

## SUPPLEMENTARY INFORMATION:

**A. Background**

This interim rule clarifies that the no-cost VECP guidance at FAR 48.104-3 permits the use of no-cost settlements when the contracting officer has balanced the administrative costs of negotiating a settlement against the anticipated savings, and when, in the contracting officer's judgment, reliance on other VECP approaches likely would not be more cost-effective, and the no-cost settlement would provide adequate consideration to the Government. The no-cost VECP alternative was not intended for use when significant cost savings are anticipated on the instant contract.

**B. Regulatory Flexibility Act**

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule could reduce the number of no-cost VECP settlements negotiated between the Government and private entities. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and is summarized as follows:

This interim rule clarifies that the guidance at FAR 48.104-3, Sharing alternative—no-cost settlement method, permits use of no-cost VECPs settlements when the contracting officer has balanced the administrative costs of negotiating a settlement against the anticipated savings; and, in the contracting officer's judgment, reliance on other VECP approaches likely would not be more cost-effective, and the no-cost settlement would provide adequate consideration to the Government. The no-cost VECP alternative was not intended for use when significant cost savings are anticipated on the instant contract.

A copy of the IRFA has been submitted to the Chief Counsel for Advocacy of the Small Business Administration and may be obtained from the FAR Secretariat at the address above. Comments are invited. Comments from small entities concerning the affected FAR subpart also will 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 96-011), in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public which require the approval of 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 under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to preclude misinterpretation and misuse of existing guidance and resulting VECP settlements that do not provide the Government with appropriate consideration. However, pursuant to Pub. L. 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

**List of Subjects in 48 CFR Part 48**

Government procurement.

Dated: June 11, 1998.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

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

**PART 48—VALUE ENGINEERING**

1. The authority citation for 48 CFR Part 48 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 48.104-3 is revised to read as follows:

**48.104-3 Sharing alternative—no-cost settlement method.**

In selecting an appropriate mechanism for incorporating a VECP into a contract, the contracting officer shall analyze the different approaches available to determine which one would be in the Government's best interest. Contracting officers should balance the administrative costs of negotiating a settlement against the anticipated savings. A no-cost settlement may be used if, in the contracting officer's judgment, reliance on other VECP approaches likely would not be more cost-effective, and the no-cost settlement would provide adequate consideration to the Government. Under this method of settlement, the contractor would keep all of the savings on the instant contract, and all savings on its concurrent contracts only. The Government would keep all savings resulting from concurrent contracts placed with other sources, savings from all future contracts, and all collateral savings. Use of this method must be by

mutual agreement of both parties for individual VECPs.

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**DEPARTMENT OF DEFENSE****GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 5, 8, 31, 45, and 53**

[FAC 97-05; Item XI]

**Federal Acquisition Regulation; Technical Amendments**

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

**ACTION:** Technical amendments.

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

**EFFECTIVE DATE:** June 22, 1998.

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

**List of Subjects in 48 CFR Parts 5, 8, 31, 45, and 53**

Government procurement.

Dated: June 11, 1998.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, 48 CFR Parts 5, 8, 31, 45, and 53 are amended as set forth below:

1. The authority citation for 48 CFR Parts 5, 8, 31, 45, 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 5—PUBLICIZING CONTRACT ACTIONS****5.201 [Amended]**

2. Section 5.201 is amended in paragraph (b)(2) by revising "(see 5.205(d))" to read "(see 5.205(e))".

**PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES****8.404 [Amended]**

3. Section 8.404 is amended in the first sentence of paragraph (a) by revising "13.202(c)(3)" to read "13.303-2(c)(3)".

**PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES****31.002 [Amended]**

4. Section 31.002 is amended by revising "Guidance for New Contractors" to read "Information for Contractors".

**PART 45—GOVERNMENT PROPERTY****45.607-2 [Amended]**

5. Section 45.607-2 is amended in the third sentence of paragraph (b) by revising "DLA:SIP" to read "DLSC-LC".

**PART 53—FORMS**

6. Section 53.101 is amended by revising the last sentence to read as follows:

**§ 53.101 Requirements for use of forms.**

\* \* \* The specific location of each requirement is identified in subpart 53.2.

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**DEPARTMENT OF DEFENSE****GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Chapter 1****Federal Acquisition Regulation; Small Entity Compliance Guide**

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

**ACTION:** Small Entity Compliance Guide.

**SUMMARY:** This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration as the Federal Acquisition Regulation (FAR) Council. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121). It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 97-05 which amends the FAR. Further information regarding these rules may be obtained by referring to FAC 97-05 which precedes this document. The FAC, including this document, may be obtained from the Internet at <http://www.arnet.gov/far>.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, (202) 501-4755.

**SUPPLEMENTARY INFORMATION:****LIST OF RULES IN FAC 97-05**

Item	Subject	Far case	Analyst
I	Subcontract Consent .....	95-011 .....	Klein
II	Availability of Specifications .....	97-034 .....	DeStefano
III	Liquidated Damages .....	89-042/97-300 .....	Moss
IV	Limits on Fee for Cost-Plus-Incentive-Fee and Cost-Plus-Award-Fee Contracts .....	97-042 .....	DeStefano
V	Rehabilitation Act, Workers With Disabilities (Interim) .....	96-610 .....	O'Neill
VI	Trade Agreements Thresholds .....	97-044 .....	Linfield
VII	Restrictions on Purchases from Sudan .....	97-301 .....	Linfield
VIII	Software Copyrights .....	97-614 .....	O'Neill
IX	Travel Reimbursement .....	97-007 .....	Nelson
X	No-Cost Value Engineering Change Proposals (Interim) .....	96-011 .....	Klein

**Item I—Subcontract Consent (FAR Case 95-011)**

This final rule amends FAR Parts 4, 22, 35, 36, 44, and 52 to reduce requirements for consent to subcontract. The rule eliminates consent requirements for contractors that have an approved purchasing system, except when specific contracts requiring consent are identified by the contracting officer; eliminates consent requirements for fixed-price incentive contracts and fixed-price redeterminable contracts; and increases, to the simplified acquisition threshold, the dollar level at which consent requirements are included in time-and-materials, labor-hour, and letter contracts.

**Item II—Availability of Specifications (FAR Case 97-034)**

This final rule amends FAR Parts 9 and 11 and the provisions at 52.211-1, 52.211-2, and 52.212-1 to update addresses and other information regarding the availability of

specifications, standards, and item descriptions that may be cited in Government solicitations and contracts. In addition, the rule clarifies the pricing policy regarding specifications, standards, and commercial item descriptions issued by GSA.

**Item III—Liquidated Damages (FAR Cases 89-042 and 97-300)**

This final rule amends FAR Parts 11, 19, 52, and 53 to clarify policy on liquidated damages and commercial subcontracting plans pertaining to requirements for subcontracting with small, small disadvantaged, and women-owned small business concerns. The rule implements Section 304 of the Business Opportunity Development Reform Act of 1988 (Pub. L. 100-656) and OFPP Policy Letter 95-1, Subcontracting Plans for Companies Supplying Commercial Items. The interim rule published in FAC 84-50, FAR case 89-042, 54 FR 30708, July 21,

1989, has been merged with this final rule.

**Item IV—Limits on Fee for Cost-Plus-Incentive-Fee and Cost-Plus-Award-Fee Contracts (FAR Case 97-042)**

This final rule amends FAR Part 16 to clarify fee limitations pertaining to cost-reimbursement contracts. The FAR Part 15 rewrite in FAC 97-02 eliminated non-statutory fee limitations for cost-plus-incentive-fee and cost-plus-award-fee contracts. This final rule makes conforming changes to FAR Part 16.

**Item V—Rehabilitation Act, Workers With Disabilities (FAR Case 96-610)**

This interim rule amends FAR Subpart 22.14 and the clauses at 52.212-5 and 52.222-36 to implement revised Department of Labor regulations regarding affirmative action to employ and advance in employment qualified individuals with disabilities. The dollar threshold for use of the clause at 52.222-36 has been increased from \$2,500 to \$10,000.