain the following terms and conditions:

(1) Description of agreement. A statement that the supplier shall furnish supplies or services, described in general terms, if and when requested by the contracting officer (or the authorized representative of the contracting officer) during a specified period and within a stipulated aggregate amount, if any.

(2) Extent of obligation. A statement that the Government is obligated only to the extent of authorized purchases actually made under the BPA.

(3) Pricing. A statement that the prices to the Government shall be as low or lower than those charged the supplier's most favored customer for comparable quantities under similar terms and conditions, in addition to any discounts for prompt payment.

(4) Purchase limitation. A statement that specifies the dollar limitation for each individual purchase under the BPA (see 13.204(b)).

(5) Notice of individuals authorized to purchase under the BPA. A statement that a list of individuals authorized to purchase under the BPA, identified either by title of position or by name of individual, organizational component, and the dollar limitation per purchase for each position title or individual shall be furnished to the supplier by the contracting officer.

(6) Delivery tickets. A requirement that all shipments under the agreement, except subscriptions and other charges for newspapers, magazines, or other periodicals, shall be accompanied by delivery tickets or sales slips which shall contain the following minimum information:

- (i) Name of supplier.
- (ii) BPA number.
- (iii) Date of purchase.
- (iv) Purchase number.
- (v) Itemized list of supplies or services furnished.
- (vi) Quantity, unit price, and extension of each item, less applicable discounts (unit prices and extensions need not be shown when incompatible with the use of automated systems; provided, that the invoice is itemized to show this information).
- (vii) Date of delivery or shipment.

(7) Invoices. One of the following statements (except that the statement in paragraph (j)(7)(iii) of this section should not be used if the accumulation of the individual invoices by the Government materially increases the administrative costs of this purchase method):

(i) A summary invoice shall be submitted at least monthly or upon expiration of this BPA, whichever occurs first, for all deliveries made during a billing period, identifying the delivery tickets covered therein, stating their total dollar value, and supported by receipt copies of the delivery tickets.

(ii) An itemized invoice shall be submitted at least monthly or upon expiration of this BPA, whichever occurs first, for all deliveries made during a billing period and for which payments has not been received. These invoices need not be supported by copies of delivery tickets.

(iii) When billing procedures provide for an individual invoice for each delivery, these invoices shall be accumulated; provided, that--

(A) A consolidated payment will be made for each specified period; and

(B) The period of any discounts will commence on the final date of the billing period or on the date of receipt of invoices for all deliveries accepted during the billing period, whichever is later.

(iv) An invoice for subscriptions or other charges for newspapers,

magazines, or other periodicals shall show the starting and ending dates and shall state either that ordered subscriptions have been placed in effect or will be placed in effect upon receipt of payment.

(k) BPAs in which the fast payment procedure is used shall include the requirements stated under 13.303(b).

13.203-2 Clauses.

(a) The contracting officer shall insert in each BPA the clauses prescribed elsewhere in this part that are required for or applicable to the particular BPA.

(b) Unless a clause prescription specifies otherwise, (e.g., see 22.305(a)(1), 22.605(a)(5), or 22.1006), if the prescription includes a

dollar threshold, the amount to be compared to that threshold is that of any particular order under the BPA.

13.204 Purchases under Blanket Purchase Agreements.

(a) The use of a BPA does not authorize purchases that are not otherwise authorized by law or regulation. For example, the BPA, being a method of simplifying the making of individual purchases, shall not be used to avoid the simplified acquisition threshold.

(b) Unless otherwise specified in agency regulations, individual

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purchases under BPAs, except those BPAs established in accordance with

13.203-1(f), shall not exceed (i) \$50,000, or (ii) \$100,000 when the contracting office has certified interim FACNET (see 13.103(b)).

(c) The existence of a BPA does not justify purchasing from only one source or avoiding small business set-asides. The requirements of 13.105 and 13.106 also apply to each order under a BPA.

(d) If there is an insufficient number of BPAs to ensure maximum practicable competition for a particular purchase, the contracting officer shall--

(1) Solicit quotations from other sources and make the purchase as appropriate; and

(2) Establish additional BPAs to facilitate future purchases if--

(i) Recurring requirements for the same or similar items or services seem likely,

(ii) Qualified sources are willing to accept BPAs, and

(iii) It is otherwise practical to do so.

(e) Documentation of purchases under BPAs shall be limited to essential information and forms as follows:

(1) Purchases under BPAs generally should be made electronically, or orally when it is not considered economical or practical to use electronic methods.

(2) A paper purchase document may be issued if written communications are necessary to ensure that the vendor and the purchaser agree concerning the transaction.

(3) If a paper document is not issued, the essential elements (e.g., date, vendor, items or services, price, delivery date) shall be recorded on the purchase requisition, in an informal memorandum, or on

a form developed locally for the purpose.

(4) Documentation of purchases under BPAs shall also cite the pertinent purchase requisitions and the accounting and appropriation data.

(5) When delivery is made or the services are performed, the vendor's sales document, delivery document, or invoice may (if it reflects the essential elements) be used for the purpose of recording receipt and acceptance of the items or services. However, if the purchase is assigned to another activity for administration, receipt and acceptance of supplies or services shall be documented by signature

and date on the agency specified form by the authorized Government representative after verification and notation of any exceptions.

13.205 Review procedures.

(a) The contracting officer placing orders under a BPA, or the designated representative of the contracting officer, shall review a sufficient random sample of the BPA files at least annually to ensure that authorized procedures are being followed.

(b) The contracting officer that entered into the BPA shall--

(1) Ensure that each BPA is reviewed at least annually and, if necessary, updated at that time; and

(2) Maintain awareness of changes in market conditions, sources of supply, and other pertinent factors that may warrant making new arrangements with different suppliers or modifying existing arrangements.

(c) If an office other than the purchasing office that established a BPA is authorized to make purchases under that BPA, the agency that has jurisdiction over the office authorized to make the purchases shall

ensure that the procedures in paragraph (a) of this section are being followed.

13.206 Completion of Blanket Purchase Agreements.

An individual BPA is considered complete when the purchases under it equal its total dollar limitation, if any, or when its stated time period expires.

44. Subpart 13.3 is revised to read as follows:

Subpart 13.3--Fast Payment Procedure

Sec.

13.301 General.

13.302 Conditions for use.

13.303 Preparation and execution of orders.

13.304 Responsibility for collection of debts.

13.305 Contract clause.

13.301 General.

The fast payment procedure allows payment under limited conditions

to a contractor prior to the Government's verification that supplies have been received and accepted. The procedure provides for payment for

supplies based on the contractor's submission of an invoice that constitutes a representation that--

(a) The supplies have been delivered to a post office, common carrier, or point of first receipt by the Government; and

(b) The contractor agrees to replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase agreements.

13.302 Conditions for use.

If the conditions in paragraphs (a) through (f) of this section are present, the fast payment procedure may be used, provided that use of the procedure is consistent with the other conditions of the purchase. The conditions for use of the fast payment procedure are as follows:

(a) Individual orders do not exceed \$25,000 except that executive agencies may permit higher dollar limitations for specified activities or items on a case-by-case basis.

(b) Deliveries of supplies are to occur at locations where there is

both a geographical separation and a lack of adequate communications facilities between Government receiving and disbursing activities that will make it impractical to make timely payment based on evidence of Government acceptance. Use of the fast payment procedure would not be indicated, for example, for small purchases by an activity if material being purchased is destined for use at that activity and contract administration will be performed by the contracting office at that activity.

(c) Title to the supplies will vest in the Government--

(1) Upon delivery to a post office or common carrier for mailing or shipment to destination; or

(2) Upon receipt by the Government if the shipment is by means other than Postal Service or common carrier.

(d) The supplier agrees to replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase requirements.

(e) The purchasing instrument is a firm-fixed price contract, a purchase order, or a delivery order for supplies.

(f) A system is in place to ensure--

(1) Documenting evidence of contractor performance under fast payment acquisitions;

(2) Timely feedback to the contracting officer in case of contractor deficiencies; and

(3) Identification of suppliers who have a current history of abusing the fast payment procedure (also see subpart 9.1).

13.303 Preparation and execution of orders.

(a) Except when orders are placed via FACNET, orders incorporating

the fast payment procedure should be issued on Optional Form 347, Order for Supplies or Services, or other agency authorized purchase order form (see 13.204(e) for purchases under BPAs). Orders may be either priced or unpriced.

(b) Contracts, purchase orders, or BPAs using the fast payment procedure shall include the following:

(1) A requirement that the supplies be shipped transportation or postage prepaid.

(2) A requirement that invoices be submitted directly to the finance or other office designated in the order, or in the case of unpriced purchase orders, to the contracting officer (see 13.502(c)).

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(3) The following statement on consignee's copy:

Consignee's Notification to Purchasing Activity of Nonreceipt, Damage, or Nonconformance

The consignee shall notify the purchasing office promptly after the specified date of delivery of supplies not received, damaged in transit, or not conforming to specifications of the purchase order. Unless extenuating circumstances exist, the notification should be made not later than 60 days after the specified date of delivery.

(4) A requirement that the contractor mark outer shipping containers ``FAST PAY.``

13.304 Responsibility for collection of debts.

The contracting officer shall be primarily responsible for collecting debts resulting from failure of contractors to properly replace, repair, or correct supplies lost, damaged, or not conforming to purchase requirements (see 32.605(b) and 32.606).

13.305 Contract clause.

The contracting officer shall insert the clause at 52.213-1, Fast Payment Procedure, in solicitations and contracts when the conditions in 13.302 are applicable and it is intended that the fast payment procedure be used in the contract (in the case of BPAs, the contracting officer may elect to insert the clause either in the BPA or in orders under the BPA).

45. Subpart 13.4 is revised to read as follows:

Subpart 13.4--Imprest Fund

Sec.

13.401 General.

13.402 Agency responsibilities.

13.403 Conditions for use.

13.404 Procedures.

13.401 General.

This subpart prescribes policies and procedures for using imprest funds to purchase supplies or services. Related policies and regulations concerning the establishment of and accounting for imprest funds, including the responsibilities of designated cashiers and alternates, are contained in Part IV of the Treasury Financial Manual for Guidance of Departments and Agencies, Title 7 of the General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies, and the agency implementing regulations. Agencies shall also be guided by the Manual of Procedures and Instructions for Cashiers, issued by the Financial Management Service, Department of the Treasury.

13.402 Agency responsibilities.

Each agency using imprest funds shall--

(a) Periodically review and determine whether there is continuing need for each fund established, and that amounts of those funds are not in excess of actual needs;

(b) Take prompt action to have imprest funds adjusted to a level commensurate with demonstrated needs whenever circumstances warrant such action; and

(c) Develop and issue appropriate implementing regulations. These regulations shall include (but are not limited to) procedures covering--

(1) Designation of personnel authorized to make purchases using imprest funds; and

(2) Documentation of purchases using imprest funds, including documentation of--

(i) Receipt and acceptance of supplies and services by the Government;

(ii) Receipt of cash payments by the suppliers; and

(iii) Cash advances and reimbursements.

13.403 Conditions for use.

Imprest funds may be used for purchases when--

(a) The transaction does not exceed \$500 or such other limits as have been approved by the agency head;

(b) The use of imprest funds is considered to be advantageous to the Government; and

(c) The use of imprest funds for the transaction otherwise complies

with any additional conditions established by agencies and with the policies and regulations referenced in 13.401.

13.404 Procedures.

(a) Each purchase using imprest funds shall be based upon an authorized purchase requisition.

(b) Normally, orders to suppliers should be placed orally and without soliciting competition if prices are considered reasonable.

(c) Purchases shall be distributed equitably among qualified suppliers.

(d) Prompt payment discounts shall be solicited.

(e) Any agency-authorized purchase order form or Standard Form 1165, Receipt for Cash-Subvoucher, may be used if a written order is considered necessary (e.g., if required by the supplier for discount, tax exemption, or other reasons). If a purchase order is used for this purpose, it shall be endorsed ``Payment to be made from Imprest Fund''.

(f) The individual authorized to make purchases using imprest funds shall--

(1) Furnish to the imprest fund cashier a copy of the purchase requisition annotated to reflect--

(i) That an imprest fund purchase has been made;

(ii) The unit prices and extensions;

(iii) The supplier's name and address; and

(iv) The date of anticipated delivery; and

(2) Require the supplier to include with delivery of the supplies an invoice, packing slip, or other sales instrument giving--

(i) The supplier's name and address;

(ii) List and quantity of items;

(iii) Unit prices and extensions; and

(iv) Cash discount, if any.

46. Subpart 13.5 is revised to read as follows:

Subpart 13.5--Purchase Orders

Sec.

13.501 General.

13.502 Unpriced purchase orders.

13.503 Obtaining contractor acceptance and modifying purchase orders.

13.504 Termination or cancellation of purchase orders.

13.505 Purchase order and related forms.

13.505-1 Optional Form (OF) 347, Order for Supplies or Services, and Optional Form 348, Order for Supplies or Services Schedule-Continuation.

13.505-2 [Reserved]

13.505-3 Standard Form 44, Purchase Order-Invoice-Voucher.

13.506 Unsigned electronic purchase orders.

13.507 Provisions and clauses.

13.501 General.

(a) Except as provided under the unpriced purchase order method (see 13.502), purchase orders shall be issued on a fixed-price basis unless otherwise authorized by agency procedures.

(b) Purchase orders shall include any trade and prompt payment discounts that are offered, consistent with the applicable principles in 14.408-3.

(c) Purchase orders shall specify the quantity of supplies or services ordered.

(d) Inspections under simplified acquisition procedures shall be as prescribed in part 46. Orders generally shall provide that inspection and acceptance will be at destination, and source inspection should be specified only if required by part 46. If inspection and acceptance are to be performed at destination, advance copies of the purchase order shall be furnished to consignee(s) for material receipt purposes. Receiving reports shall be accomplished immediately upon receipt and acceptance of material.

(e) F.o.b. destination shall be specified for supplies to be delivered within the United States, except Alaska and Hawaii, unless there are valid reasons to the contrary.

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(f) Each purchase order shall contain a determinable date by which delivery of supplies or performance of services is required.

(g) The contracting officer's signature on purchase orders shall be in accordance with 4.101. Facsimile signature may be used in the procedure of purchase orders by automated methods.

(h) Distribution of copies of purchase orders and related forms shall be limited to those copies required for essential administration and transmission of contractual information.

13.502 Unpriced purchase orders.

(a) An unpriced purchase order is an order for supplies or services, the price of which is not established at the time of issuance of the order.

(b) An unpriced purchase order may be used only when--

(1) It is anticipated that the transaction will not exceed--

(i) \$50,000; or

(ii) \$100,000 when the contracting office of an agency has certified interim or full FACNET (see 13.103(b)).

(2) It is impractical to obtain pricing in advance of issuance of the purchase order; and

(3) The purchase is for--

(i) Repairs to equipment requiring disassembly to determine the nature and extent of repairs;

(ii) Material available from only one source and for which cost cannot be readily established; or

(iii) Supplies or services for which prices are known to be competitive but exact prices are not known (e.g., miscellaneous repair parts, maintenance agreements).

(c) Unpriced purchase orders may be issued by using written purchase orders or electronically (see 13.506). A realistic monetary limitation, either for each line item or for the total order, shall be placed on each unpriced purchase order. The monetary limitation shall be an obligation subject to adjustment when the firm price is established. The contracting office shall follow-up each order to ensure timely pricing. The contracting officer or the contracting

officer's designated representative shall review the invoice price and, if reasonable (see 13.106-2(a)), process the invoice for payment.

13.503 Obtaining contractor acceptance and modifying purchase orders.

(a) When it is desired to consummate a binding contract between the parties before the contractor undertakes performance, the contracting officer shall require written acceptance of the purchase order by the contractor.

(b) A purchase order may be modified by use of--

(1) Standard Form 30, Amendment of Solicitation/Modification of Contract;

(2) An agency-designed form or an agency-approved automated format;

or

(3) A purchase order form, if not prohibited by agency regulations.

(c) Each purchase order modification shall identify the order it modifies and shall contain an appropriate modification number.

(d) Contracting officers need not obtain a contractor's written acceptance of a purchase order modification, unless the written acceptance is--

(1) Determined by the contracting officer to be necessary to ensure

the contractor's compliance with the purchase order as revised; or

(2) Required by agency regulations.

13.504 Termination or cancellation of purchase orders.

(a) If a purchase order that has been accepted in writing by the contractor is to be terminated, the contracting officer shall process the termination action as prescribed by part 49.

(b) If a purchase order that has not been accepted in writing by the contractor is to be canceled, the contracting officer shall notify the contractor in writing that the purchase order has been canceled, request the contractor's written acceptance of the cancellation, and proceed as follows:

(1) If the contractor accepts the cancellation and does not claim that costs were incurred as a result of beginning performance under the purchase order, no further action is required (i.e., the purchase order shall be considered canceled).

(2) If the contractor does not accept the cancellation or claims that costs were incurred as a result of beginning performance under the purchase order, the contracting officer shall process the termination action as prescribed by part 49.

13.505 Purchase order and related forms.

13.505-1 Optional Form (OF) 347, order for supplies or services, and Optional Form 348, order for supplies or services schedule-continuation.

(a) Optional Form 347 (illustrated in 53.302-347) and Optional Form 348 (illustrated in 53.302-348) are multipurpose forms designed for the following:

- (1) Negotiated purchases of supplies or services.
- (2) Delivery orders.
- (3) Inspection and receiving reports.
- (4) Invoices.

(b) Agencies may use order forms other than Optional Form 347 and 348 and may print on those forms the clauses they consider to be generally suitable for their purchases using simplified acquisition procedures. The clauses may include agency clauses, if they do not conflict with clauses prescribed by the FAR and are designated as agency clauses.

13.505-2 [Reserved]

13.505-3 Standard Form 44, purchase order-invoice-voucher.

(a) Standard Form 44, Purchase Order-Invoice-Voucher (illustrated in 53.301-44) is a pocket-size purchase order form designed primarily for on-the-spot, over-the-counter purchases of supplies and nonpersonal

services while away from the purchasing office or at isolated activities. It is a multipurpose form that can be used as a purchase order, receiving report, invoice, and public voucher.

(b) Standard Form 44 may be used if all of the following conditions are satisfied:

- (1) The amount of the purchase is at or below the micro-purchase threshold, except for purchases made under unusual and compelling urgency or in support of a contingency operation. Agencies may establish higher dollar limitations for specific activities or items.
- (2) The supplies or services are immediately available.
- (3) One delivery and one payment will be made.
- (4) Its use is determined to be more economical and efficient than use of other simplified acquisition methods.

(c) General procedural instructions governing the use of Standard Form 44 are printed on the form and on the inside front cover of each book of forms.

(d) Since there is, for all practical purposes, simultaneous placing of purchase orders on Standard Form 44 and delivery of the items ordered, clauses are not required for purchases using this form.

(e) Agencies shall provide adequate safeguards regarding the control of forms and accounting for purchases.

13.506 Unsigned electronic purchase orders.

(a) An unsigned electronic purchase order (EPO) may be issued when the following conditions are present--

- (1) Its use is more advantageous to the Government than any other simplified acquisition method;
- (2) It is acceptable to the supplier;
- (3) It is approved by the contracting officer;
- (4) It does not require written acceptance by the supplier; and

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(5) The purchasing office retains all contract administration functions.

(b) When an unsigned EPO is used--

- (1) Appropriate clauses shall be incorporated by reference;
 - (2) Administrative information that is not needed by the supplier shall be placed only on copies intended for internal distribution;
 - (3) The same distribution shall be made of the unsigned EPO as is made of signed purchase orders; and
 - (4) No purchase order form is required.
- (c) An unsigned EPO may be unpriced if it meets the conditions in 13.502.

13.507 Provisions and clauses.

(a) Each purchase order (and each purchase order modification (see 13.503)) shall incorporate all clauses required for or applicable to the particular acquisition.

(b) The contracting officer shall insert the clause at 52.213-2, Invoices, in purchase orders that authorize advance payments (see 31 U.S.C. 3324(d)(2)) for subscriptions or other charges for newspapers, magazines, periodicals, or other publications (i.e., any publication printed, microfilmed, photocopied, or magnetically or otherwise recorded for auditory or visual usage).

(c) The contracting officer shall insert the clause at 52.213-3, Notice to Supplier, in unpriced purchase orders.

PART 15--CONTRACTING BY NEGOTIATION

47. Section 15.106-1 is amended by revising paragraph (b)(1) to read as follows:

15.106-1 Examination of Record clause.

* * * * *

(b) * * *

(1) The contract amount is at or below the simplified acquisition threshold;

* * * * *

48. Section 15.106-2 is amended by revising the first sentence in paragraph (b) to read as follows:

15.106-2 Audit-Negotiation clause.

* * * * *

(b) The contracting officer shall insert the clause at 52.215-2,

Audit-Negotiation, in solicitations and contracts when contracting by negotiation, unless the acquisition is made under simplified acquisition procedures. * * *

49. Section 15.401 is amended by revising paragraph (a) to read as follows:

15.401 Applicability.

* * * * *

(a) Acquisitions made under simplified acquisition procedures (see part 13); and

* * * * *

50. Section 15.602 is amended by revising paragraph (b) to read as follows:

15.602 Applicability.

* * * * *

(b) This subpart does not apply to acquisitions using simplified acquisition procedures (see part 13).

51. Section 15.804-2 is amended by revising the first sentence of paragraph (a) (3) introductory text; and (a) (4) and (a) (5) to read as follows:

15.804-2 Requiring certified cost or pricing data.

(a) * * *

* * * * *

(3) The contracting officer may obtain certified cost or pricing data for pricing actions below the pertinent threshold in paragraph (a) (1) of this section provided the action exceeds the simplified acquisition threshold. * * *

* * * * *

(4) The contracting officer shall not require certified cost or pricing data when awarding a contract below the simplified acquisition threshold in part 13.

(5) When certified cost or pricing data are not required, the contracting officer may request partial or limited data to determine a reasonable price.

* * * * *

52. Section 15.812-2 is amended by revising paragraph (a) (1) to read as follows:

15.812-2 Contract clause.

(a) * * *

(1) Acquisitions at or below the simplified acquisition threshold; * * * * *

53. Section 15.1001 is amended by revising the first sentence of paragraph (b) (1), and (c) (1) introductory text and (c) (3) to read as follows:

15.1001 Notifications to unsuccessful offerors.

* * * * *

(b) * * * (1) When the proposal evaluation period for a solicitation not using simplified acquisition procedures in part 13 is expected to exceed 30 days, or when a limited number of offerors have been selected as being within the competitive range (see 15.609), the contracting officer, upon determining that a proposal is unacceptable, shall promptly notify the offeror. * * *

* * * * *

(c) Postaward notices. (1) After award of contracts resulting from solicitations not using simplified acquisition procedures, the contracting officer shall notify unsuccessful offerors in writing or electronically, unless preaward notice was given under paragraph (b) of

this section. The notice shall include--

* * * * *

(3) Upon request, the contracting officer shall furnish the information described in 15.1001(c)(1) (i) through (v) to unsuccessful offerors in solicitations using simplified acquisition procedures in part 13.

PART 16--TYPES OF CONTRACTS

54. Section 16.000 is amended by revising the first sentence to read as follows:

16.000 Scope of part.

This part describes types of contracts that may be used in acquisitions other than those made under simplified acquisition procedures in part 13, unless otherwise authorized by agency procedures. * * *

55. Section 16.103 is amended by revising paragraph (d)(1) to read as follows:

16.103 Negotiating contract type.

* * * * *

(d) * * * (1) acquisitions made under simplified acquisition procedures in part 13, unless otherwise required under agency procedures,

* * * * *

56. Section 16.105 is revised to read as follows:

16.105 Solicitation provision.

The contracting officer shall complete and insert the provision at 52.216-1, Type of Contract, in a solicitation unless it is for--

(a) A fixed-price acquisition made under simplified acquisition procedures (see part 13); or

(b) Information or planning purposes.

PART 19--SMALL BUSINESS PROGRAMS

19.102 [Amended]

57. Section 19.102 is amended by removing paragraph (f) (3) and redesignating paragraphs (f) (4) through (f) (7) as (f) (3) through (f) (6).

58. Section 19.303 is amended by revising paragraph (a) to read as follows:

19.303 Determining product or service classifications.

(a) The contracting officer shall determine the appropriate standard industrial classification code and related small business size standard and include them in solicitations above the micro-purchase threshold in 13.101.

* * * * *

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19.104 [Amended]

59. Section 19.304 is amended in paragraph (a) after the word ``solicitations'' by adding the parenthetical ``(other than micro-purchases)'' , and in paragraphs (b), (c), and (d) by removing the parenthetical ``(other than those for small purchases)'' and inserting ``(other than micro-purchases)'' in its place.

19.501 [Amended]

60. Section 19.501 is amended by removing from paragraph (d) the phrase ``small purchase limitation in 13.000'' and inserting in its place ``micro-purchase threshold in 13.101''; by removing paragraphs (f) and (g) and redesignating paragraphs (h), (i), and (j) as (f), (g) and (h); and by removing the last two sentences from paragraph (c).

61. Section 19.502-1 is amended by adding a sentence at the end of paragraph (c) to read as follows:

19.502-1 Requirements for setting aside acquisitions.

* * * * *

(c) * * * This requirement does not apply to purchases of \$2,500 or less, purchases from required sources of supply under part 8 (e.g., Federal Prison Industries, Committee for Purchase From People Who Are Blind or Severely Disabled, and Federal Supply Schedule contracts), or orders under Federal Information Processing (FIP) Multiple Award Schedule contracts.

62. Section 19.502-2 is revised to read as follows:

19.502-2 Total set-asides.

(a) Each acquisition of supplies or services that has an anticipated dollar value exceeding \$2,500, but not over \$100,000, is automatically reserved exclusively for small business concerns, unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and with regard to the quality and delivery of the goods or services being purchased. This requirement does not preclude the award of a contract with a value not greater than \$100,000 under 19.8, Contracting with the

Small Business Administration, or under 19.1006(c), Emerging small business set-aside.

(b) The contracting officer shall set aside any acquisition over \$100,000 for small business participation when there is a reasonable expectation that (1) offers will be obtained from at least two responsible small business concerns offering the products of different small business concerns (but see paragraph (c) of this subsection); and

(2) awards will be made at fair market prices. Total small business set-asides shall not be made unless such a reasonable expectation exists (but see 19.502-3 as to partial set-asides). Although past acquisition history of the item or similar items is always important, it is not the only factor to be considered in determining whether a reasonable expectation exists. In making R&D small business set-asides,

there must also be a reasonable expectation of obtaining from small businesses the best scientific and technological sources consistent with the demands of the proposed acquisition for the best mix of cost, performances, and schedules.

(c) For set-asides other than for construction or services, any concern proposing to furnish the product which it did not itself manufacture must furnish the product of a small business manufacturer unless the Small Business Administration has granted a waiver (see 19.102(f)). In industries where the SBA finds that there are no small business manufacturers, it may waive the nonmanufacturers rule for regular dealers (see 19.102(f)(4)). This would permit small business regular dealers to provide any firm's product. In these cases, the contracting officer's determination in paragraph (b)(1) of this subsection or the decision not to set-aside a procurement reserved for small business under paragraph (a) of this subsection will be based on the expectation of receiving offers from at least two responsible small

business regular dealers offering the products of different concerns.

(d) The requirements of this subsection do not apply to acquisitions over \$25,000 during the period when set-asides cannot be considered for the four designated industry groups (see 19.1006(b)).

19.502-3 [Amended]

63. Section 19.502-3 is amended in paragraph (a)(4) by removing the

phrase ``small purchase procedures'' and inserting ``simplified acquisition procedures'' in its place.

64. Section 19.502-4 is amended by revising paragraph (a) to read as follows:

19.502-4 Methods of conducting set-asides.

(a) Total set-asides may be conducted by using simplified acquisition procedures (see part 13), sealed bids (see part 14), or competitive proposals (see part 15). Partial small business set-asides may be conducted using sealed bids (see part 14), or competitive proposals (see part 15).

* * * * *

65. Section 19.503 is amended by revising paragraph (c)(2) to read as follows:

19.503 Setting aside a class of acquisitions.

* * * * *

(c) * * *

(2) Provide that the set-aside does not apply to any acquisition automatically reserved for small business concerns under 19.502-2(a).

* * * * *

66. Section 19.506 is amended by revising the last sentence of paragraph (b) to read as follows:

19.506 Withdrawing or modifying set-asides.

* * * * *

(b) * * * However, the procedures are not applicable to automatic dissolutions of set-asides (19.507) or dissolutions of set-asides of acquisitions automatically reserved exclusively for small business concerns (19.502-2(a)).

* * * * *

19.508 [Amended]

67. Section 19.508 is amended by removing and reserving paragraph (a); by removing ``19.502-2(b)'' at the end of paragraphs (b), (c) and (d) and inserting ``19.502-2(c)'' in their place; by removing the word ``not'' in the last sentence of paragraphs (b), (c) and (d) and inserting ``no'' in their place; and by removing the phrase ``small purchase procedures'' in paragraph (e) and inserting ``simplified acquisition procedures'' in its place.

19.702 [Amended]

68. Section 19.702 is amended by removing the phrase ``small purchase limitation in 13.000'' from the introductory text and inserting ``the simplified acquisition threshold in 13.101'' in its place.

19.708 [Amended]

69. Section 19.708 is amended in paragraph (a) introductory text by removing the phrase ``small purchase limitation in 13.000'' and inserting ``the simplified acquisition threshold in 13.101'' in its place.

19.902 [Amended]

70. Section 19.902 is amended by removing the phrase ``small purchase limitation'' in the introductory text and inserting ``simplified acquisition threshold'' in its place.

19.1006 [Amended]

71. Section 19.1006 is amended in paragraph (c)(3) by removing the phrase ``small purchase'' and inserting ``simplified acquisition'' in its place.

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PART 20--LABOR SURPLUS AREA CONCERNS

20.103 [Amended]

72. Section 20.103 is amended by removing the phrase ``appropriate small purchase limitation in part 13'' in paragraph (b) and inserting ``simplified acquisition threshold in 13.101'' in its place.

20.104 [Amended]

73. Section 20.104 is amended by removing the phrase ``appropriate small purchase limitation in part 13'' in the introductory text and inserting ``simplified acquisition threshold in 13.101'' in its place.

20.202 [Amended]

74. Section 20.202 is amended by removing the phrase ``appropriate small purchase limitation in part 13'' and inserting ``simplified acquisition threshold in 13.101'' in its place.

20.301 [Amended]

75. Section 20.301 is amended in paragraph (a) by removing the phrase ``appropriate small purchase limitation in part 13'' and inserting ``simplified acquisition threshold in 13.101'' in its place.

20.302 [Amended]

76. Section 20.302 is amended in paragraph (a) introductory text by removing the phrase ``appropriate small purchase limitation in part 13'' and inserting ``simplified acquisition threshold in 13.101'' in its place.

PART 22--APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.202 [Amended]

77. Section 22.202 is amended in the introductory text by adding the phrase ``above the micro-purchase threshold,'' after ``contracts''.

78. Section 22.305 is amended by revising the first sentence of the introductory text and paragraph (a), removing paragraph (b) and redesignating paragraphs (c) through (h) as (b) through (g) to read as follows:

22.305 Contract clause.

The contracting officer shall insert the clause at 52.222-4, Contract Work Hours and Safety Standards Act-Overtime Compensation, in solicitations and contracts (including, for this purpose, basic ordering agreements) when the contract may require or involve the employment of laborers or mechanics. * * *

(a) Contracts at or below the simplified acquisition threshold.
* * * * *

22.1006 Contract clauses.

79. Section 22.1006 is amended by revising the heading to read as set forth above and by removing from the first two sentences of paragraphs (c)(1) and (c)(2) the phrase ``small purchase limitation'' and inserting ``simplified acquisition threshold'' in their places.

PART 23--ENVIRONMENT CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

80. Section 23.101 is amended by revising the first sentence to read as follows:

23.101 Applicability.

This subpart does not apply to contracts at or below the simplified acquisition threshold or to the use of facilities outside the United States. * * *

81. Section 23.501 is amended by revising paragraph (a) to read as follows:

23.501 Applicability.

* * * * *

(a) Contracts at or below the simplified acquisition threshold; however, the requirements of this subpart shall apply to contracts of any value if the contract is awarded to an individual;

* * * * *

82. Section 23.504 is amended by revising the introductory text of paragraph (a) to read as follows:

23.504 Policy.

(a) No offeror other than an individual shall be considered a responsible source (see 9.104-1) for a contract that exceeds the simplified acquisition threshold, unless it has certified, pursuant to 52.223-5, Certification Regarding a Drug-Free Workplace, that it will provide a drug-free workplace by--

* * * * *

83. Section 23.505 is amended by revising paragraph (a)(2) to read as follows:

23.505 Solicitation provision and contract clause.

(a) * * *

(2) Expected to exceed the simplified acquisition threshold if the contract is expected to be awarded to other than an individual; or

* * * * *

PART 25--FOREIGN ACQUISITION

84. Section 25.302 is amended by revising paragraph (b)(1) to read as follows:

25.302 Policy.

* * * * *

(b) * * *

(1) The estimated cost of the product or service is at or below the simplified acquisition threshold in part 13.

* * * * *

85. Section 25.703 is amended by revising the third sentence to read as follows:

25.703 Exceptions.

* * * The approval level for this exception is the contracting officer for acquisitions at or below the simplified acquisition threshold unless otherwise provided by agency procedures. In the case of contracts in excess of the simplified acquisition threshold, the approval level is the agency head. * * *

PART 27--PATENTS, DATA, AND COPYRIGHTS

86. Section 27.201-2 is amended by revising paragraph (a) to read as follows:

27.201-2 Clauses on authorization and consent.

(a) The contracting officer shall insert the clause at 52.227-1, Authorization and Consent, in solicitations and contracts (including those for construction; architect-engineer services; dismantling, demolition, or removal of improvements; and noncommon carrier communication services), except when using simplified acquisition procedures or both complete performance and delivery are outside the United States, its possessions, and Puerto Rico. Although the clause is not required when simplified acquisition procedures are used, it may be used with them.

* * * * *

87. Section 27.202-2 is revised to read as follows:

27.202-2 Clause on notice and assistance.

The contracting officer shall insert the clause at 52.227-2, Notice and Assistance Regarding Patent and Copyright Infringement, in supply, service, or research and development solicitations and contracts (including construction and architect-engineer contracts) which anticipate a contract value above the simplified acquisition threshold, except when complete performance and delivery are outside the United States, its possessions, and Puerto Rico, unless the contracts indicate that the supplies or other

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deliverables are ultimately to be shipped into one of those areas.

88. Section 27.203-1 is amended by revising paragraph (b) (4) to read as follows:

27.203-1 General.

* * * * *

(b) * * *

(4) When the contract is awarded using simplified acquisition procedures.

* * * * *

PART 28--BONDS AND INSURANCE

89. Section 28.103-2 is amended by revising the first sentence of paragraph (a) to read as follows:

28.103-2 Performance bonds.

(a) Performance bonds may be required for contracts exceeding the simplified acquisition threshold when necessary to protect the Government's interest. * * *

* * * * *

90. Section 28.310 is amended by revising paragraph (a) introductory text to read as follows:

28.310 Contract clause for work on a Government installation.

(a) The contracting officer shall insert the clause at 52.228-5, Insurance-Work on a Government Installation, in solicitations and contracts when a fixed-price contract is contemplated, the contract amount is expected to exceed the simplified acquisition threshold in part 13, and the contract will require work on a Government installation, unless--

* * * * *

PART 29--TAXES

91. Section 29.401-3 is revised to read as follows:

29.401-3 Competitive contracts.

The contracting officer shall insert the clause at 52.229-3, Federal, State, and Local Taxes, in solicitations and contracts if the contract is to be performed wholly or partly within the United States, its possessions, or Puerto Rico, when a fixed-price contract is contemplated and the contract is expected to exceed the simplified acquisition threshold in part 13, unless the clause at 52.229-4, Federal, State, and Local Taxes (Noncompetitive Contract), is included in the contract.

29.401-4 [Amended]

92. Section 29.401-4 is amended by removing the words ``small purchase limitation in 13.000'' after the words ``exceeds the'' and inserting ``simplified acquisition threshold in part 13'' in its place.

PART 32--CONTRACT FINANCING

93. Section 32.617 is amended by revising paragraph (a)(1) to read as follows:

32.617 Contract clause.

(a) * * *

(1) Contracts at or below the simplified acquisition threshold.

* * * * *

94. Section 32.901 is revised to read as follows:

32.901 Applicability.

This subpart applies to all Government contracts (including contracts at or below the simplified acquisition threshold as defined in subpart 13.1), except contracts with payment terms and late payment penalties established by other governmental authority (e.g., tariffs).

95. Section 32.908 is amended by revising paragraph (c) to read as follows:

32.908 Contract clauses.

* * * * *

(c) The contracting officer shall insert the clause at 52.232-25, Prompt Payment, in all other solicitations and contracts (including contracts at or below the simplified acquisition threshold in part 13),

except as indicated in 32.901.

* * * * *

33.106 [Amended]

96. Section 33.106(a) is amended by removing ``other than small purchases'' and inserting ``contracts expected to exceed the simplified acquisition threshold'' in its place.

PART 36--CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.602-5 Short selection process for contracts not to exceed the simplified acquisition threshold.

97. The heading of 36.602-5 is revised to read as set forth above.

36.502, 36.503, 36.506, 36.508, 36.509, 36.510, 36.512, 36.513, 36.515, 36.521, 36.602-5, and 36.702 [Amended]

98. Part 36 is amended removing the phrase ``exceed the small purchase limitation'' and inserting ``exceed the simplified acquisition threshold'' in its place in the following locations: 36.502, 36.503, 36.506, 36.508, 36.509, 36.510, 36.512, 36.513(a), 36.515, 36.521, 36.602-5 introductory text, 36.702(b)(2).

36.511 and 36.701 [Amended]

99. Part 36 is amended by removing the phrase ``exceed the small purchase limitations'' and inserting ``exceed the simplified acquisition threshold'' in the following locations: 36.511 and 36.701(b).

36.502, 36.503, 36.506, 36.508, 36.509, 36.510, 36.512, 36.513, 36.521,
and 36.701 [Amended]

100. Part 36 is amended by removing the phrase ``within the small purchase limitation'' and inserting ``at or below the simplified acquisition threshold'' at the following locations: 36.502, 36.503, 36.506, 36.508, 36.509, 36.510, 36.512, 36.513(a), 36.521, 36.701(c).

36.511, 36.701, and 36.702 [Amended]

101. Part 36 is amended by removing the phrase ``within the small purchase limitations'' and inserting ``at or below the simplified acquisition threshold'' at the following locations: 36.511, 36.701(b), and 36.702(b) (2).

PART 41--ACQUISITION OF UTILITY SERVICES

102. In 41.201(b), the first sentence is revised to read as follows:

41.201 Policy.

* * * * *

(b) Except for acquisitions at or below the simplified acquisition threshold in part 13, agencies shall acquire utility services by a bilateral written contract, which must include the clauses required by 41.501, regardless of whether rates or terms and conditions of service are fixed or adjusted by a regulatory body. * * *

* * * * *

41.401 [Amended]

103. Section 41.401 is amended in the first sentence by removing ``small purchase'' and inserting ``simplified acquisition'' in its place, and in the second sentence by removing ``beneath the small purchase dollar'' and inserting ``at or below the simplified acquisition'' in its place.

PART 42--CONTRACT ADMINISTRATION

42.903 [Amended]

104. In section 42.903, the phrase ``small purchase limitation in 13.000'' is removed and ``simplified acquisition threshold in part 13'' is inserted in its place.

42.1104 [Amended]

105. In 42.1104(b) the phrase ``Contracts of values less than the small purchase'' is removed and ``Contracts at or below the simplified acquisition threshold'' is inserted in its place.

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PART 43--CONTRACT MODIFICATIONS

43.205 [Amended]

106. In section 43.205(d) (2) and (e), the phrase ``applicable small purchase limitation'' is removed and ``simplified acquisition threshold'' is inserted in its place.

PART 44--SUBCONTRACTING POLICIES AND PROCEDURES

44.201-2 and 44.204 [Amended]

107. In sections 44.201-2(b) and 44.204(e), the phrase ``small purchase limitation'' is removed and ``simplified acquisition threshold'' is inserted in its place.

PART 45--GOVERNMENT PROPERTY

108. Section 45.106 is amended by revising paragraph (e) to read as follows:

45.106 Government property clauses.

* * * * *

(e) When the cost of the item to be repaired does not exceed the simplified acquisition threshold in part 13, purchase orders for property repair need not include a Government property clause.

* * * * *

PART 46--QUALITY ASSURANCE

46.202-1 [Amended]

109. In section 46.202-1(a), the phrase ``under small purchases'' is removed and ``at or below the simplified acquisition threshold'' is inserted in its place.

46.301 [Amended]

110. In section 46.301 in the introductory text the phrase ``within

the small purchase limitation'' is removed and ``at or below the simplified acquisition threshold'' is inserted in its place.

46.302 [Amended]

111. In the first sentence of section 46.302, the phrase ``small purchase limitation'' is removed and ``simplified acquisition threshold'' is inserted in its place; and in the second sentence, the phrase ``within the small purchase limitation'' is removed and ``at or below the simplified acquisition threshold'' is inserted in its place.

46.304 [Amended]

112. In section 46.304, in the first sentence the phrase ``small purchase limitation'' is removed and ``simplified acquisition threshold'' is inserted in its place, and in the second sentence, the phrase ``within the small purchase limitation'' is removed and ``at or below the simplified acquisition threshold'' is inserted in its place.

46.307 [Amended]

113. In section 46.307(a)(3), the phrase ``small purchase limitation'' is removed and ``simplified acquisition threshold'' is inserted in its place; and in paragraph (b) the phrase ``within the small purchase limitation'' is removed and ``at or below the simplified acquisition threshold'' is inserted in its place.

46.312 [Amended]

114. In the first sentence of section 46.312, the phrase ``small purchase limitation'' is removed and ``simplified acquisition threshold'' is inserted in its place; and in the second sentence the phrase ``within small purchase limitation'' is removed and ``at or below the simplified acquisition threshold'' is inserted in its place.

46.316 [Amended]

115. In section 46.316, the phrase ``small purchase limitation'' is removed and ``simplified acquisition threshold'' is inserted each time it appears.

46.404 Government contract quality assurance for acquisitions at or below the simplified acquisition threshold.

116. Section 46.404 is amended by revising the heading to read as set forth above; by removing the words ``small purchases'' in paragraphs (a) and (b)(1) and inserting ``contracts at or below the simplified acquisition threshold'' in their place.

117. Section 46.805 is amended in the heading of paragraph (a) and introductory text of paragraph (a) by removing ``small purchase

limitation in 13.000'' and inserting ``simplified acquisition threshold in part 13''; and by revising paragraph (b) to read as follows:

46.805 Contract clauses.

* * * * *

(b) Acquisitions at or below the simplified acquisition threshold in part 13. The clauses prescribed by paragraph (a) of this section are

not required for contracts at or below the simplified acquisition threshold in part 13. However, in response to a contractor's specific request, the contracting officer may insert the clauses prescribed in paragraph (a) (1) or (a) (4) of this section in a contract at or below the simplified acquisition threshold in part 13 and may obtain any price reduction that is appropriate.

PART 47--TRANSPORTATION

118. Section 47.104-4(a) (2) is amended by removing the phrase ``small purchases under'' and inserting ``contracts at or below the simplified acquisition threshold in'' in its place; and revising paragraph (b) to read as follows:

47.104-4 Contract clauses.

* * * * *

(b) The contracting officer may insert the clause at 52.247-1, Commercial Bill of Lading Notations, in solicitations and contracts made at or below the simplified acquisition threshold in part 13 when it is contemplated that the delivery terms will be f.o.b. origin.

47.200 [Amended]

119. In 47.200(b) (4), remove the phrase ``Small purchases under'' and insert ``Contracts at or below the simplified acquisition threshold in'' in its place.

47.205 [Amended]

120. In section 47.205(b), remove the phrase ``small purchase limitation under the small purchase procedures in part 13'' and insert ``simplified acquisition threshold at 13.101'' in its place.

47.305-16 [Amended]

121. In the first sentence of 47.305-16(b) (1), remove the phrase ``awarded under the small purchase procedures of'' and insert ``at or below the simplified acquisition threshold in'' in its place.

122. Section 47.405 is amended by revising the last sentence to

read as follows:

47.405 Contract clause.

* * * This clause does not apply to contracts awarded using the simplified acquisition procedures in part 13.

123. Section 47.504(d) is revised to read as follows:

47.504 Exceptions.

* * * * *

(d) Contracts awarded using the simplified acquisition procedures in part 13.

PART 49--TERMINATION OF CONTRACTS

49.504 [Amended]

124. In section 49.504 at paragraphs (a) (1), (b) and (c) (1), in the first sentence remove the phrase ``small purchase limitation'' and insert ``simplified acquisition threshold'' in its place; and in the second sentence, remove the phrase ``not expected to exceed the small purchase limitation'' and insert ``at or below the simplified acquisition threshold;'' in its place.

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PART 52--SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.203-6 [Amended]

125. In the clause at 52.203-6, the date of the clause is revised to read (JUL 1995), and at the end of paragraph (c), add the phrase ``which exceed \$100,000.''

52.203-7 [Amended]

126. In the clause at 52.203-7, the date of the clause is revised to read (JUL 1995) and at the end of paragraph (c) (5) add the phrase ``which exceed \$100,000.''

52.209-6 [Amended]

127. In the clause at 52.209-6, the date of the clause is revised to read (JUL 1995) and in the second sentence of paragraph (a) and in paragraph (b) remove the phrase ``the small purchase limitation at FAR 13.000'' and insert ``\$25,000''.

128. Sections 52.213-2 and 52.213-3 are amended by revising the introductory paragraphs and removing the derivation lines following

``(End of clause)'' to read as follows:

52.213-2 Invoices.

As prescribed in 13.507(b), insert the following clause:
* * * * *

52.213-3 Notice to supplier.

As prescribed in 13.507(c), insert the following clause:
* * * * *

52.215-1 [Amended]

129. Section 52.215-1 is amended by revising the clause date to read ``(JUL 1995)''; in paragraph (a) by removing ``small purchase limitation'' and inserting ``simplified acquisition threshold'' in its place; in the first sentence of paragraph (c) by adding the phrase ``, exceeding \$100,000,'' after the first appearance of ``subcontracts''; and removing the derivation lines after ``(End of clause)''.

52.215-2 [Amended]

130. In the clause in 52.215-2, the date is revised to read ``(JUL 1995)'', and in paragraph (f), ``are over the small purchase limitation'' is removed and ``exceed the simplified acquisition threshold'' is inserted in its place.

131. Section 52.216-1 is amended by revising the introductory paragraph and removing the derivation line following ``(End of clause)'' to read as follows:

52.216-1 Type of contract.

As prescribed in 16.105, complete and insert the following provision:
* * * * *

52.219-4 [Reserved]

132. Section 52.219-4 is removed and reserved.

52.219-5 [Amended]

133. Section 52.219-5 is amended by revising the date of the clause to read ``(JUL 1995)''; and in paragraph (c)(1)(ii) of the clause by removing the phrase ``small purchase limitation'' and inserting ``simplified acquisition threshold'' in its place.

52.219-7 [Amended]

134. Section 52.219-7 is amended by revising the date of the clause to read ``(JUL 1995)''; and in paragraph (c)(2) of the clause by removing the phrase ``small purchase limitation'' and inserting ``simplified acquisition threshold'' in its place.

135. Section 52.220-1 is amended by revising the introductory text to read as follows:

52.220-1 Preference for Labor Surplus Area Concerns.

As prescribed in 20.103(b), insert the following provision:

* * * * *

136. Section 52.220-2 is amended by revising the introductory text; revising the date of the clause to read ``(JUL 1995)''; in paragraph (c)(2) of the clause by removing the parenthetical ``(if it exceeds the appropriate small purchase limitation in part 13 of the Federal Acquisition Regulation)''; and removing the derivation line following ``(End of clause)'''. The revised text reads as follows:

52.220-2 Notice of Total Labor Surplus Area Set-Aside.

As prescribed in 20.202, insert the following clause:

* * * * *

52.220-3 [Amended]

137. Section 52.220-3 is amended by revising the date of the clause to read ``(JUL 1995)''; removing paragraph (a) and redesignating paragraphs (b), (c), and (d) as (a), (b), and (c), respectively; in newly designated paragraph (b) by removing the phrase ``paragraph (b) above'' and inserting ``paragraph (a) of this clause'' in its place; and removing the derivation lines following ``(End of clause)'''.

52.222-4 [Amended]

138. In the clause at 52.222-4, the date is revised to read ``(JUL 1995)'' and, in the first sentence of paragraph (e), following ``subcontracts'' the first time it appears, add the phrase ``, exceeding \$100,000,''.

139. Section 52.223-5 is amended in the clause by revising the date and paragraph (b) introductory text to read as follows:

52.223-5 Certification Regarding A Drug-Free Workplace.

* * * * *

Certification Regarding a Drug-Free Workplace (Jul 1995)

* * * * *

(b) By submission of its offer, the offeror (other than an individual) responding to a solicitation that is expected to exceed the simplified acquisition threshold, certifies and agrees, that with respect to all employees of the offeror to be employed under a contract resulting from this solicitation, it will--no later than 30 calendar days after contract award (unless a longer period is agreed to in writing), for contracts of 30 calendar days or more performance duration; or as soon as possible for contracts of less than 30 calendar days performance duration, but in any case, by a date prior to when performance is expected to be completed--

* * * * *

52.227-1 [Amended]

140. In the clause at section 52.227-1, revise the clause date to read ``(JUL 1995)'' and in paragraph (b), remove ``\$25,000'' after the word ``exceed'' and insert ``the simplified acquisition threshold'' in its place; remove the phrase ``under or over \$25,000'' and insert ``including those at or below the simplified acquisition threshold'' in its place; and remove the derivation line after ``(End of clause)''.

52.227-3 [Amended]

141. In section 52.227-3, Alternate III, revise the clause date to read ``(JUL 1995)'' and remove ``\$25,000'' and insert ``the simplified acquisition threshold''.

142. The introductory paragraphs in sections 52.236-2, 52.236-3, 52.236-6, 52.236-8, 52.236-9, 52.236-10, 52.236-11, 52.236-12, 52.236-15, 52.236-21, and 52.243-5 are revised and the derivation lines are removed following ``(End of clause)'' to read as follows:

52.236-2 Differing Site Conditions.

As prescribed in 36.502, insert the following clause:

* * * * *

52.236-3 Site Investigation and Conditions Affecting the Work.

As prescribed in 36.503, insert the following clause:

* * * * *

52.236-6 Superintendence by the Contractor.

As prescribed in 36.506, insert the following clause:

* * * * *

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52.236-8 Other Contracts.

As prescribed in 36.508, insert the following clause:
* * * * *

52.236-9 Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements.

As prescribed in 36.509, insert the following clause:
* * * * *

52.236-10 Operations and Storage Areas.

As prescribed in 36.510, insert the following clause:
* * * * *

52.236-11 Use and Possession Prior to Completion.

As prescribed in 36.511, insert the following clause:
* * * * *

52.236-12 Cleaning Up.

As prescribed in 36.512, insert the following clause:
* * * * *

52.236-15 Schedules for Construction Contracts.

As prescribed in 36.515, insert the following clause:
* * * * *

52.236-21 Specifications and Drawings for Construction.

As prescribed in 36.521, insert the following clause:
* * * * *

52.243-5 Changes and Changed Conditions.

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

52.244-2 [Amended]

143. In section 52.244-2, Alternate I, revise the parenthetical

date to read `` (JUL 1995) '' and, in paragraph (a) (2), remove the phrase ``small purchase limitation'' and insert ``simplified acquisition threshold'' in its place.

144. Section 52.244-5 is amended by revising the introductory text; removing paragraphs (a) and (b); and removing the derivation lines following `` (End of clause) '' to read as follows:

52.244-5 Competition in Subcontracting.

As prescribed in 44.204(e), insert the following clause:

* * * * *

145. The introductory paragraphs of sections 52.246-1, 52.246-7, 52.246-12, 52.246-16, 52.246-23, 52.246-24, and 52.246-25 are revised and the derivation lines following `` (End of clause) '' are removed to read as follows:

52.246-1 Contractor Inspection Requirements.

As prescribed in 46.301, insert the following clause:

* * * * *

52.246-7 Inspection of Research and Development--Fixed Price.

As prescribed in 46.307(a), insert the following clause:

* * * * *

52.246-12 Inspection of Construction.

As prescribed in 46.312, insert the following clause:

* * * * *

52.246-16 Responsibilities for Supplies.

As prescribed in 46.316, insert the following clause:

* * * * *

52.246-23 Limitation of Liability.

As prescribed in 46.805, insert the following clause:

* * * * *

52.246-24 Limitation of Liability--High-Value Items.

As prescribed in 46.805, insert the following clause:

* * * * *

52.246-25 Limitation of Liability--Services.

As prescribed in 46.805, insert the following clause:

* * * * *

146. Section 52.247-1 is amended by adding introductory text, and removing paragraphs (a) and (b) and the derivation lines following ``(End of clause)'' to read as follows:

52.247-1 Commercial Bill of Lading Notations.

As prescribed in 47.104-4, insert the following clause:

* * * * *

147. Section 52.247-64 is amended by revising the introductory text; in the clause heading, the date is revised to read ``(JUL 1995)''; in paragraph (d), remove the words ``small purchases as described in 48 CFR 13'' and insert ``contracts at or below the simplified acquisition threshold as described in FAR part 13'' in their place; in paragraph (e)(1), remove the words ``Small purchases as defined in 48 CFR 13'' and insert ``Contracts at or below the simplified acquisition threshold as defined in FAR part 13'' in their place; and remove the derivation line after ``(End of clause)''.

The revised text reads as follows:

52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels.

As prescribed in 47.507(a), insert the following clause:

* * * * *

148. In sections 52.249-8, 52.249-9, and 52.249-10 the introductory paragraphs are revised and the derivation lines following ``(End of clause)'' are removed to read as follows:

52.249-8 Default (Fixed-Price Supply and Service).

As prescribed in 49.504(a)(1), insert the following clause:

* * * * *

52.249-9 Default (Fixed-Price Research and Development).

As prescribed in 49.504(b), insert the following clause:

* * * * *

52.249-10 Default (Fixed-Price Construction).

As prescribed in 49.504(c)(1), insert the following clause:

* * * * *

PART 53--FORMS

149. Section 53.213 is amended by revising the heading, the

introductory paragraph, and paragraphs (a), (c), (e) heading, and (e) (1) to read as follows:

53.213 Simplified acquisition procedures (SF's 18, 30, 44, 1165, OF's 347, 348).

The following forms are prescribed as stated below for use in simplified acquisition procedures, orders under existing contracts or agreements, and orders from required sources of supplies and services:

(a) SF 18 (Rev. 6/95), Request for Quotations. SF 18 prescribed in 53.215-1(a), shall be used in obtaining price, cost, delivery, and related information from suppliers as specified in 13.107(a).

* * * * *

(c) SF 44 (Rev. 10/83), Purchase Order Invoice Voucher. SF 44 is prescribed for use in simplified acquisition procedures, as specified in 13.505-3.

* * * * *

(e) OF 347 (6/95), Order for Supplies or Services, and OF 348 (10/83), Order for Supplies or Services--Schedule Continuation. * * *

(1) To accomplish acquisitions under simplified acquisition procedures, as specified in 13.505-1.

* * * * *

150. Section 53.215-1 is amended by revising the introductory paragraph; and in paragraph (a) by revising ``(REV 5/93)'' to read ``(REV 6/95)'''. The revised text reads as follows:

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53.215-1 Solicitation and receipt of proposals and quotations.

The following forms are prescribed, as stated below, for use in contracting by negotiation (except for construction, architect-engineer services, or acquisitions made using simplified acquisition procedures):

* * * * *

53.236-1 [Amended]

151. Section 53.236-1 is amended in paragraph (e) by removing two references to ``small purchase limitation'' and inserting ``simplified acquisition threshold'' in both places; by adding ``6/95)'' immediately

following the first reference to ``OF 347'' in paragraph (f); and removing ``contracts of \$10,000 or less'' and inserting ``contracts under the simplified acquisition threshold'' in its place.

152. Section 53.301-18 is revised to read as follows:

53.301-18 SF 18 (REV 6/95), Request for Quotations.

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<GRAPHIC><TIFF>TR03JY95.066

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153. Section 53.302-347 is revised to read as follows:

53.302-347 OF 347 (REV 6/95), Order for Supplies or Services.

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<GRAPHIC><TIF1>TR03JY95.067

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<GRAPHIC><TIF2>TR03JY95.068

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