

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 47 and 52

[FAR Case 98-604]

RIN 9000-A139

Federal Acquisition Regulation; Ocean Transportation by U.S.-Flag Vessels

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

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to clarify application of the preference for U.S.-flag vessels.

DATES: Comments should be submitted on or before September 10, 1999 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

E-mail comments submitted over Internet should be addressed to: farcase.98-604@gsa.gov.

Please cite FAR case 98-604 in all correspondence related to this case.

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. Linda Klein, Procurement Analyst, at (202) 501-3775. Please cite FAR case 98-604.

SUPPLEMENTARY INFORMATION:

A. Background

This rule proposes to amend the FAR as follows:

• Apply the preference for U.S.-flag vessels to contracts awarded using simplified acquisition procedures (47.504 and 52.213-4).

• Add to the clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items, Alternate I to 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels.

• Incorporate in the clause at 52.247-64 the exception at 47.504(e) for subcontracts for commercial items or commercial components.

Subpart 47.5, Ocean Transportation by U.S.-Flag Vessels, of the Federal Acquisition Regulations, does not apply to the Department of Defense. Policy and procedures applicable to DoD appear in DFARS subpart 247.5.

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.

B. Regulatory Flexibility Act

This proposed rule is not 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 most ocean transportation companies are large business concerns. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, et seq. (FAR case 98-604), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq. The information collection requirements of the clause at FAR 52.247-64 have been approved under OMB Control Number 9000-0054.

List of Subjects in 48 CFR Parts 47 and 52

Government procurement.

Dated: July 6, 1999.

Jeremy F. Olson,

Acting Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR parts 47 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 47 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 47—TRANSPORTATION

2. Amend section 47.504 to remove paragraph (d) and redesignate paragraph (e) as (d); and at the beginning of the

newly redesignated paragraph (d) revise the first sentence to read as follows:

47.504 Exceptions.

* * * * *

(d) Subcontracts for the acquisition of commercial items or commercial components (see 12.504(a)(13)). * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend section 52.212-5 to revise the date of the clause; redesignate paragraph (b)(26) as (b)(26)(i); and add paragraph (b)(26)(ii) to read as follows:

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (Date)

* * * * *

(b) * * *

_____ (26)(ii) Alternate I of 52.247-64.

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4. Amend section 52.213-4 to revise the date of the clause; and add paragraph (b)(1)(xi) to read as follows:

52.213-4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (Date)

* * * * *

(b) * * *

(1) * * *

(xi) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (DATE)(46 U.S.C. 1241). (Applies to supplies transported by ocean vessels.)

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5. Amend section 52.247-64 to revise the date of the clause; revise paragraph (d); remove paragraph (e)(1); and redesignate paragraphs (e)(2) through (e)(4) as (e)(1) to (e)(3), respectively. The revised text reads as follows:

52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels

* * * * *

Preference for Privately Owned U.S.-Flag Commercial Vessels (Date)

* * * * *

(d)(1) Except as provided in paragraph (d)(2) of this clause, the Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract.

(2) Unless this is a contract for ocean transportation services, the Contractor is not required to insert the substance of this clause in subcontracts under this contract for the

acquisition of commercial items or
commercial components.

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