

no longer acceptable under acquisitions subject to the TAA unless the contracting officer does not receive any offers of U.S.-made end products or eligible products (designated, Caribbean Basin, or NAFTA country end products).

This interim rule also amends the definition of "Caribbean Basin country end product" at FAR 25.003 and in the clause at 52.225-5, Trade Agreements, to implement Section 211 of the United States—Caribbean Basin Trade Partnership Act and the determinations of the USTR as to which countries qualify for the enhanced trade benefits under that Act. Offerors of end products from the Caribbean Basin must understand the revised definition in order to certify whether the products that they are offering qualify as Caribbean Basin country end products. The definition of "Caribbean Basin country end product" excludes products that do not qualify for duty-free treatment. Information provided in this rule helps offerors determine the duty-free status of a product by review of the Harmonized Tariff Schedule of the United States.

Item VI—Final Contract Voucher Submission (FAR Case 1999-026)

This final rule amends FAR 42.705, Final indirect cost rates, and FAR 52.216-7, Allowable Cost and Payment, to explicitly state the right of the contracting officer to unilaterally determine the final contract payment amount when the contractor does not submit the final invoice or voucher within the time specified in the contract. The rule is applicable to contracting officers that administer contract closeout procedures.

Item VII—Technical Amendments

These amendments update sections and make editorial changes at sections 3.807, 9.203, 12.301, 13.301, 14.205-2, 14.409-1, 15.404-4, 31.002, 31.205-17, 36.606, 42.705-1, 46.202-4, 51.101, 52.212-3, 52.213-4, 52.219-21, and 52.222-44.

Dated: February 1, 2002.

Al Matera,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001-04 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2001-04 is effective February 20, 2002.

Dated: January 31, 2002.

Carolyn M. Balven,
Col., USAF Deputy Dir., Defense Procurement.

Dated: January 30, 2002.

David A. Drabkin,
Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: January 30, 2002.

Tom Luedtke,
Associate Administrator for Procurement, National Aeronautics and Space Administration.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 14, and 32

[FAC 2001-04; FAR Case 2000-404; Item I]

RIN 9000-AI81

Federal Acquisition Regulation; Definitions for Classified Acquisitions

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 (Councils) have agreed to amend the Federal Acquisition Regulation (FAR) to provide consistent definitions for classified acquisitions.

DATES: *Effective Date:* February 20, 2002.

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. Ralph DeStefano, Procurement Analyst, at (202) 501-1758. Please cite FAC 2001-04, FAR case 2000-404.

SUPPLEMENTARY INFORMATION:

A. Background

This rule amends the FAR to address perceived inconsistencies in definitions that are used for classified acquisitions. The rule moves the definitions of "classified acquisition," "classified contract," and "classified information"

from FAR 4.401 to FAR 2.101, because the definitions apply to more than one FAR part. Those definitions also have been amended for clarity. The definition of "classified information" has been further amended to reflect classification of privately generated restricted data in accordance with Department of Energy regulations at 10 CFR 1045.21. The rule also amends the policy regarding bid openings for classified acquisitions at FAR 14.402-2 for clarity.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 46558, July 28, 2000. Four respondents submitted comments on the proposed rule. The Councils considered all comments in the development of the final rule. The following issues merit noting:

- *Comment:* Expand the definition of "classified information" at FAR 2.101 to include privately generated Restricted Data, which is established under the Atomic Energy Act of 1954, as amended, and implemented in 10 CFR 1045.21. Response: Accepted.

- *Comment:* Amend the "classified contract" definition at FAR 2.101 to address only situations where the contract itself is classified and add a new "contracts involving access to classified" definition at FAR 2.101. Commentor believed that the suggested change was more in keeping with a "plain language" philosophy. Response: Not accepted. The suggested change does not conform to the way the terms are used in the FAR.

- *Comment:* The rule at FAR 14.402-2 states "the contracting officer must not make a public record of the bids or the bid prices." The language is too narrow because it only restricts the contracting officer from making a public record. Response: Accepted. The current FAR language will be retained in lieu of the language in the proposed rule. Keeping the present FAR language addresses the person opening the bids.

This is not a significant regulatory action, and therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

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, while we have made changes for clarity, we

have not substantively changed procedures for award and administration of contracts.

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.*

List of Subjects in 48 CFR parts 2, 4, 14, and 32

Government procurement.

Dated: February 1, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 4, 14, and 32 as set forth below:

1. The authority citation for 48 CFR parts 2, 4, 14, and 32 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 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by adding, in alphabetical order, the definitions “classified acquisition,” “classified contract,” and “classified information” to read as follows:

2.101 Definitions.

* * * * *

Classified acquisition means an acquisition in which offerors must have access to classified information to properly submit an offer or quotation, to understand the performance requirements, or to perform the contract.

Classified contract means any contract in which the contractor or its employees must have access to classified information during contract performance. A contract may be a classified contract even though the contract document itself is unclassified.

Classified information means any knowledge that can be communicated or any documentary material, regardless of its physical form or characteristics, that—

(1)(i) Is owned by, is produced by or for, or is under the control of the United States Government; or

(ii) Has been classified by the Department of Energy as privately generated restricted data following the procedures in 10 CFR 1045.21; and

(2) Must be protected against unauthorized disclosure according to Executive Order 12958, Classified National Security Information, April 17,

1995, or classified in accordance with the Atomic Energy Act of 1954.

* * * * *

PART 4—ADMINISTRATIVE MATTERS

4.401 [Reserved]

3. Section 4.401 is removed and reserved.

PART 14—SEALED BIDDING

14.103-1 [Amended]

4. Amend section 14.103-1 in paragraph (c) by removing “(see 4.401)”.

5. Revise section 14.402-2 to read as follows:

14.402-2 Classified bids.

The general public may not attend bid openings for classified acquisitions. A bidder or its representative may attend and record the results if the individual has the appropriate security clearance. The contracting officer also may make the bids available at a later time to properly cleared individuals who represent bidders. No public record shall be made of bids or bid prices received in response to classified invitations for bids.

PART 32—CONTRACT FINANCING

32.1103 [Amended]

6. Amend section 32.1103 in paragraph (d) by removing “(see 4.401)”.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 13

[FAC 2001-04; FAR Case 2002-002; Item II]

RIN 9000-AJ28

Federal Acquisition Regulation; Special Simplified Procedures for Purchases of Commercial Items in Excess of the Simplified Acquisition Threshold

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 (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Section 823 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 107-107). Section 823 extends the test of the special simplified procedures for purchases of commercial items greater than the simplified acquisition threshold, but not exceeding \$5,000,000, until January 1, 2003.

DATES: *Effective Date:* February 20, 2002.

Applicability Date: FAR Subpart 13.5, as amended by this rule, is applicable to solicitations issued on or after January 1, 2002.

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 2001-04, FAR case 2002-002.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Subpart 13.5 to implement section 823 of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107-107). Section 823 amends section 4202(e) of the Clinger-Cohen Act of 1996 (Divisions D and E of Pub. L. 104-106; 110 Stat. 654; 10 U.S.C. 2304 note) to extend, through January 1, 2003, the expiration of the test of special simplified procedures for purchases of commercial items greater than the simplified acquisition threshold, but not exceeding \$5,000,000.

This is not a significant regulatory action, and therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

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, the Councils will consider comments from small entities concerning the affected FAR Subpart 13.5 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2001-04, FAR case 2002-002), in correspondence.