

**48 CFR Part 2****[FAC 90-45; FAR Case 96-323; Item III]****RIN 9000-AH45****Federal Acquisition Regulation;  
Humanitarian Operations**

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

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to implement Section 807 of the Fiscal Year 1997 Defense Authorization Act (Public Law 104-201). Section 807 increases the "simplified acquisition threshold" for a humanitarian or peacekeeping operation. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

**EFFECTIVE DATE:** January 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul L. Linfield at (202) 501-1757 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-45, FAR case 96-323.

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

This final rule amends FAR Part 2 to implement Section 807 of the Fiscal Year 1997 Defense Authorization Act (Public Law 104-201). Section 807 amends 10 U.S.C. 2302(7) and 41 U.S.C. 259(d) to provide for a simplified acquisition threshold for humanitarian or peacekeeping operations in an amount equal to two times that specified in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403). Accordingly, the definition of "simplified acquisition threshold" at FAR 2.101 is amended to reflect an amount of \$200,000 for contracts to be awarded and performed, or purchases to be made, outside the United States in support of a humanitarian or peacekeeping operation.

**B. Regulatory Flexibility Act**

This 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. However,

comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90-45, FAR case 96-323), 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 2**

Government procurement.

Dated: December 24, 1996.

Edward C. Loeb,

*Director, Federal Acquisition Policy Division.*

Therefore, 48 CFR Part 2 is amended as set forth below:

**PART 2—DEFINITIONS OF WORDS  
AND TERMS**

1. The authority citation for 48 CFR Part 2 continues to read as follows:

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

2. Section 2.101 is amended by revising the definition for "Simplified acquisition threshold" to read as follows:

**2.101 Definitions.**

\* \* \* \* \*

*Simplified acquisition threshold* means \$100,000, except that 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 (as defined in 10 U.S.C. 101(a)(13)) or a humanitarian or peacekeeping operation (as defined in 10 U.S.C. 2302(7) and 41 U.S.C. 259(d)), the term means \$200,000.

\* \* \* \* \*

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**48 CFR Parts 6, 15, and 24****[FAC 90-45; FAR Case 96-326; Item IV]****RIN 9000-AH46****Federal Acquisition Regulation;  
Freedom of Information Act**

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

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to implement Section 821 of the Fiscal Year 1997 Defense Authorization Act (Public Law 104-201). Section 821 prohibits, with certain exceptions, Government release of competitive proposals under the Freedom of Information Act. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

**EFFECTIVE DATE:** January 1, 1997.

**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 4035, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-45, FAR case 96-326.

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

This final rule amends FAR Subpart 24.2, Freedom of Information Act (5 U.S.C. 552), to add a new section 24.202, Prohibitions. This new section implements section 821 of Public Law 104-201 by prohibiting, with certain exceptions, the release of proposals submitted in response to competitive solicitations. The rule also amends FAR sections 6.305 and 15.1006 to provide appropriate cross-references. (Note: The change to 15.804-5 that implements this rule in part is made under FAR case 96-306.)

**B. Regulatory Flexibility Act**

This 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. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90-45, FAR case 96-326), 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 Parts 6, 15, and 24

Government procurement.

Dated: December 24, 1996.

Edward C. Loeb,  
Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 6, 15, and 24 are amended as set forth below:

1. The authority citation for 48 CFR Parts 6, 15, and 24 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 6—COMPETITION REQUIREMENTS

2. Section 6.305 is amended in paragraph (1) by revising the third sentence to read as follows:

### 6.305 Availability of the justification.

(1) \* \* \* Contracting officers shall also be guided by the exemptions to disclosure of information contained in the Freedom of Information Act (5 U.S.C. 552) and the prohibitions against disclosure in 24.202 in determining whether other data should be removed.

\* \* \* \* \*

## PART 15—CONTRACTING BY NEGOTIATION

3. Section 15.1006 is amended in paragraph (e) introductory text by revising the second sentence to read as follows:

### 15.1006 Postaward debriefing of offerors.

\* \* \* \* \*

(e) \* \* \* Moreover, debriefing shall not reveal any information prohibited from disclosure by 24.202 or exempt from release under the Freedom of Information Act, including—

\* \* \* \* \*

## PART 24—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

### 24.202 [Redesignated as 24.203]

4. Section 24.202 is redesignated as 24.203 and a new section 24.202 is added to read as follows:

### 24.202 Prohibitions.

(a) A proposal in the possession or control of the Government, submitted in response to a competitive solicitation, shall not be made available to any person under the Freedom of Information Act. This prohibition does not apply to a proposal, or any part of a proposal, that is—

(1) In the possession or control of NASA or the Coast Guard; or

(2) Set forth or incorporated by reference in a contract between the Government and the contractor that submitted the proposal. (See 10 U.S.C. 2305(g) and 41 U.S.C. 253b(m).)

(b) No agency shall disclose any information obtained pursuant to 15.804–5(b) that is exempt from disclosure under the Freedom of Information Act. (See 10 U.S.C. 2306a(d)(2)(C) and 41 U.S.C. 254b(d)(2)(C).)

[FR Doc. 96–33208 Filed 12–31–96; 8:45 am]

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## 48 CFR Parts 4, 12, 15, 16, 25, 31, 46, and 52

[FAC 90–45; FAR Case 96–306; Item V]

RIN 9000–AH16

## Federal Acquisition Regulation; Exceptions to Requirements for Certified Cost or Pricing Data

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

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to implement Section 4201 of the Federal Acquisition Reform Act of 1996. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

**EFFECTIVE DATE:** January 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeremy Olson at (202) 501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–45, FAR case 96–306.

## SUPPLEMENTARY INFORMATION:

### A. Background

This final FAR rule implements changes to the Truth in Negotiations Act (TINA) contained in Section 4201 of the Clinger-Cohen Act of 1996 (Pub. L. 104–106) and—

Simplifies obtaining a TINA exception for commercial items by eliminating the distinction between catalog or market-priced commercial items and all other commercial items;

Eliminates the subordination of the commercial item exception to the

traditional exceptions of adequate price competition, catalog or market-priced commercial items, or prices set by law or regulation, which previously was required by the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) (FASA);

Eliminates the criteria established by FASA for the commercial item exception (i.e., an exception could not be granted unless price reasonableness could be determined based on specific information requirements) and deletes the authority to obtain cost or pricing data for commercial item acquisitions when the criteria is not met; and

Eliminates the clause for postaward audit of information submitted to support the pricing of commercial item contracts.

The Federal Acquisition Reform Act of 1996 was subsequently named the Clinger-Cohen Act of 1996.

A proposed rule was published on August 7, 1996 (61 FR 41214). Sixteen comments were received from seven respondents. All comments were considered in the development of the final rule.

### B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis and do not require the submission of cost or pricing data.

### 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 Parts 4, 12, 15, 16, 25, 31, 46, and 52

Government procurement.

Dated: December 24, 1996.

Edward C. Loeb,  
Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 4, 12, 15, 16, 25, 31, 46, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 4, 12, 15, 16, 25, 31, 46, and 52 continues to read as follows: