

fixed-price or fixed-price with economic price adjustment (provided that the price adjustment is not based on actual costs incurred).

This final rule amends FAR Subpart 12.2, Special Requirements for the Acquisition of Commercial Items, and the clauses at 52.230-2, Cost Accounting Standards, and 52.230-3, Disclosure and Consistency of Cost Accounting Practices, to conform the FAR to the revised CAS.

### 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 subparts 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.* (FAC 97-04, FAR case 97-020), 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 OMB under 44 U.S.C. 3501, *et seq.*

### List of Subjects in 48 CFR Parts 12 and 52

Government procurement.

Dated: February 13, 1998.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, 48 CFR Parts 12 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 12 and 52 continues to read as follows:

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

### PART 12—ACQUISITION OF COMMERCIAL ITEMS

2. Section 12.214 is revised to read as follows:

#### 12.214 Cost Accounting Standards.

Cost Accounting Standards (CAS) do not apply to contracts and subcontracts for the acquisition of commercial items when these contracts and subcontracts are firm-fixed-price or fixed-price with economic price adjustment (provided that the price adjustment is not based on actual costs incurred). See 48 CFR 30.201-1 for CAS applicability to fixed-price with economic price adjustment contracts and subcontracts for

commercial items when the price adjustment is based on actual costs incurred. When CAS applies, the contracting officer shall insert the appropriate provisions and clauses as prescribed in 48 CFR 30.201.

### PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.230-2 is amended by revising the clause date and paragraph (d) to read as follows:

#### 52.230-2 Cost Accounting Standards.

\* \* \* \* \*

Cost Accounting Standards (Apr 1998)

\* \* \* \* \*

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of \$500,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1. (End of clause)

4. Section 52.230-3 is amended by revising the clause date and paragraphs (d)(1), (2) and (3) to read as follows:

#### 52.230-3 Disclosure and Consistency of Cost Accounting Practices.

\* \* \* \* \*

Disclosure and Consistency of Cost Accounting Practices (Apr 1998)

\* \* \* \* \*

(d) \* \* \*

(1) If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted.

(2) This requirement shall apply only to negotiated subcontracts in excess of \$500,000.

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt

from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

(End of clause)

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### DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Parts 15 and 52

[FAC 97-04; FAR Case 97-029; Item VI]

RIN 9000-AH83

### Federal Acquisition Regulation; OMB Circular No. A-133

**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 amending the Federal Acquisition Regulation (FAR) to implement revisions to Office of Management and Budget (OMB) Circular No. A-133, published as a final rule in the **Federal Register** at 62 FR 35277, June 30, 1997. This regulatory action was not subject to OMB review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

**EFFECTIVE DATE:** April 24, 1998.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson at (202) 501-3221. Please cite FAC 97-04, FAR case 97-029.

### SUPPLEMENTARY INFORMATION:

#### A. Background

This final rule amends FAR 15.209 and the associated clause at FAR 52.215-2, Audits and Records—Negotiation, Alternate II, to implement revisions to OMB Circular No. A-133. The circular has a new title, "Audits of States, Local Governments, and Non-Profit Organizations", and now addresses audits of State and local Governments as well as audits of institutions of higher learning and other nonprofit organizations.

**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. 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 should cite 5 U.S.C. 601, *et seq.* (FAC 97-04, FAR case 97-029), 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 15 and 52**

Government procurement.

Dated: February 13, 1998.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

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

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

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

**PART 15—CONTRACTING BY NEGOTIATION**

2. Section 15.209 is amended by revising paragraph (b)(3) to read as follows:

**15.209 Solicitation provisions and contract clauses.**

\* \* \* \* \*

(b) \* \* \*

(3) For cost-reimbursement contracts with State and local Governments, educational institutions, and other nonprofit organizations, the contracting officer shall use the clause with its Alternate II.

\* \* \* \* \*

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

3. Section 52.215-2 is amended by revising Alternate II to read as follows:

**52.215-2 Audit and Records—Negotiation.**

\* \* \* \* \*

Alternate II (Apr 1998). As prescribed in 15.209(b)(3), add the following paragraph (h) to the basic clause:

(h) The provisions of OMB Circular No. A-133, "Audits of States, Local Governments, and Nonprofit Organizations," apply to this contract.

\* \* \* \* \*

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**DEPARTMENT OF DEFENSE****GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Part 19**

[FAC 97-04; FAR Case 97-026; Item VII]

RIN 9000-AH87

**Federal Acquisition Regulation; SIC Code and Size Standard Appeals**

**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 amending the Federal Acquisition Regulation (FAR) to conform to the Small Business Administration (SBA) regulations pertaining to protest of an offeror's small business representation, and appeal of a contracting officer's Standard Industrial Classification (SIC) code designation and related small business size standard. 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:** April 24, 1998.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501-4764. Please cite FAC 97-04, FAR case 97-026.

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

This rule amends FAR Subpart 19.3 to conform to SBA regulations at 13 CFR 121 and 134 pertaining to protest of small business representations, and appeal of SIC code designations and related small business size standards. The rule contains procedures for filing such protests and appeals.

**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. 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 should cite 5 U.S.C. 601, *et seq.* (FAC 97-04, FAR case 97-026), 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 19:**

Government procurement.

Dated: February 13, 1998.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, 48 CFR Part 19 is amended as set forth below:

**PART 19—SMALL BUSINESS PROGRAMS**

1. The authority citation for 48 CFR Part 19 continues to read as follows:

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

2. Section 19.302 is amended—

- a. By revising paragraph (a);
- b. In paragraph (c)(1) by adding "Government Contracting" after "SBA";
- c. In paragraph (d)(1)(i) by adding "business" after "1";
- d. In paragraphs (e)(1) and (g)(1) by removing "protestant" and adding "protester" in its place;
- e. In the first sentence of paragraph (g)(2) by adding "Government Contracting" after "SBA", and ", or designee," after "Director"; and in the third sentence by removing the word "below" and adding "of this section" in its place;
- f. By revising the second sentence of paragraph (h)(4); and
- g. By revising paragraphs (i) and (j) to read as follows:

**19.302 Protesting a small business representation.**

(a) An offeror, the SBA Government Contracting Area Director having responsibility for the area in which the headquarters of the protested offeror is located, the SBA Associate