

**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. 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 rules appearing in Federal Acquisition Circular (FAC) 97-11 which amend the FAR. The rules marked with an asterisk (\*) are those for which a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Further information regarding these rules may be obtained by referring to FAC 97-11 which precedes this document. This document may be obtained from the Internet at <http://www.arnet.gov/far>.

**FOR FURTHER INFORMATION CONTACT:** Laurie Duarte, FAR Secretariat, (202) 501-4225.

LIST OF RULES IN FAC 97-11

Item	Subject	FAR case	Analyst
I	Review of FAR Representations	96-013	Linfield.
II	Very Small Business Concerns (Interim)	98-013	Moss.
III	Variation in Quantity	98-612	Moss.
IV	*Electronic Funds Transfer	91-118	Olson.
V	Waiver of Cost or Pricing Data for Subcontracts	98-302	De Stefano.
VI	Executive Order 12933, Nondisplacement of Qualified Workers Under Certain Contracts	94-610	O'Neill.
VII	Recruitment Costs Principle	98-001	Nelson.
VIII	Compensation for Senior Executives (Interim)	98-301	Nelson.

**Item I—Review of FAR Representations (FAR Case 96-013)**

This final rule amends FAR parts 1, 4, 12, 14, 26, 27, 32, 41, and 52 to reduce certain contractual requirements for representations or other affirmations that place an unnecessary burden on offerors or contractors.

**Item II—Very Small Business Concerns (FAR Case 98-013)**

This interim rule amends the Federal Acquisition Regulation (FAR) Parts 5, 8, 12, 19, and 52 to implement the Small Business Administration's Very Small Business Pilot Program (13 CFR parts 121 and 125). The rule provides for the set-aside of certain acquisitions between \$2,500 and \$50,000 for very small business (VSB) concerns. The pilot VSB program is limited to buying activities and VSBs located in 10 geographic regions specified by the Small Business Administration and will run through September 30, 2000.

**Item III—Variation in Quantity (FAR Case 98-612)**

This final rule revises the prescription in 11.703(a) for the clause at 52.211-16, Variation in Quantity, to require use of the clause only in solicitations and contracts where a variation in quantity is authorized. This change makes the clause prescription consistent with language in FAR 11.701(a).

**Item IV—Electronic Funds Transfer (FAR Case 91-118)**

This final rule amends FAR Parts 13, 16, 32, and 52 to address the use of electronic funds transfer (EFT) for Federal contract payments, and to facilitate implementation of Public Law 104-134 which mandates payment by EFT in most situations. The final rule mainly differs from the interim rule by removing references to the "phase one" time period, which ended on January 1, 1999; by implementing applicable provisions of the Department of the Treasury's final rule at 31 CFR part 208 which addresses the "phase two" time period beginning January 2, 1999; by addressing the situation where contractors furnish EFT information by registering in the Central Contractor Registration database; and by permitting agencies to collect EFT banking information at various time periods ranging from prior to award (as a condition of award) to after award (concurrent with the initial invoice).

**Item V—Waiver of Cost or Pricing Data for Subcontracts (FAR Case 98-302)**

Section 805 of Public Law 105-261 clarifies that waivers of requirements for submittal of prime contractor cost or pricing data do not automatically waive requirements for subcontractors to submit cost or pricing data. Although this is consistent with the current

requirements of FAR 15.403-1(c)(4), the final rule clarifies the requirement to provide rationale supporting any waiver of subcontracts.

**Item VI—Executive Order 12933, Nondisplacement of Qualified Workers Under Certain Contracts (FAR Case 94-610)**

The interim rule published as Item III in FAC 97-01 is converted to a final rule with minor changes. The final rule makes changes to the definition of "building service contract" at FAR 22.1202, and paragraphs (c) and (j) of the clause at 52.222-50, Nondisplacement of Qualified Workers.

**Item VII—Recruitment Costs Principle (FAR Case 98-001)**

This final rule amends FAR 31.205-1, Public relations and advertising costs, and FAR 31.205-34, Recruitment costs, to remove excessive wording and details for streamlining purposes.

**Item VIII—Compensation for Senior Executives (FAR Case 98-301)**

This interim rule revises FAR section 31.205-6(p) to implement Section 804 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261). Section

804 revises the definition of "senior executive" at 10 U.S.C. 2324(1)(5) and at 41 U.S.C. 256(m)(2) to be "the five most highly compensated employees in management positions at each home office and each segment of the contractor." This change applies to costs of compensation incurred after January 1, 1999, regardless of the date of contract award.

Dated: February 25, 1999.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

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