

(1) Describe the requirements in terms of results required rather than the methods of performance of the work;

(2) Use measurable performance standards (*i.e.*, in terms of quality, timeliness, quantity, etc.) and quality assurance surveillance plans (see 46.103(a) and 46.401(a));

(3) Specify procedures for reductions of fee or for reductions to the price of a fixed-price contract when services are not performed or do not meet contract requirements (see 46.407); and

(4) Include performance incentives where appropriate.

(b) See 12.102(g) for the use of Part 12 procedures for performance-based contracting.

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Amend section 52.202–1 by revising the date of the clause and the introductory text of paragraph (c)(6) of the clause to read as follows:

### 52.202–1 Definitions.

\* \* \* \* \*

Definitions (Jun 2004)

\* \* \* \* \*

(c) \* \* \*

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed or specific outcomes to be achieved and under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed or a specific outcome to be achieved. For purposes of these services—

\* \* \* \* \*

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 2 and 52

[FAC 2001–24; FAR Case 2002–013; Item II]

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:** 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 clarify the applicability of FAR definitions to solicitation provisions and contract clauses.

**DATES:** *Effective Date:* July 19, 2004.

**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 FAC 2001–24, FAR case 2002–013.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This final rule amends the FAR to delete the list of definitions from the clause at FAR 52.202–1 and to replace the list with general policy regarding the applicability of FAR definitions to solicitation provisions and contract clauses.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 69 FR 2988, January 21, 2004. Three comments were received from one respondent. The first two comments requested clarification as to whether the second and third sentences of FAR 2.201 and Alternate I of the clause at FAR 52.202–1 are being deleted. This text has been deleted, and the proposed and final rules reflect this. The third comment suggested correcting the Web address in FAR 52.202–1. We agree. The Web address has been changed. The proposed rule has been converted to a final rule with this change and other minor editorial changes.

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 the principle of how definitions apply is already expressed in FAR Part 2. Since this principle is not as clearly expressed

in the FAR Part 52 clauses, the rule repeats the principle in a clause to clarify this issue for offerors and contractors.

##### 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 and 52

Government procurement.

Dated: June 10, 2004.

**Ralph J. De Stefano,**

*Acting Director, Acquisition Policy Division.*

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

■ 1. The authority citation for 48 CFR parts 2 and 52 is revised to read as follows:

**Authority:** 40 U.S.C. 121(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 2.201, insert the following clause:

Definitions (Jul 2004)

(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 FAR Part 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.acqnet.gov> at the end of the FAR, after the FAR Appendix.

(End of clause)

#### 52.213-4 [Amended]

■ 4. Amend section 52.213-4 by removing "(May 2004)" from the clause heading and from paragraph (a)(2)(vi) of the clause and adding "(Jul 2004)" in their place.

■ 5. In section 52.244-6, revise the date of the clause; and in paragraph (a) of the clause revise the definition "Commercial item" to read as follows:

#### 52.244-6 Subcontracts for Commercial Items.

\* \* \* \* \*

Subcontracts for Commercial Items (Jul 2004)

(a) \* \* \*

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

\* \* \* \* \*

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 8 and 52

[FAC 2001-24; FAR Case 2003-013; Item III]

RIN 9000-AJ82

#### Federal Acquisition Regulation; Procurement Lists

**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 clarify the point that the Javits-Wagner-O'Day (JWOD) program becomes a mandatory source when the supplies or services have been added to the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled. The rule also updates the address for the Committee for Purchase From People Who Are Blind or Severely Disabled.

**DATES:** *Effective Date:* July 19, 2004.

**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. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 2001-24, FAR case 2003-013. The TTY Federal Relay Number for further information is 1-800-877-8973.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This final rule amends the FAR to clarify that the Javits-Wagner-O'Day (JWOD) program becomes a mandatory source of supplies and services when the supplies or services have been added to the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled (the Committee). A Web site for the "Procurement List" is added, and the address for the Committee has also been updated. These changes are necessary to correct confusion and avoid misuse of mandatory source authority.

DoD, GSA, and NASA published a proposed rule in the *Federal Register* at 68 FR 69262, December 11, 2003. One source, the International Safety Equipment Association (ISEA), submitted comments on the proposed rule. The Councils concluded that the proposed rule should be converted to a final rule, with only an editorial change at FAR 8.714 to update address information and a clarification at FAR clause 52.208-9. A summary of the comments and the disposition follows:

*Comment:* The respondent recommended that a new provision be added to FAR 8.002 exempting personal protective equipment from requirements of that part.

*Response:* The Councils do not concur. The proposed change is outside the scope of the FAR case. Further, the FAR does not provide for particular product exemptions. Decisions to add a product or service to the Procurement List are made on a case-by-case basis by the Committee for Purchase From People Who Are Blind or Severely Disabled, following the notice-and-comment rulemaking provisions of the Administrative Procedure Act in accordance with 41 U.S.C. 47(a)(2).

*Comment:* The respondent recommended that the JWOD program provide for exceptions similar to those provided at FAR 8.606 for purchases from Federal Prison Industries (FPI).

*Response:* The Councils do not concur. First, the proposed change is outside the scope of the FAR case. Secondly, 41 U.S.C. 47(d) identifies the Committee as the entity responsible for

rules and regulations necessary to carry out the JWOD program. The Committee's statute and regulations do not provide for FPI-like exceptions, but do provide for purchase exceptions appropriate for JWOD, which are implemented in the FAR.

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 the rule clarifies that the Javits-Wagner-O'Day (JWOD) program becomes a mandatory source of supplies and services when the supplies or services are added to the Procurement List. While we have made changes to clarify when a supply or service becomes a mandatory JWOD source, 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 8 and 52

Government procurement.

Dated: June 10, 2004.

**Ralph J. De Stefano,**

*Acting Director, Acquisition Policy Division.*

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 8 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 8 and 52 is revised to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

#### PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 2. Amend section 8.002 by revising paragraphs (a)(1)(iv) and (a)(2)(i) to read as follows: