

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 2 and 52**

[FAR Case 2002–013]

RIN: 9000–AJ83

**Federal Acquisition Regulation;
Definitions Clause**

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 (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to clarify what FAR definitions apply to FAR solicitation provisions and contract clauses.

DATES: Interested parties should submit comments in writing on or before March 22, 2004 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405. Submit electronic comments via the Internet to—farcase.2002-013@gsa.gov. Please submit comments only and cite FAR case 2002–013 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Jeritta Parnell, Procurement Analyst, at (202) 501–4082. Please cite FAR case 2002–013.

SUPPLEMENTARY INFORMATION:**A. Background**

This proposed FAR rule amends the FAR to address the issue that FAR clause 52.202–1, Definitions, is an incomplete list of definitions applicable to the provisions and clauses. This case clarifies what FAR definitions apply to

FAR solicitation provisions and contract clauses.

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 Councils do not expect this proposed rule 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 the principle of how definitions apply is already expressed in FAR Part 2. But, it is not as clearly expressed in the Part 52 clauses. This case repeats the principle in a clause so contractors have a clearer idea of which words have official FAR definitions. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 2 and 52 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.* (FAR case 2002–013), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed 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 and 52

Government procurement.

Dated: January 13, 2004.

Laura Auletta,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2 and 52 as set forth below:

1. The authority citation for 48 CFR parts 2 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 2—DEFINITIONS OF WORDS
AND TERMS**

2. Revise section 2.201 to read as follows:

2.201 Contract clause.

Insert the clause at 52.202–1, Definitions, in solicitations and contracts that exceed the simplified acquisition threshold.

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

3. Revise section 52.202–1 to read as follows:

52.202–1 Definitions.

As prescribed in section 2.201, insert the following clause:

Definitions (Date)

(a) When a solicitation provision or contract clause uses a word or term that is defined in the Federal Acquisition Regulation (FAR), the word or term has the same meaning as the definition in FAR 2.101 in effect at the time the solicitation was issued, unless—

(1) The solicitation, or amended solicitation, provides a different definition;

(2) The contracting parties agree to a different definition;

(3) The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning; or

(4) The word or term is defined in Subpart 31 for use in the cost principles and procedures.

(b) The FAR Index is a guide to words and terms the FAR defines and shows where each definition is located. The FAR Index is available via the Internet at <http://www.arnet.gov/> at the end of the Federal Acquisition Regulation, after the FAR Appendix.

(End of clause)

4. In section 52.244–6(a), revise the definition “Commercial item” to read as follows:

52.244–6 Subcontracts for Commercial Items.

* * * * *

(a) * * *

Commercial item has the meaning contained in Federal Acquisition Regulation 2.101, Definitions.

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