

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Ch. 1**

**Federal Acquisition Circular 97-22; Introduction**

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

**ACTION:** Summary presentation of final rules.

**SUMMARY:** This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 97-22. The Councils drafted these FAR rules using plain language in accordance with the White House memorandum, Plain Language in Government Writing, dated June 1, 1998. The Councils wrote all new and revised text using plain language. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including

the SECG, is available via the Internet at <http://www.arnet.gov/far>.

**DATES:** For effective dates and comment dates, see separate documents which follow.

**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 the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 97-22 and specific FAR case numbers. Interested parties may also visit our website at <http://www.arnet.gov/far>.

Item	Subject	FAR case	Analyst
I .....	Definitions .....	1999-403	Olson.
II .....	Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage .....	2000-301	Nelson.
III .....	Advance Payments for Non-Commercial Items .....	1999-016	Olson.
IV .....	Part 12 and Assignment of Claims .....	1999-021	Moss.
V .....	Clause Flowdown—Commercial Items .....	1996-023	Moss.
VI .....	Technical Amendments.		

**SUPPLEMENTARY INFORMATION:**

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Federal Acquisition Circular 97-22 amends the FAR as specified below:

**Item I—Definitions (FAR Case 1999-403)**

This final rule clarifies the applicability of definitions used in the FAR, eliminates redundant or conflicting definitions, and makes definitions easier to find. The rule—

- Relocates definitions of terms that are used in more than one FAR part with the same meaning to 2.101;
- Relocates other definitions of terms to the “Definitions” section of the highest level FAR division (part, subpart, or section) where the term as defined is used. For example, if a term was defined in a FAR section, but the term is used as defined in another section of that subpart, then the definition was moved to the “Definitions” section of that subpart;
- Clarifies that a term, defined in FAR 2.101, has the same meaning throughout the FAR unless the context in which the term is used clearly requires a different meaning; or unless another FAR part, subpart, or section provides a different definition for that particular part, subpart, or section;
- Adds cross-references to definitions of terms in FAR 2.101 that are defined

differently in another part, subpart, or section of the FAR; and

- Makes technical corrections throughout the FAR.

**Item II—Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage (FAR Case 2000-301)**

The interim rule published as Item VIII of FAC 97-18 (65 FR 36028, June 6, 2000) is converted to a final rule without change. This rule amends FAR Subpart 30.2, CAS Program Requirements, and the FAR clause at 52.230-1, Cost Accounting Standards Notices and Certification, to implement Section 802 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106-65) and the Cost Accounting Standards (CAS) Board’s final rule, Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage. The FAR rule revises policies affecting which contractors and subcontractors must comply with CAS by—

- Removing the requirement at FAR 52.230-1, Cost Accounting Standards Notices and Certification, that a contractor or subcontractor must have received at least one CAS-covered contract exceeding \$1 million (“trigger contract”) to be subject to “full CAS coverage.” The CAS Board added a new “trigger contract” dollar amount of \$7.5 million at paragraph (b)(7) of 48 CFR 9903.201-1, CAS applicability, which is already referenced at FAR 30.201-1;
- Revising FAR 30.201-4(b), Disclosure and consistency of cost

accounting practices, and FAR 52.230-1 to increase the dollar threshold for full CAS coverage from \$25 million to \$50 million; and

- Revising the CAS waiver procedures and conditions at FAR 30.201-5.

**Item III—Advance Payments for Non-Commercial Items (FAR Case 99-016)**

This final rule amends the FAR to permit federally insured credit unions, in addition to banks, to participate in the maintenance of special accounts for advance payments. The rule will only affect contracting officers that provide contract financing using advance payments for non-commercial items.

**Item IV—Part 12 and Assignment of Claims (FAR Case 1999-021)**

This final rule amends the FAR to correct an inconsistency between two clauses related to the assignment of claims. FAR 52.232-36, Payment by Third Party, prohibits a contractor from assigning its rights to receive payment under the contract if payment is made by a third party, such as when a Governmentwide commercial purchase card is used. This clause is cited in the contract clause at FAR 52.212-5 that addresses terms and conditions required to implement statutes or Executive orders for commercial items.

FAR 52.212-4, Contract Terms and Conditions—Commercial Items, addresses assignment of claims but does not include the third party prohibition.

This rule revises FAR 52.212-4(b) to add the prohibition.

**Item V—Clause Flowdown—  
Commercial Items (FAR Case 1996-023)**

This final rule amends the clause at FAR 52.244-6, Subcontracts for Commercial Items, to revise the listing of clauses the contractor must flow down to subcontractors. The rule revises the listing to add the clause at FAR 52.219-8, Utilization of Small Business Concerns, when specified circumstances have been met. In addition, the rule adds language to inform contractors that they may flow down a minimal number of additional clauses to subcontractors to satisfy their contractual obligations.

**Item VI—Technical Amendments**

This document makes amendments to the Federal Acquisition Regulation in order to update references and make editorial changes.

Dated: December 22, 2000.

**Al Matera,**

*Acting Director, Federal Acquisition Policy Division.*

**Federal Acquisition Circular**

Federal Acquisition Circular (FAC) 97-22 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.

All Federal Acquisition Regulation (FAR) changes and other directive material contained in FAC 97-22 are effective March 12, 2001, except for Items II and VI, which are effective January 10, 2001.

Dated: December 8, 2000

Deidre A. Lee,

*Director, Defense Procurement.*

Dated: December 8, 2000.

David A. Drabkin,

*Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.*

Dated: December 7, 2000.

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 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 13, 14, 15, 17, 19, 22, 23, 24, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37, 39, 42, 43, 44, 46, 47, 48, 49, 50, and 52**

[FAC 97-22; FAR Case 1999-403; Item I]

RIN 9000-AJ08

**Federal Acquisition Regulation;  
Definitions**

**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 definitions, eliminate redundant or conflicting definitions, and make definitions easier to find.

**DATES:** *Effective Date:* March 12, 2001.

**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. Jeremy Olson, Procurement Analyst, at (202) 501-3221. Please cite FAC 97-22, FAR case 1999-403.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This final rule clarifies the applicability of definitions, eliminates redundant or conflicting definitions, and makes definitions easier to find. The Councils do not intend to make any substantive policy changes to the FAR by these amendments. Nevertheless, in view of the extensive scope of these FAR improvements, comments are invited in the event any substantial policy change appears to have been made inadvertently. The rule—

- Relocates definitions of terms that are used in more than one FAR part with the same meaning to 2.101;
- Relocates other definitions of terms to the “Definitions” section of the highest level FAR division (part, subpart, or section) the term as defined is used in. For example, if a term was defined in a FAR section, but the term is used as defined in another section of

that subpart, then the definition was moved to the “Definitions” section of that subpart;

- Clarifies that a term, defined in FAR 2.101, has the same meaning throughout the FAR unless the context in which the term is used clearly requires a different meaning; or another FAR part, subpart, or section provides a different definition for that particular part, subpart, or section;

- Adds cross-references to definitions of terms in FAR 2.101 that are defined differently in another part, subpart, or section of the FAR;

- Makes plain language revisions to the revised text in accordance with the White House memorandum, Plain Language in Government Writing, dated June 1, 1998; and

- Makes technical corrections throughout 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 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 Parts 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 97-22, FAR case 1999-403), 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.*

**List of Subjects in 48 CFR Parts 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 13, 14, 15, 17, 19, 22, 23, 24, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37, 39, 42, 43, 44, 46, 47, 48, 49, 50, and 52**

Government procurement.

Dated: December 22, 2000.

**Al Matera,**

*Acting Director, Federal Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 13, 14, 15, 17, 19, 22, 23, 24, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37, 39, 42, 43, 44, 46, 47, 48, 49, 50, and 52 as set forth below:

1. The authority citation for 48 CFR parts 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 13, 14, 15, 17, 19, 22, 23, 24, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37, 39, 42, 43, 44, 46, 47, 48, 49, 50, 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 1—FEDERAL ACQUISITION REGULATIONS SYSTEM**

2. Amend section 1.401 in paragraph (a) by removing “52.101(a)” each time it is used (twice) and adding “2.101” in its place; and in paragraphs (c) and (d) revise the text in the parenthetical to read as follows:

**1.401 Definition.**

\* \* \* \* \*

(c) \* \* \* (see definition of “modification” in 52.101(a) and definition of “alternate” in 2.101(a)).

(d) \* \* \* (see definitions in 2.101 and 52.101(a))

\* \* \* \* \*

**PART 2—DEFINITIONS OF WORDS AND TERMS**

3a. Revise 2.000 to read as follows:

**2.000 Scope of part.**

- (a) This part—
  - (1) Defines words and terms that are frequently used in the FAR;
  - (2) Provides cross-references to other definitions in the FAR of the same word or term; and
  - (3) Provides for the incorporation of these definitions in solicitations and contracts by reference.
- (b) Other parts, subparts, and sections of this regulation (48 CFR chapter 1) may define other words or terms and those definitions only apply to the part, subpart, or section where the word or term is defined (see the Index for locations).

3b. Amend section 2.101 as follows:

- Revise paragraphs (a) and (b);
- Add, in alphabetical order, the following definitions:

- “Acquisition planning,”
- “Adequate evidence,”
- “Alternate,”
- “Architect-engineer services,”

- “Assignment of claims,”
- “Basic research,”
- “Broad agency announcement,”
- “Business unit,”
- “Change-of-name agreement,”
- “Change order,”
- “Cognizant Federal agency,”
- “Computer software,”
- “Consent to subcontract,”
- “Contract clause or clause,”
- “Contract modification,”
- “Conviction,”
- “Cost or pricing data,”
- “Cost realism,”
- “Cost sharing,”
- “Debarment,”
- “Design-to-cost,”
- “Drug-free workplace,”
- “Effective date of termination,”
- “Electronic data interchange (EDI),”
- “Electronic Funds Transfer (EFT),”
- “Federally Funded Research and Development Centers (FFRDCs),”
- “Final indirect cost rate,”
- “First article,”
- “First article testing,”
- “F.o.b.,”
- “F.o.b. destination,”
- “F.o.b. origin,”
- “F.o.b. . . .,”
- “Forward pricing rate agreement,”
- “Forward pricing rate recommendation,”
- “Freight,”
- “Full and open competition,”
- “General and administrative (G&A) expense,”
- “Historically black college or university,”
- “HUBZone,”
- “HUBZone small business concern,”
- “Indirect cost,”
- “Indirect cost rate,”
- “Ineligible,”
- “Information other than cost or pricing data,”
- “Inherently governmental function,”
- “Inspection,”
- “Insurance,”
- “Invoice,”
- “Irrevocable letter of credit,”
- “Labor surplus area,”
- “Labor surplus area concern,”
- “Latent defect,”
- “List of Parties Excluded from Federal Procurement and Nonprocurement Programs,”
- “Make-or-Buy program,”
- “Master solicitation,”

- “Minority Institution,”
- “Neutral person,”
- “Novation agreement,”
- “Option,”
- “Organizational conflict of interest,”
- “Overtime,”
- “Overtime premium,”
- “Ozone-depleting substance,”
- “Performance-based contracting,”
- “Personal services contract,”
- “Power of attorney,”
- “Preaward survey,”
- “Preponderance of the evidence,”
- “Pricing,”
- “Procurement,”
- “Procuring activity,”
- “Projected average loss,”
- “Proper invoice,”
- “Purchase order,”
- “Qualification requirement,”
- “Qualified products list (QPL),”
- “Residual value,”
- “Responsible audit agency,”
- “Responsible prospective contractor,”
- “Segment,”
- “Self-insurance,”
- “Shipment,”
- “Shop drawings,”
- “Should,”
- “Single, Governmentwide point of entry,”
- “Small business subcontractor,”
- “Small disadvantaged business concern,”
- “Sole source acquisition,”
- “Solicitation provision or provision,”
- “Special competency,”
- “State and local taxes,”
- “Substantial evidence,”
- “Substantially as follows or substantially the same as,”
- “Supplemental agreement,”
- “Surety,”
- “Suspension,”
- “Taxpayer Identification Number (TIN),”
- “Unallowable cost,”
- “Unique and innovative concept,”
- “Unsolicited proposal,”
- “Value engineering,”
- “Value engineering change proposal (VECP),”
- “Warranty,”
- “Women-owned small business concern,”
- “Writing or written,”
- Amend the definitions listed below as follows:

Definition/paragraph	Remove paragraph designation(s) or word	Add in its/their place
“Contract administration office,”	“(a)” and “(b)”	“(1)” and “(2)”, respectively.
“Contracting officer,”	“(a)” and “(b)”	“(1)” and “(2)”, respectively.
“Federal Acquisition Computer Network (FACNET) Architecture”	“is”	“means”.
“Head of the contracting activity”	“includes”	“means”.
“Pollution prevention,”	“(a)(1)” and “(2)”	“(1)(i)” and “(ii)”, respectively.
	“(b)” and “(c)”	“(2)” and “(3)”, respectively.

Definition/paragraph	Remove paragraph designation(s) or word	Add in its/their place
"Virgin material," .....	"(a)" and "(b)" .....	"(1)" and "(2)", respectively.

—Revise the definitions "Affiliates," "Agency head or head of the agency," "Commercial item," "Contracting office," "Head of the agency," "In writing, writing, or written," "Information technology," "Major system," and "Nondevelopmental item". For the convenience of the user, the section is set out in its entirety to read as follows:

**2.101 Definitions.**

(a) A word or a term, defined in this section, has the same meaning throughout this regulation (48 CFR chapter 1), unless—

(1) The context in which the word or term is used clearly requires a different meaning; or

(2) Another FAR part, subpart, or section provides a different definition for the particular part or portion of the part.

(b) If a word or term that is defined in this section is defined differently in another part, subpart, or section of this regulation (48 CFR chapter 1, the definition in—

(1) This section includes a cross-reference to the other definitions; and

(2) That part, subpart, or section applies to the word or term when used in that part, subpart, or section.

*Acquisition* means the acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

*Acquisition planning* means the process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling the agency need in a timely manner and at a reasonable cost. It includes developing the overall strategy for managing the acquisition.

*Adequate evidence* means information sufficient to support the

reasonable belief that a particular act or omission has occurred.

*Advisory and assistance services* means those services provided under contract by nongovernmental sources to support or improve: organizational policy development; decision-making; management and administration; program and/or project management and administration; or R&D activities. It can also mean the furnishing of professional advice or assistance rendered to improve the effectiveness of Federal management processes or procedures (including those of an engineering and technical nature). In rendering the foregoing services, outputs may take the form of information, advice, opinions, alternatives, analyses, evaluations, recommendations, training and the day-to-day aid of support personnel needed for the successful performance of ongoing Federal operations. All advisory and assistance services are classified in one of the following definitional subdivisions:

(1) Management and professional support services, *i.e.*, contractual services that provide assistance, advice or training for the efficient and effective management and operation of organizations, activities (including management and support services for R&D activities), or systems. These services are normally closely related to the basic responsibilities and mission of the agency originating the requirement for the acquisition of services by contract. Included are efforts that support or contribute to improved organization of program management, logistics management, project monitoring and reporting, data collection, budgeting, accounting, performance auditing, and administrative technical support for conferences and training programs.

(2) Studies, analyses and evaluations, *i.e.*, contracted services that provide organized, analytical assessments/evaluations in support of policy development, decision-making, management, or administration. Included are studies in support of R&D activities. Also included are acquisitions of models, methodologies, and related software supporting studies, analyses or evaluations.

(3) Engineering and technical services, *i.e.*, contractual services used to support the program office during the acquisition cycle by providing such

services as systems engineering and technical direction (see 9.505-1(b)) to ensure the effective operation and maintenance of a weapon system or major system as defined in OMB Circular No. A-109 or to provide direct support of a weapon system that is essential to research, development, production, operation or maintenance of the system.

*Affiliates* means associated business concerns or individuals if, directly or indirectly—

(1) Either one controls or can control the other; or

(2) A third party controls or can control both.

*Agency head or head of the agency* means the Secretary, Attorney General, Administrator, Governor, Chairperson, or other chief official of an executive agency, unless otherwise indicated, including any deputy or assistant chief official of an executive agency.

*Alternate* means a substantive variation of a basic provision or clause prescribed for use in a defined circumstance. It adds wording to, deletes wording from, or substitutes specified wording for a portion of the basic provision or clause. The alternate version of a provision or clause is the basic provision or clause as changed by the addition, deletion, or substitution (see 52.105(a)).

*Architect-engineer services*, as defined in 40 U.S.C. 541, means—

(1) Professional services of an architectural or engineering nature, as defined by State law, if applicable, that are required to be performed or approved by a person licensed, registered, or certified to provide those services;

(2) Professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and

(3) Those other professional services of an architectural or engineering nature, or incidental services, that members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering,

construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

*Assignment of claims* means the transfer or making over by the contractor to a bank, trust company, or other financing institution, as security for a loan to the contractor, of its right to be paid by the Government for contract performance.

*Basic research* means that research directed toward increasing knowledge in science. The primary aim of basic research is a fuller knowledge or understanding of the subject under study, rather than any practical application of that knowledge.

*Best value* means the expected outcome of an acquisition that, in the Government's estimation, provides the greatest overall benefit in response to the requirement.

*Broad agency announcement* means a general announcement of an agency's research interest including criteria for selecting proposals and soliciting the participation of all offerors capable of satisfying the Government's needs (see 6.102(d)(2)).

*Bundled contract* means a contract where the requirements have been consolidated by bundling. (See the definition of *bundling*.)

*Bundling* means—

(1) Consolidating two or more requirements for supplies or services, previously provided or performed under separate smaller contracts, into a solicitation for a single contract that is likely to be unsuitable for award to a small business concern due to—

(i) The diversity, size, or specialized nature of the elements of the performance specified;

(ii) The aggregate dollar value of the anticipated award;

(iii) The geographical dispersion of the contract performance sites; or

(iv) Any combination of the factors described in paragraphs (1)(i), (ii), and (iii) of this definition.

(2) "Separate smaller contract" as used in this definition, means a contract that has been performed by one or more small business concerns or that was suitable for award to one or more small business concerns.

(3) This definition does not apply to a contract that will be awarded and performed entirely outside of the United States.

*Business unit* means any segment of an organization, or an entire business organization that is not divided into segments.

*Change-of-name agreement* means a legal instrument executed by the

contractor and the Government that recognizes the legal change of name of the contractor without disturbing the original contractual rights and obligations of the parties.

*Change order* means a written order, signed by the contracting officer, directing the contractor to make a change that the Changes clause authorizes the contracting officer to order without the contractor's consent.

*Cognizant Federal agency* means the Federal agency that, on behalf of all Federal agencies, is responsible for establishing final indirect cost rates and forward pricing rates, if applicable, and administering cost accounting standards for all contracts in a business unit.

*Commercial component* means any component that is a commercial item.

*Commercial item* means—

(1) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that—

(i) Has been sold, leased, or licensed to the general public; or

(ii) Has been offered for sale, lease, or license to the general public;

(2) Any item that evolved from an item described in paragraph (1) of this definition through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

(3) Any item that would satisfy a criterion expressed in paragraphs (1) or (2) of this definition, but for—

(i) Modifications of a type customarily available in the commercial marketplace; or

(ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. Minor

modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(4) Any combination of items meeting the requirements of paragraphs (1), (2), (3), or (5) of this definition that are of a type customarily combined and sold in combination to the general public;

(5) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an

item referred to in paragraphs (1), (2), (3), or (4) of this definition, and if the source of such services—

(i) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and

(ii) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;

(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 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;

(7) Any item, combination of items, or service referred to in paragraphs (1) through (6) of this definition, notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or

(8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments.

*Component* means any item supplied to the Government as part of an end item or of another component, except that for use in 52.225-9 and 52.225-11, see the definitions in 52.225-9(a) and 52.225-11(a).

*Computer software* means computer programs, computer data bases, and related documentation.

*Consent to subcontract* means the contracting officer's written consent for the prime contractor to enter into a particular subcontract.

*Construction* means construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property. For purposes of this definition, the terms "buildings, structures, or other real property" include, but are not limited to, improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, cemeteries, pumping stations, railways, airport facilities, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, and channels. Construction does not include the manufacture, production, furnishing, construction, alteration, repair, processing, or assembling of

vessels, aircraft, or other kinds of personal property.

*Contract* means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications.

Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301, *et seq.* For discussion of various types of contracts, see part 16.

*Contract administration office* means an office that performs—

(1) Assigned postaward functions related to the administration of contracts; and

(2) Assigned preaward functions.

*Contract clause* or *clause* means a term or condition used in contracts or in both solicitations and contracts, and applying after contract award or both before and after award.

*Contract modification* means any written change in the terms of a contract (see 43.103).

*Contracting* means purchasing, renting, leasing, or otherwise obtaining supplies or services from nonfederal sources. Contracting includes description (but not determination) of supplies and services required, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration. It does not include making grants or cooperative agreements.

*Contracting activity* means an element of an agency designated by the agency head and delegated broad authority regarding acquisition functions.

*Contracting office* means an office that awards or executes a contract for supplies or services and performs postaward functions not assigned to a contract administration office (except for use in part 48, see also 48.001).

*Contracting officer* means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer. “Administrative contracting officer (ACO)” refers to a

contracting officer who is administering contracts. “Termination contracting officer (TCO)” refers to a contracting officer who is settling terminated contracts. A single contracting officer may be responsible for duties in any or all of these areas. Reference in this regulation (48 CFR chapter 1) to administrative contracting officer or termination contracting officer does not—

(1) Require that a duty be performed at a particular office or activity; or

(2) Restrict in any way a contracting officer in the performance of any duty properly assigned.

*Conviction* means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of *nolo contendere*. For use in subpart 23.5, see the definition at 23.503.

*Cost or pricing data* (10 U.S.C. 2306a(h)(1) and 41 U.S.C. 254b) means all facts that, as of the date of price agreement or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price, prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are data requiring certification in accordance with 15.406–2. Cost or pricing data are factual, not judgmental; and are verifiable. While they do not indicate the accuracy of the prospective contractor’s judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also include such factors as—

(1) Vendor quotations;

(2) Nonrecurring costs;

(3) Information on changes in production methods and in production or purchasing volume;

(4) Data supporting projections of business prospects and objectives and related operations costs;

(5) Unit-cost trends such as those associated with labor efficiency;

(6) Make-or-buy decisions;

(7) Estimated resources to attain business goals; and

(8) Information on management decisions that could have a significant bearing on costs.

*Cost realism* means that the costs in an offeror’s proposal—

(1) Are realistic for the work to be performed;

(2) Reflect a clear understanding of the requirements; and

(3) Are consistent with the various elements of the offeror’s technical proposal.

*Cost sharing* means an explicit arrangement under which the contractor bears some of the burden of reasonable, allocable, and allowable contract cost.

*Day* means, unless otherwise specified, a calendar day.

*Debarment* means action taken by a debarring official under 9.406 to exclude a contractor from Government contracting and Government-approved subcontracting for a reasonable, specified period; a contractor that is excluded is “debarred.”

*Delivery order* means an order for supplies placed against an established contract or with Government sources.

*Design-to-cost* means a concept that establishes cost elements as management goals to achieve the best balance between life-cycle cost, acceptable performance, and schedule. Under this concept, cost is a design constraint during the design and development phases and a management discipline throughout the acquisition and operation of the system or equipment.

*Drug-free workplace* means the site(s) for the performance of work done by the contractor in connection with a specific contract where employees of the contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

*Effective date of termination* means the date on which the notice of termination requires the contractor to stop performance under the contract. If the contractor receives the termination notice after the date fixed for termination, then the effective date of termination means the date the contractor receives the notice.

*Electronic commerce* means electronic techniques for accomplishing business transactions including electronic mail or messaging, World Wide Web technology, electronic bulletin boards, purchase cards, electronic funds transfer, and electronic data interchange.

*Electronic data interchange (EDI)* means a technique for electronically transferring and storing formatted information between computers utilizing established and published formats and codes, as authorized by the applicable Federal Information Processing Standards.

*Electronic Funds Transfer (EFT)* means any transfer of funds, other than a transaction originated by cash, check, or similar paper instrument, that is

initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes Automated Clearing House transfers, Fedwire transfers, and transfers made at automatic teller machines and point-of-sale terminals. For purposes of compliance with 31 U.S.C. 3332 and implementing regulations at 31 CFR part 208, the term "electronic funds transfer" includes a Governmentwide commercial purchase card transaction.

*End product* means supplies delivered under a line item of a Government contract.

*Energy-efficient product* means a product in the upper 25 percent of efficiency for all similar products or, if there are applicable Federal appliance or equipment efficiency standards, a product that is at least 10 percent more efficient than the minimum Federal standard.

*Environmentally preferable* means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.

*Executive agency* means an executive department, a military department, or any independent establishment within the meaning of 5 U.S.C. 101, 102, and 104(1), respectively, and any wholly owned Government corporation within the meaning of 31 U.S.C. 9101.

*Facsimile* means electronic equipment that communicates and reproduces both printed and handwritten material. If used in conjunction with a reference to a document; *e.g.*, facsimile bid, the term refers to a document (in the example given, a bid) that has been transmitted to and received by the Government via facsimile.

*Federal Acquisition Computer Network (FACNET) Architecture* is a Governmentwide system that provides universal user access, employs nationally and internationally recognized data formats, and allows the electronic data interchange of acquisition information between the private sector and the Federal Government. FACNET qualifies as the single, Governmentwide point of entry pending designation by the Administrator of the Office of Federal Procurement Policy (OFPP).

*Federal agency* means any executive agency or any independent establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, the Architect of the Capitol, and any activities under the Architect's direction).

*Federally Funded Research and Development Centers (FFRDC's)* means activities that are sponsored under a broad charter by a Government agency (or agencies) for the purpose of performing, analyzing, integrating, supporting, and/or managing basic or applied research and/or development, and that receive 70 percent or more of their financial support from the Government; and—

(1) A long-term relationship is contemplated;

(2) Most or all of the facilities are owned or funded by the Government; and

(3) The FFRDC has access to Government and supplier data, employees, and facilities beyond that common in a normal contractual relationship.

*Final indirect cost rate* means the indirect cost rate established and agreed upon by the Government and the contractor as not subject to change. It is usually established after the close of the contractor's fiscal year (unless the parties decide upon a different period) to which it applies. For cost-reimbursement research and development contracts with educational institutions, it may be predetermined; that is, established for a future period on the basis of cost experience with similar contracts, together with supporting data.

*First article* means a reproduction model, initial production sample, test sample, first lot, pilot lot, or pilot models.

*First article testing* means testing and evaluating the first article for conformance with specified contract requirements before or in the initial stage of production.

*F.o.b.* means free on board. This term is used in conjunction with a physical point to determine—

(1) The responsibility and basis for payment of freight charges; and

(2) Unless otherwise agreed, the point where title for goods passes to the buyer or consignee.

*F.o.b. destination* means free on board at destination; *i.e.*, the seller or consignor delivers the goods on seller's or consignor's conveyance at destination. Unless the contract provides otherwise, the seller or consignor is responsible for the cost of shipping and risk of loss. For use in the

clause at 52.247–34, see the definition at 52.247–34(a).

*F.o.b. origin* means free on board at origin; *i.e.*, the seller or consignor places the goods on the conveyance. Unless the contract provides otherwise, the buyer or consignee is responsible for the cost of shipping and risk of loss. For use in the clause at 52.247–29, see the definition at 52.247–29(a).

*F.o.b. \* \* \** (For other types of F.o.b., see 47.303).

*Forward pricing rate agreement* means a written agreement negotiated between a contractor and the Government to make certain rates available during a specified period for use in pricing contracts or modifications. These rates represent reasonable projections of specific costs that are not easily estimated for, identified with, or generated by a specific contract, contract end item, or task. These projections may include rates for such things as labor, indirect costs, material obsolescence and usage, spare parts provisioning, and material handling.

*Forward pricing rate recommendation* means a rate set unilaterally by the administrative contracting officer for use by the Government in negotiations or other contract actions when forward pricing rate agreement negotiations have not been completed or when the contractor will not agree to a forward pricing rate agreement.

*Freight* means supplies, goods, and transportable property.

*Full and open competition*, when used with respect to a contract action, means that all responsible sources are permitted to compete.

*General and administrative (G&A) expense* means any management, financial, and other expense which is incurred by or allocated to a business unit and which is for the general management and administration of the business unit as a whole. G&A expense does not include those management expenses whose beneficial or causal relationship to cost objectives can be more directly measured by a base other than a cost input base representing the total activity of a business unit during a cost accounting period.

*Head of the agency* (see "agency head").

*Head of the contracting activity* includes the official who has overall responsibility for managing the contracting activity.

*Historically black college or university* means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. For the Department of Defense, the National Aeronautics and Space Administration,

and the Coast Guard, the term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

*HUBZone* means a historically underutilized business zone that is an area located within one or more qualified census tracts, qualified nonmetropolitan counties, or lands within the external boundaries of an Indian reservation.

*HUBZone small business concern* means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

*In writing, writing, or written* means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

*Indirect cost* means any cost not directly identified with a single, final cost objective, but identified with two or more final cost objectives or an intermediate cost objective.

*Indirect cost rate* means the percentage or dollar factor that expresses the ratio of indirect expense incurred in a given period to direct labor cost, manufacturing cost, or another appropriate base for the same period (see also "final indirect cost rate").

*Ineligible* means excluded from Government contracting (and subcontracting, if appropriate) pursuant to statutory, Executive order, or regulatory authority other than this regulation (48 CFR chapter 1) and its implementing and supplementing regulations; for example, pursuant to the Davis-Bacon Act and its related statutes and implementing regulations, the Service Contract Act, the Equal Employment Opportunity Acts and Executive orders, the Walsh-Healey Public Contracts Act, the Buy American Act, or the Environmental Protection Acts and Executive orders.

*Information other than cost or pricing data* means any type of information that is not required to be certified in accordance with 15.406-2 and is necessary to determine price reasonableness or cost realism. For example, such information may include pricing, sales, or cost information, and includes cost or pricing data for which certification is determined inapplicable after submission.

*Information technology* means any equipment, or interconnected system(s) or subsystem(s) of equipment, that is used in the automatic acquisition, storage, manipulation, management,

movement, control, display, switching, interchange, transmission, or reception of data or information by the agency.

(1) For purposes of this definition, equipment is used by an agency if the equipment is used by the agency directly or is used by a contractor under a contract with the agency that requires—

(i) Its use; or

(ii) To a significant extent, its use in the performance of a service or the furnishing of a product.

(2) The term "information technology" includes computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources.

(3) The term "information technology" does not include any equipment that—

(i) Is acquired by a contractor incidental to a contract; or

(ii) Contains imbedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment, such as thermostats or temperature control devices, and medical equipment where information technology is integral to its operation, are not information technology.

*Inherently governmental function* means, as a matter of policy, a function that is so intimately related to the public interest as to mandate performance by Government employees. This definition is a policy determination, not a legal determination. An inherently governmental function includes activities that require either the exercise of discretion in applying Government authority, or the making of value judgments in making decisions for the Government. Governmental functions normally fall into two categories: the act of governing, *i.e.*, the discretionary exercise of Government authority, and monetary transactions and entitlements.

(1) An inherently governmental function involves, among other things, the interpretation and execution of the laws of the United States so as to—

(i) Bind the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;

(ii) Determine, protect, and advance United States economic, political, territorial, property, or other interests by military or diplomatic action, civil or

criminal judicial proceedings, contract management, or otherwise;

(iii) Significantly affect the life,

liberty, or property of private persons;

(iv) Commission, appoint, direct, or control officers or employees of the United States; or

(v) Exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the United States, including the collection, control, or disbursement of Federal funds.

(2) Inherently governmental functions do not normally include gathering information for or providing advice, opinions, recommendations, or ideas to Government officials. They also do not include functions that are primarily ministerial and internal in nature, such as building security, mail operations, operation of cafeterias, housekeeping, facilities operations and maintenance, warehouse operations, motor vehicle fleet management operations, or other routine electrical or mechanical services. The list of commercial activities included in the attachment to Office of Management and Budget (OMB) Circular No. A-76 is an authoritative, nonexclusive list of functions that are not inherently governmental functions.

*Inspection* means examining and testing supplies or services (including, when appropriate, raw materials, components, and intermediate assemblies) to determine whether they conform to contract requirements.

*Insurance* means a contract that provides that for a stipulated consideration, one party undertakes to indemnify another against loss, damage, or liability arising from an unknown or contingent event.

*Invoice* means a contractor's bill or written request for payment under the contract for supplies delivered or services performed (see also "proper invoice").

*Irrevocable letter of credit* means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon the Government's (the beneficiary) presentation of a written demand for payment. Neither the financial institution nor the offeror/contractor can revoke or condition the letter of credit.

*Labor surplus area* means a geographical area identified by the Department of Labor in accordance with 20 CFR part 654, subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.

*Labor surplus area concern* means a concern that together with its first-tier



subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.

*Latent defect* means a defect that exists at the time of acceptance but cannot be discovered by a reasonable inspection.

*List of Parties Excluded from Federal Procurement and Nonprocurement Programs* means a list compiled, maintained, and distributed by the General Services Administration containing the names and other information about parties debarred, suspended, or voluntarily excluded under the Nonprocurement Common Rule or the Federal Acquisition Regulation, parties who have been proposed for debarment under the Federal Acquisition Regulation, and parties determined to be ineligible.

*Major system* means that combination of elements that will function together to produce the capabilities required to fulfill a mission need. The elements may include hardware, equipment, software, or any combination thereof, but exclude construction or other improvements to real property. A system is a major system if—

(1) The Department of Defense is responsible for the system and the total expenditures for research, development, test, and evaluation for the system are estimated to be more than \$115,000,000 (based on fiscal year 1990 constant dollars) or the eventual total expenditure for the acquisition exceeds \$540,000,000 (based on fiscal year 1990 constant dollars);

(2) A civilian agency is responsible for the system and total expenditures for the system are estimated to exceed \$750,000 (based on fiscal year 1980 constant dollars) or the dollar threshold for a “major system” established by the agency pursuant to Office of Management and Budget Circular A-109, entitled “Major System Acquisitions,” whichever is greater; or

(3) The system is designated a “major system” by the head of the agency responsible for the system (10 U.S.C. 2302 and 41 U.S.C. 403).

*Make-or-buy program* means that part of a contractor’s written plan for a contract identifying those major items to be produced or work efforts to be performed in the prime contractor’s facilities and those to be subcontracted.

*Market research* means collecting and analyzing information about capabilities

within the market to satisfy agency needs.

*Master solicitation* means a document containing special clauses and provisions that have been identified as essential for the acquisition of a specific type of supply or service that is acquired repetitively.

*May* denotes the permissive.

However, the words “no person may \* \* \*” mean that no person is required, authorized, or permitted to do the act described.

*Micro-purchase* means an acquisition of supplies or services (except construction), the aggregate amount of which does not exceed \$2,500, except that in the case of construction, the limit is \$2,000.

*Micro-purchase threshold* means \$2,500.

*Minority Institution* means an institution of higher education meeting the requirements of section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1067k), including a Hispanic-serving institution of higher education, as defined in section 316(b)(1) of the Act (20 U.S.C. 1101a).

*Must* (see “shall”).

*National defense* means any activity related to programs for military or atomic energy production or construction, military assistance to any foreign nation, stockpiling, or space.

*Neutral person* means an impartial third party, who serves as a mediator, fact finder, or arbitrator, or otherwise functions to assist the parties to resolve the issues in controversy. A neutral person may be a permanent or temporary officer or employee of the Federal Government or any other individual who is acceptable to the parties. A neutral person must have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless the interest is fully disclosed in writing to all parties and all parties agree that the neutral person may serve (5 U.S.C. 583).

*Nondevelopmental item* means—

(1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

(2) Any item described in paragraph (1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or

(3) Any item of supply being produced that does not meet the

requirements of paragraphs (1) or (2) solely because the item is not yet in use.

*Novation agreement* means a legal instrument—

(1) Executed by the—

(i) Contractor (transferor);

(ii) Successor in interest (transferee); and

(iii) Government; and

(2) By which, among other things, the transferor guarantees performance of the contract, the transferee assumes all obligations under the contract, and the Government recognizes the transfer of the contract and related assets.

*Offer* means a response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract. Responses to invitations for bids (sealed bidding) are offers called “bids” or “sealed bids” responses to requests for proposals (negotiation) are offers called “proposals” responses to requests for quotations (negotiation) are not offers and are called “quotes.” For unsolicited proposals, see subpart 15.6.

*Option* means a unilateral right in a contract by which, for a specified time, the Government may elect to purchase additional supplies or services called for by the contract, or may elect to extend the term of the contract.

*Organizational conflict of interest* means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person’s objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

*Overtime* means time worked by a contractor’s employee in excess of the employee’s normal workweek.

*Overtime premium* means the difference between the contractor’s regular rate of pay to an employee for the shift involved and the higher rate paid for overtime. It does not include shift premium, *i.e.*, the difference between the contractor’s regular rate of pay to an employee and the higher rate paid for extra-pay-shift work.

*Ozone-depleting substance* means any substance the Environmental Protection Agency designates in 40 CFR part 82 as—

(1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or

(2) Class II, including, but not limited to, hydrochlorofluorocarbons.

*Performance-based contracting* means structuring all aspects of an acquisition around the purpose of the work to be performed as opposed to either the manner by which the work will be

performed or broad and imprecise statements of work.

*Personal services contract* means a contract that, by its express terms or as administered, makes the contractor personnel appear to be, in effect, Government employees (see 37.104).

*Pollution prevention* means any practice that—

(1)(i) Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and

(ii) Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, and contaminants;

(2) Reduces or eliminates the creation of pollutants through increased efficiency in the use of raw materials, energy, water, or other resources; or

(3) Protects natural resources by conservation.

*Possessions* include the Virgin Islands, Johnston Island, American Samoa, Guam, Wake Island, Midway Island, and the Guano Islands, but does not include Puerto Rico, leased bases, or trust territories.

*Power of attorney* means the authority given one person or corporation to act for and obligate another, as specified in the instrument creating the power; in corporate suretyship, an instrument under seal that appoints an attorney-in-fact to act in behalf of a surety company in signing bonds (see also “attorney-in-fact” at 28.001).

*Preaward survey* means an evaluation of a prospective contractor’s capability to perform a proposed contract.

*Preponderance of the evidence* means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

*Pricing* means the process of establishing a reasonable amount or amounts to be paid for supplies or services.

*Procurement* (see “acquisition”).

*Procuring activity* means a component of an executive agency having a significant acquisition function and designated as such by the head of the agency. Unless agency regulations specify otherwise, the term “procuring activity” is synonymous with “contracting activity.”

*Projected average loss* means the estimated long-term average loss per period for periods of comparable exposure to risk of loss.

*Proper invoice* means a bill or written request for payment that meets the minimum standards specified in the

clause at 52.232–25, Prompt Payment, 52.232–26, Prompt Payment for Fixed-Price Architect-Engineer Contracts, or 52.232–27, Prompt Payment for Construction Contracts (also see 32.905(e)), and other terms and conditions contained in the contract for invoice submission.

*Purchase order*, when issued by the Government, means an offer by the Government to buy supplies or services, including construction and research and development, upon specified terms and conditions, using simplified acquisition procedures.

*Qualification requirement* means a Government requirement for testing or other quality assurance demonstration that must be completed before award of a contract.

*Qualified products list (QPL)* means a list of products that have been examined, tested, and have satisfied all applicable qualification requirements.

*Recovered material* means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process. For use in subpart 11.3 for paper and paper products, see the definition at 11.301.

*Residual value* means the proceeds, less removal and disposal costs, if any, realized upon disposition of a tangible capital asset. It usually is measured by the net proceeds from the sale or other disposition of the asset, or its fair value if the asset is traded in on another asset. The estimated residual value is a current forecast of the residual value.

*Responsible audit agency* means the agency that is responsible for performing all required contract audit services at a business unit.

*Responsible prospective contractor* means a contractor that meets the standards in 9.104.

*Segment* means one of two or more divisions, product departments, plants, or other subdivisions of an organization reporting directly to a home office, usually identified with responsibility for profit and/or producing a product or service. The term includes—

(1) Government-owned contractor-operated (GOCO) facilities; and

(2) Joint ventures and subsidiaries (domestic and foreign) in which the organization has—

(i) A majority ownership; or

(ii) Less than a majority ownership, but over which it exercises control.

*Self-insurance* means the assumption or retention of the risk of loss by the contractor, whether voluntarily or involuntarily. Self-insurance includes

the deductible portion of purchased insurance.

*Senior procurement executive* means the individual appointed pursuant to section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) who is responsible for management direction of the acquisition system of the executive agency, including implementation of the unique acquisition policies, regulations, and standards of the executive agency.

*Service-disabled veteran-owned small business concern*—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

*Shall* denotes the imperative.

*Shipment* means freight transported or to be transported.

*Shop drawings* means drawings submitted by the construction contractor or a subcontractor at any tier or required under a construction contract, showing in detail either or both of the following:

(1) The proposed fabrication and assembly of structural elements.

(2) The installation (*i.e.*, form, fit, and attachment details) of materials or equipment.

*Should* means an expected course of action or policy that is to be followed unless inappropriate for a particular circumstance.

*Signature* or *signed* means the discrete, verifiable symbol of an individual which, when affixed to a writing with the knowledge and consent of the individual, indicates a present intention to authenticate the writing. This includes electronic symbols.

*Simplified acquisition procedures* means the methods prescribed in part 13 for making purchases of supplies or services.

*Simplified acquisition threshold* means \$100,000, except that in the case of any contract to be awarded and performed, or purchase to be made, outside the United States in support of a contingency operation (as defined in

10 U.S.C. 101(a)(13)) or a humanitarian or peacekeeping operation (as defined in 10 U.S.C. 2302(8) and 41 U.S.C. 259(d)), the term means \$200,000.

*Single, Governmentwide point of entry*, means the one point of entry to be designated by the Administrator of OFPP that will allow the private sector to electronically access procurement opportunities Governmentwide.

*Small business subcontractor* means a concern, including affiliates, that for subcontracts valued at—

(1) \$10,000 or less, does not have more than 500 employees; and

(2) More than \$10,000, does not have employees or average annual receipts exceeding the size standard in 13 CFR part 121 (see 19.102) for the product or service it is providing on the subcontract.

*Small disadvantaged business concern* (except for 52.212–3(c)(2) and 52.219–1(b)(2) for general statistical purposes and 52.212–3(c)(7)(ii), 52.219–22(b)(2), and 52.219–23(a) for joint ventures under the price evaluation adjustment for small disadvantaged business concerns), means an offeror that represents, as part of its offer, that it is a small business under the size standard applicable to the acquisition; and either—

(1) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, subpart B; and

(i) No material change in disadvantaged ownership and control has occurred since its certification;

(ii) Where the concern is owned by one or more disadvantaged individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(iii) It is identified, on the date of its representation, as a certified small disadvantaged business concern in the data base maintained by the Small Business Administration (PRO–Net); or

(2) For a prime contractor, it has submitted a completed application to the Small Business Administration or a private certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR part 124, subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since it submitted its application. In this case, a contractor must receive certification as a small disadvantaged business by the Small Business Administration prior to contract award.

*Sole source acquisition* means a contract for the purchase of supplies or

services that is entered into or proposed to be entered into by an agency after soliciting and negotiating with only one source.

*Solicitation provision or provision* means a term or condition used only in solicitations and applying only before contract award.

*Special competency* means a special or unique capability, including qualitative aspects, developed incidental to the primary functions of the Federally Funded Research and Development Centers to meet some special need.

*State and local taxes* means taxes levied by the States, the District of Columbia, Puerto Rico, possessions of the United States, or their political subdivisions.

*Substantial evidence* means information sufficient to support the reasonable belief that a particular act or omission has occurred.

*Substantially as follows or substantially the same as*, when used in the prescription and introductory text of a provision or clause, means that authorization is granted to prepare and utilize a variation of that provision or clause to accommodate requirements that are peculiar to an individual acquisition; provided that the variation includes the salient features of the FAR provision or clause, and is not inconsistent with the intent, principle, and substance of the FAR provision or clause or related coverage of the subject matter.

*Supplemental agreement* means a contract modification that is accomplished by the mutual action of the parties.

*Supplies* means all property except land or interest in land. It includes (but is not limited to) public works, buildings, and facilities; ships, floating equipment, and vessels of every character, type, and description, together with parts and accessories; aircraft and aircraft parts, accessories, and equipment; machine tools; and the alteration or installation of any of the foregoing.

*Surety* means an individual or corporation legally liable for the debt, default, or failure of a principal to satisfy a contractual obligation. The types of sureties referred to are as follows:

(1) An individual surety is one person, as distinguished from a business entity, who is liable for the entire penal amount of the bond.

(2) A corporate surety is licensed under various insurance laws and, under its charter, has legal power to act as surety for others.

(3) A cosurety is one of two or more sureties that are jointly liable for the penal sum of the bond. A limit of liability for each surety may be stated.

*Suspension* means action taken by a suspending official under 9.407 to disqualify a contractor temporarily from Government contracting and Government-approved subcontracting; a contractor that is disqualified is “suspended.”

*Task order* means an order for services placed against an established contract or with Government sources.

*Taxpayer Identification Number (TIN)* means the number required by the IRS to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

*Unallowable cost* means any cost that, under the provisions of any pertinent law, regulation, or contract, cannot be included in prices, cost-reimbursements, or settlements under a Government contract to which it is allocable.

*Unique and innovative concept*, when used relative to an unsolicited research proposal, means that—

(1) In the opinion and to the knowledge of the Government evaluator, the meritorious proposal—

(i) Is the product of original thinking submitted confidentially by one source;

(ii) Contains new, novel, or changed concepts, approaches, or methods;

(iii) Was not submitted previously by another; and

(iv) Is not otherwise available within the Federal Government.

(2) In this context, the term does not mean that the source has the sole capability of performing the research.

*United States*, when used in a geographic sense, means the 50 States and the District of Columbia, except as follows:

(1) For use in subpart 22.8, see the definition at 22.801.

(2) For use in subpart 22.10, see the definition at 22.1001.

(3) For use in part 25, see the definition at 25.003.

(4) For use in subpart 47.4, see the definition at 47.401.

*Unsolicited proposal* means a written proposal for a new or innovative idea that is submitted to an agency on the initiative of the offeror for the purpose of obtaining a contract with the Government, and that is not in response to a request for proposals, Broad Agency Announcement, Small Business Innovation Research topic, Small Business Technology Transfer Research topic, Program Research and Development Announcement, or any other Government-initiated solicitation or program.

*Value engineering* means an analysis of the functions of a program, project, system, product, item of equipment, building, facility, service, or supply of an executive agency, performed by qualified agency or contractor personnel, directed at improving performance, reliability, quality, safety, and life-cycle costs (section 36 of the Office of Federal Procurement Policy Act, 41 U.S.C. 401, *et seq.*). For use in the clause at 52.248-2, see the definition at 52.248-2(b).

*Value engineering change proposal* (VECP)—(1) means a proposal that—

(i) Requires a change to the instant contract to implement; and

(ii) Results in reducing the overall projected cost to the agency without impairing essential functions or characteristics, provided that it does not involve a change—

(A) In deliverable end item quantities only;

(B) In research and development (R&D) items or R&D test quantities that are due solely to results of previous testing under the instant contract; or

(C) To the contract type only.

(2) For use in the clauses at—

(i) 52.248-2, see the definition at 52.248-2(b); and

(ii) 52.248-3, see the definition at 52.248-3(b).

*Veteran-owned small business concern* means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

*Virgin material* means—

(1) Previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore; or

(2) Any undeveloped resource that is, or with new technology will become, a source of raw materials.

*Warranty* means a promise or affirmation given by a contractor to the Government regarding the nature, usefulness, or condition of the supplies or performance of services furnished under the contract.

*Waste reduction* means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

*Women-owned small business concern* means a small business concern—

(1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

*Writing* or *written* (see “in writing”).

3c. 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. If the contract is for personal services, construction, architect-engineer services, or dismantling, demolition, or removal of improvements, use the clause with its Alternate I. The contracting officer may include additional definitions, provided they are consistent with the clause and the FAR.

### **PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST**

4. In section 3.302, add an introductory paragraph to read as follows:

#### **3.302 Definitions.**

As used in this subpart—

\* \* \* \* \*

5. Amend section 3.401 by adding an introductory paragraph; and by removing “, as used in this subpart,” from the definitions “Bona fide agency”, “Bona fide employee”, “Contingent fee”, and “Improper influence” by. The added text reads as follows:

#### **3.401 Definitions.**

As used in this subpart—

\* \* \* \* \*

6. In section 3.501-1, revise the introductory paragraph; and redesignate paragraphs (a) and (b) as (1) and (2), respectively. The revised text reads as follows:

#### **3.501-1 Definition.**

*Buying-in*, as used in this section, means submitting an offer below anticipated costs, expecting to—

\* \* \* \* \*

7. Amend section 3.502-1 by adding an introductory paragraph; removing “, as used in this section,” from the definitions “Kickback”, “Person”, “Prime contract”, “Prime Contractor”, “Prime Contractor employee”, and “Subcontract”; removing “, as used in this section, “ from the definition “Subcontractor”; and redesignating

paragraphs (a) and (b) as (1) and (2), respectively. The added text reads as follows:

#### **3.502-1 Definitions.**

As used in this section—

\* \* \* \* \*

8. Add an introductory paragraph to section 3.901 to read as follows:

#### **3.901 Definitions.**

As used in this subpart—

\* \* \* \* \*

### **PART 4—ADMINISTRATIVE MATTERS**

#### **4.501 [Reserved]**

9. Remove and reserve section 4.501.

#### **4.901 Definition.**

10. In section 4.901, revise the section heading as set forth above; and remove the definition “Taxpayer Identification Number (TIN).”

### **PART 5—PUBLICIZING CONTRACT ACTIONS**

#### **5.202 [Amended]**

11. In section 5.202, amend paragraph (a)(8) by removing “6.003” and adding “2.101” in its place.

12. Amend section 5.501, by adding an introductory paragraph; by removing “, as used in this subpart,” from the definitions “Advertisement” and “Publication”; and by redesignating paragraphs (a) and (b) in the definition “Publication” as (1) and (2), respectively. The added text reads as follows:

#### **5.501 Definitions.**

As used in this subpart—

\* \* \* \* \*

### **PART 6—COMPETITION REQUIREMENTS**

13. Revise section 6.000 to read as follows:

#### **6.000 Scope of part.**

This part prescribes policies and procedures to promote full and open competition in the acquisition process and to provide for full and open competition, full and open competition after exclusion of sources, other than full and open competition, and competition advocates. This part does not deal with the results of competition (*e.g.*, adequate price competition), that are addressed in other parts (*e.g.*, part 15).

#### **6.003 [Removed and Reserved]**

14. Remove and reserve section 6.003.

15. Amend section 6.302-1 by revising paragraph (a)(2)(i)(A) to read as follows:

**6.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.**

- (a) \* \* \*
- (2) \* \* \*
- (i) \* \* \*

(A) Demonstrates a unique and innovative concept (see definition at 2.101), or, demonstrates a unique capability of the source to provide the particular research services proposed;

**6.302-3 [Amended]**

16. Amend section 6.302-3 in paragraph (a)(2)(iii) by removing “(see 33.201)”.

**PART 7—ACQUISITION PLANNING**

17. Amend section 7.101 by adding an introductory paragraph; removing the definitions “Acquisition planning” and “Design to cost”; and by removing “, as used in this subpart,” from the definitions “Acquisition streamlining”, and “Planner”. The added text reads as follows:

**7.101 Definitions.**

As used in this subpart—  
\* \* \* \* \*

**7.501 [Reserved]**

18. Remove and reserve section 7.501.

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

19. In section 8.501, add an introductory paragraph; and remove “, as used in this subpart,” from the definition “Bureau of Land Management”. The added text reads as follows:

**8.501 Definitions.**

As used in this subpart—  
\* \* \* \* \*

20. In section 8.701, add an introductory paragraph; and amend the definitions “Allocation”, “Central nonprofit agency”, “Committee”, and “Procurement List” by removing “, as used in this subpart,”. The added text reads as follows:

**8.701 Definitions.**

As used in this subpart—  
\* \* \* \* \*

21. Amend section 8.801 by adding an introductory paragraph; and removing “, as used in this subpart,” from the definition “Related supplies”. The added text reads as follows:

**8.801 Definitions.**

As used in this subpart—  
\* \* \* \* \*

22. Amend section 8.1101 by adding an introductory paragraph; removing from the definition “Leasing” “, as used in this subpart,”; and redesignating paragraphs (a) and (b) in the definition “Motor vehicle” as (1) and (2), respectively. The added text reads as follows:

**8.1101 Definitions.**

As used in this subpart—  
\* \* \* \* \*

**PART 9—CONTRACTOR QUALIFICATIONS**

**9.101 [Amended]**

23. Amend section 9.101 by revising the section heading to read “Definition”; by removing the definitions “Preaward survey” and “Responsible prospective contractor”; and by adding “, as used in this subpart,” after the word “activity” in the definition “Surveying activity.”

24. Amend section 9.201 by adding an introductory paragraph; and by removing the definitions “Procuring activity”, “Qualification requirement”, and “Qualified products list (QPL).” The added text reads as follows:

**9.201 Definitions.**

As used in this subpart—  
\* \* \* \* \*

**9.301 Definition.**

25. Amend section 9.301 by revising the section heading to read as set forth above; and by removing the definitions “First article” and “First article testing.”

**9.400 [Amended]**

26. Amend section 9.400 in paragraph (a)(2) by removing “9.403” and adding “2.101” in its place.

27. Amend section 9.403 as follows:

- a. Add an introductory paragraph;
- b. Remove the definitions “Adequate evidence”, “Conviction”, “Debarment”, “Ineligible”, “List of Parties Excluded from Federal Procurement and Nonprocurement Programs”, “Preponderance of the evidence”, and “Suspension”;
- c. In the definitions “Affiliates”, “Contractor”, “Debarred official”, and “Suspending official”, redesignate paragraphs (a) and (b) as (1) and (2), respectively;
- d. Amend the definitions “Agency”, “Contractor”, and “Unfair trade practices” by removing “, as used in this subpart,” and

e. In the definition “Indictment” remove “shall be” and add “is” in its place.

The added text reads as follows:

**9.403 Definitions.**

As used in this subpart—  
\* \* \* \* \*

**9.501 Definition.**

28. Amend section 9.501 as follows:

- a. Revise the section heading as set forth above;
- b. In the definition “Marketing consultant” remove “means” and add “, as used in this subpart, means” in its place; and redesignate paragraphs (a) through (d) as (1) through (4), respectively; and
- c. Remove the definition “Organizational conflict of interest”.

**9.601 [Amended]**

29. Amend section 9.601 in the definition “Contractor team arrangement” by adding “, as used in this subpart,” after the word “arrangement” the first time it is used; and by redesignating paragraphs (a) and (b) as (1) and (2), respectively.

**9.701 [Amended]**

30. Amend section 9.701 by redesignating paragraphs (a) and (b) as (1) and (2), respectively, and paragraphs (c) introductory text, (c)(1), and (c)(2) as (3), (3)(i), and (3)(ii), respectively.

**PART 11—DESCRIBING AGENCY NEEDS**

31. Amend section 11.601 by adding an introductory paragraph; and by removing “, as used in this subpart,” from the definitions “Authorized program”, “Controlled materials”, and “Delegate Agency”. The added text reads as follows:

**11.601 Definitions.**

As used in this subpart—  
\* \* \* \* \*

**PART 13—SIMPLIFIED ACQUISITION PROCEDURES**

**13.001 [Amended]**

32. Amend section 13.001 by removing the definition “Purchase order”.

**13.501 [Amended]**

33. Amend section 13.501 in paragraph (a)(1)(i) by removing “6.003” and adding “2.101” in its place.

**PART 14—SEALED BIDDING**

34. Revise section 14.203-3 to read as follows:

**14.203-3 Master solicitation.**

The master solicitation is provided to potential sources who are requested to retain it for continued and repetitive use. Individual solicitations must reference the date of the current master solicitation and identify any changes. The contracting officer must—

(a) Make available copies of the master solicitation on request; and

(b) Provide the cognizant contract administration activity a current copy of the master solicitation.

**PART 15—CONTRACTING BY NEGOTIATION**

35. Amend section 15.001 by adding, in alphabetical order, the definitions “Deficiency” and “Weakness” to read as follows:

**15.001 Definitions.**

*Deficiency* is a material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.

\* \* \* \* \*

*Weakness* means a flaw in the proposal that increases the risk of unsuccessful contract performance. A “significant weakness” in the proposal is a flaw that appreciably increases the risk of unsuccessful contract performance.

**15.301 [Reserved]**

36. Remove and reserve section 15.301.

37. Amend section 15.401 as follows:

a. Add an introductory paragraph;  
b. Remove the definitions “Cost or pricing data”, “Cost realism”, “Forward pricing rate agreement”, “Forward pricing rate recommendation”, and “Information other than cost or pricing data”; and

c. Remove “, as used in this subpart,” from the definitions “Price” and “Subcontract”. The added text reads as follows:

**15.401 Definitions.**

As used in this subpart—

\* \* \* \* \*

**15.402 [Amended]**

38. Amend section 15.402 as follows:

a. In the introductory paragraph remove “shall” and add “must” in its place;

b. In the introductory text of paragraph (a) remove “shall” each time it is used (twice) and add “must” in its place;

c. In paragraph (a)(2)(ii) remove “15.401” and add “2.101” in its place; and

d. In paragraph (a)(3), second sentence, remove “shall” and add “must” in its place.

**15.403-1 [Amended]**

39. Amend section 15.403-1 in the first sentence of paragraph (c)(3) by removing “(c)(1) or (2)” and adding “(3)(i) or (ii)” in its place.

**15.403-4 [Amended]**

40. Amend section 15.403-4 in paragraph (c) by removing “shall” each time it is used (twice) and adding “must” in its place; and by removing “15.401” and adding “2.101” in its place.

**15.406-2 [Amended]**

41. Amend section 15.406-2 paragraph (a) by removing “shall” each time it is used (twice) and adding “must” in its place; and by removing from the first sentence of the Certificate of Current Cost or Pricing Data “15.401” and adding “2.101” in its place.

42. Amend section 15.407-2 by revising paragraph (b) to read as follows:

**15.407-2 Make-or-buy programs.**

\* \* \* \* \*

(b) *Definition. Make item*, as used in this subsection, means an item or work effort to be produced or performed by the prime contractor or its affiliates, subsidiaries, or divisions.

\* \* \* \* \*

**15.408 [Amended]**

43. In section 15.408, amend Table 15-2, which follows paragraph (m)(4), by adding a comma after the word “title” in paragraph A. (11) of the General Instructions; and by removing from paragraph C. “15.401” and adding “2.101” in its place.

**15.601 [Amended]**

44. Amend section 15.601 by removing the definition “Unsolicited proposal.”

**15.604 [Amended]**

45. Amend section 15.604 in the introductory text of paragraph (a), second sentence, by removing “shall” and adding “must” in its place; and in paragraph (a)(1) by removing “15.601” and adding “2.101” in its place.

**PART 17—SPECIAL CONTRACTING METHODS****17.103 [Amended]**

46. Amend section 17.103 in the definition “Cancellation” by

redesignating paragraphs (a) and (b) as (1) and (2), respectively.

**17.201 [Reserved]**

47. Remove and reserve section 17.201.

**17.501 [Amended]**

48. In section 17.501, add “, as used in this subpart,” after the word “acquisition”.

**PART 19—SMALL BUSINESS PROGRAMS**

49. Amend section 19.001 as follows:

a. Add an introductory paragraph;  
b. In the definitions “Concern”, “Fair market price”, and “Industry” remove “, as used in this part,”; and

c. Remove the definitions “HUBZone”, “HUBZone small business concern”, “Labor surplus area”, “Labor surplus area concern”, “Small disadvantaged business concern”, and “Women-owned small business concern”. The added text reads as follows:

**19.001 Definitions.**

As used in this part—

\* \* \* \* \*

50. Amend section 19.101 as follows:

a. Add an introductory paragraph;  
b. In the definition of “Affiliates”—

• Remove “As used in this subpart, business” and add “Business” in its place;

• Redesignate paragraphs (a) through (g) as (1) through (7), respectively;

• In the newly designated paragraph (3), redesignate paragraphs (1) through (3) as (i) through (iii), respectively;

• In the newly designated paragraph (6), redesignate paragraphs (1) through (3) as (i) through (iii), respectively;

• In the newly designated paragraph (7), redesignate paragraphs (1) through (5) as (i) through (v), respectively;

• In the newly designated paragraph (7)(i) redesignate paragraphs (i) and (ii) as (A) and (B), respectively;

• In the newly designated paragraph (7)(i)(B), redesignate paragraphs (A) and (B) as (1) and (2), respectively; and

• In the newly designated paragraph (7)(v), remove “(g)(1)(i) and (ii)” and add “(7)(i)(A) and (B)” in its place; and

c. In the definition “Annual receipts”, redesignate paragraphs (1) and (2) as (i) and (ii), respectively; redesignate paragraphs (a) and (b) as (1) and (2), respectively; and in the newly designated paragraph (2) remove

“paragraph (a) above” and add “paragraph (1) of this definition” in its place. The added text reads as follows:

**19.101 Explanation of terms.**

As used in this subpart—

\* \* \* \* \*

51. In section 19.701, add an introductory paragraph; and remove the definition "Small business subcontractor". The added text reads as follows:

**19.701 Definitions.**

As used in this subpart—

\* \* \* \* \*

**19.703 [Amended]**

52. Amend section 19.703 in paragraph (a)(1) by removing "in 2.101 or 19.001" and adding "(see 2.101 and 19.001)" in its place.

53. Amend section 19.902 by revising the section heading and the introductory paragraph to read as follows:

**19.902 Designated SBA district.**

A designated SBA district is the geographic area served by any of the following SBA district offices:

\* \* \* \* \*

**PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS****22.103–1 Definition.**

54. Amend section 22.103–1 by revising the section heading to read as set forth above; in the definition "Normal workweek" by redesignating paragraphs (a) and (b) as (1) and (2), respectively; and by removing the definitions "Overtime", "Overtime premium", and "Shift premium".

55. Amend section 22.401 as follows:

a. Add a new introductory paragraph;

b. Remove ", as used in this subpart," from the definitions "Building" or "work", "Construction, alteration, or repair", "Public building" or "public work", and "Wages".

c. Amend the definition "Laborers or mechanics" as follows—

- Remove ", as used in this subpart,";
- Redesignate paragraphs (a) through (d) as (1) through (4), respectively;
- In the newly designated paragraph (2), redesignate paragraphs (1) and (2) as (i) and (ii), respectively; and redesignate paragraphs (i) and (ii) as (A) and (B), respectively; and
- In the newly designated paragraph (4), remove "paragraph (c)" and add "paragraph (3)" in its place; and

d. Amend the definition "Site of the work" as follows:

- Remove ", as used in this subpart,";
- Redesignate paragraphs (a) through (c) as (1) through (3), respectively;

- In the newly designated paragraph (1), remove "paragraph (b)" and add "paragraph (2)" in its place; and

- In the newly designated paragraph (2), remove "paragraph (c)" and add "paragraph (3)" in its place. The added text reads as follows:

**22.401 Definitions.**

As used in this subpart—

\* \* \* \* \*

56. Amend section 22.1001 by adding an introductory paragraph; revising the definition "Act or Service Contract Act"; and removing ", as used in this subpart," from the definitions "Contractor", "Multiple year contracts", "Notice", "Service contract", and "United States". The added and revised text reads as follows:

**22.1001 Definitions.**

As used in this subpart—

*Act or Service Contract Act* means the Service Contract Act of 1965.

\* \* \* \* \*

**22.1102 [Amended]**

57. In the first sentence of section 22.1102, add ", as used in this subpart," after "Professional employee".

58. Amend section 22.1202, by adding an introductory paragraph; and removing "as used in this subpart," from the definitions "Building service contract", "Public building" and "Service employee". The added text reads as follows:

**22.1202 Definitions.**

As used in this subpart—

\* \* \* \* \*

**PART 23—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE**

59. Amend section 23.503 by adding an introductory paragraph; removing ", as used in this subpart," from the definition "Controlled substance"; and removing the definition "Drug-free workplace". The added text reads as follows:

**23.503 Definitions.**

As used in this subpart—

\* \* \* \* \*

**23.802 [Reserved]**

60. Remove and reserve section 23.802.

**23.904 [Amended]**

61. In section 23.904, add ", as used in this subpart," after "Toxic chemicals".

**PART 24—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION**

62. Amend section 24.101 by adding an introductory paragraph; and by removing ", as used in this subpart," from the definitions "Agency", "Individual", "Maintain", "Operation of a system of records", "Record", and "System of records on individuals". The added text reads as follows:

**24.101 Definitions.**

As used in this subpart—

\* \* \* \* \*

**PART 26—OTHER SOCIOECONOMIC PROGRAMS****26.301 [Reserved]**

63. Remove and reserve section 26.301.

**PART 27—PATENTS, DATA, AND COPY RIGHTS**

64. Amend section 27.301 by adding an introductory paragraph; and by removing ", as used in this subpart," from the definitions "Invention", "Made", "Nonprofit organization", "Practical application", "Small business firm", and "Subject invention". The added text reads as follows:

**27.301 Definitions.**

As used in this subpart—

\* \* \* \* \*

65. Amend section 27.401 by adding an introductory paragraph; removing the definition "Computer software"; and removing ", as used in this subpart," from the definitions "Data", "Form, fit, and function data", "Limited rights", "Limited rights data" (both definitions), "Restricted computer software", "Restricted rights", "Technical data", and "Unlimited rights". The added text reads as follows:

**27.401 Definitions.**

As used in this subpart—

\* \* \* \* \*

**PART 28—BONDS AND INSURANCE**

66. Amend section 28.001 as follows:

- a. Add an introductory paragraph;
- b. Remove ", as used in this part," from the definition "Attorney-in-fact"; and in the parenthetical add "at 2.101" after the word "attorney";
- c. In the definition "Bid guarantee", redesignate paragraphs (a) and (b) as (1) and (2), respectively;
- d. In the definition "Bond", redesignate paragraphs (a) through (f) as (1) through (6), respectively; and
- e. Remove the definitions "Insurance", "Irrevocable letter of credit

(ILC)", "Power of attorney", and "Surety". The added text reads as follows:

**28.001 Definitions.**

As used in this part—

\* \* \* \* \*

**28.308 [Amended]**

67. Amend section 28.308 in the first sentence of paragraph (a) by removing "(see 31.001)".

**PART 29—TAXES**

**29.301 [Reserved]**

68. Remove and reserve section 29.301.

**PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES**

69. Amend section 31.001 as follows:

- a. Add an introductory paragraph;
- b. Revise the definition "Actual costs";
- c. In the definition "Actuarial cost method", remove "that uses" and add "which uses", in its place;
- d. Remove the definition "Business unit";
- e. Revise the definitions "Cost objective" and "Final cost objective";
- f. Remove ", as used in this part," from the definition "Fiscal year";
- g. Remove the definition "General and administrative (G&A) expense";
- h. Revise the definition "Indirect cost pools";
- i. Remove ", as used in this part" from the definitions "Job"; Job class of employees"; and "Labor market";
- j. Remove the definition "Pricing";
- k. Revise the definition "Profit center"; and
- l. Remove the definitions "Projected average loss", "Residual value", "Segment", "Self-insurance", and "Unallowable cost".

The added text reads as follows:

**31.001 Definitions.**

As used in this part—

\* \* \* \* \*

*Actual costs* means (except for subpart 31.6) amounts determined on the basis of costs incurred, as distinguished from forecasted costs. Actual costs include standard costs properly adjusted for applicable variances.

\* \* \* \* \*

*Cost objective* means (except for subpart 31.6) a function, organizational subdivision, contract, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, etc.

\* \* \* \* \*

*Final cost objective* means (except for subparts 31.3 and 31.6) a cost objective that has allocated to it both direct and indirect costs and, in the contractors accumulation system, is one of the final accumulation points.

\* \* \* \* \*

*Indirect cost pools* means (except for subparts 31.3 and 31.6) groupings of incurred costs identified with two or more cost objectives but not identified specifically with any final cost objective.

\* \* \* \* \*

*Profit center* means (except for subparts 31.3 and 31.6) the smallest organizationally independent segment of a company charged by management with profit and loss responsibilities.

\* \* \* \* \*

70. Amend section 31.205–17 as follows:

- a. Add an introductory paragraph;
- b. Remove the paragraph designation from paragraph "(a)";
- c. Redesignate paragraphs (b) through (d) as (1) through (3), respectively; and in newly designated paragraph (1), redesignate paragraphs (1) and (2) as (i) and (ii), respectively; and
- d. Remove ", as used in this subsection," from the definitions "Costs of idle facilities or idle capacity", "Facilities", "Idle capacity", and "Idle facilities";. The added text reads as follows:

**31.205–17 Idle facilities and idle capacity costs.**

As used in this subsection—

\* \* \* \* \*

71. Amend section 31.205–18 in the heading of paragraph (a) by adding "As used in this subsection—" after the word "Definitions."; removing ", as used in this subsection," from the definitions "Applied research", "Bid and proposal (B&P) costs", "Company", "Development", "Independent research and development (IR&D)" and "Systems and other concept formulation studies"; and revising the definition "Basic research" to read as follows:

**31.205–18 Independent research and development and bid and proposal costs.**

(a) \* \* \*

*Basic research* (see 2.101).

\* \* \* \* \*

**31.205–32 [Amended]**

72. Amend section 31.205–32 in the first sentence by removing "are those" and adding "means costs" in its place; and in the second sentence by removing "Such" and adding "These" in its place.

**31.205–33 [Amended]**

73. Amend section 31.205–33 in the first sentence of paragraph (a) by removing "subpart, are" and adding "subsection, means" in its place.

**31.205–39 [Amended]**

74. Amend the second sentence of section 31.205–39 by removing the word "such".

**31.205–47 [Amended]**

75. Amend section 31.205–47 in the heading of paragraph (a) by adding "As used in this subpart—" after "Definitions.", and by removing the definition "Conviction"; and in paragraph (f)(5) by redesignating paragraphs (i) & (ii) as (A) and (B), and (1) and (2) as (i) and (ii), respectively. The added text reads as follows:

**31.205–47 Costs related to legal and other proceedings.**

(a) *Definitions.* As used in this subpart—

\* \* \* \* \*

**PART 32—CONTRACT FINANCING**

76. Amend section 32.001 by adding an introductory paragraph; adding, in alphabetical order, the definitions "Commercial interim payment", "Delivery payment", and "Due date"; and removing ", as used in this part," from the definition "Contract action". The added text reads as follows:

**32.001 Definitions.**

As used in this part—

*Commercial interim payment* means any payment that is not a commercial advance payment or a delivery payment. These payments are contract financing payments for prompt payment purposes (*i.e.*, not subject to the interest penalty provisions of the Prompt Payment Act in accordance with subpart 32.9). A commercial interim payment is given to the contractor after some work has been done, whereas a commercial advance payment is given to the contractor when no work has been done.

\* \* \* \* \*

*Delivery payment* means a payment for accepted supplies or services, including payments for accepted partial deliveries. Commercial financing payments are liquidated by deduction from these payments. Delivery payments are invoice payments for prompt payment purposes.

*Due date* means the date on which payment should be made.

\* \* \* \* \*



**32.006-2 Definition.**

77. Amend section 32.006-2 by revising the section heading

to read as set forth above; by removing the introductory paragraph; by adding “, as used in this section,” after the word “official” in the definition “Remedy coordination official”; and by removing the definition “Substantial evidence”.

**32.113 [Amended]**

78. Amend section 32.113 in paragraph (e) by removing “part 6” and adding “2.101” in its place.

79. Amend section 32.202-2, by revising the first sentence in the definition “Commercial advance payment”; and by revising the definitions “Commercial interim payment” and “Delivery payment” to read as follows:

**32.202-2 Types of payments for commercial item purchases.**

\* \* \* \* \*

*Commercial advance payment*, as used in this subsection, means a payment made before any performance of work under the contract. \* \* \*

*Commercial interim payment* (see 32.001).

*Delivery payment* (see 32.001).

**32.202-3 [Amended]**

80. Amend section 32.202-3 in paragraphs (d) and (e) by removing “32.202-2” and adding “32.001” in its place.

81. Amend section 32.301 by adding an introductory paragraph; and by removing “, as used in this subpart,” from the definitions “Borrower”, “Guaranteed loan” or “V loan”, and “Guaranteeing agency”. The added text reads as follows:

**32.301 Definitions.**

As used in this subpart—  
\* \* \* \* \*

**32.801 [Amended]**

82. Amend section 32.801 by removing the definition “Assignment of claims”.

83. Amend section 32.902 by adding an introductory paragraph; removing “, as used in this subpart,” from the definitions “Contract financing payment”, “Day”, “Designated billing office,” and “Invoice payment”; by removing the definitions “Due date”, “Invoice”, and “Proper invoice”; and by removing “which” from the definition “Specified payment date” the first time it appears and adding “that” in its place. The added text reads as follows:

**32.902 Definitions.**

As used in this subpart—  
\* \* \* \* \*

84. Amend section 32.1102 as follows:  
a. Add an introductory paragraph;  
b. Remove the definition “Electronic Funds Transfer”;

c. Remove from the definition “EFT information” “EFT information” and add “Electronic Funds Transfer information (EFT)” in its place; and  
d. Remove “, as used in this part,” from the definition “Governmentwide commercial purchase card”. The added text reads as follows:

**32.1102 Definitions.**

As used in this subpart—  
\* \* \* \* \*

**PART 33—PROTESTS, DISPUTES, AND APPEALS**

85. Amend section 33.101 as follows:

a. Add an introductory paragraph;  
b. In the definition “Day” redesignate paragraphs (a) and (b) as (1) and (2), respectively; and in the newly designated paragraph (2), redesignate paragraphs (1) and (2) as (i) and (ii), respectively;

c. Remove “, as used in this subpart,” from the definitions “Day”, “Filed”, and “Interested party for the purpose of filing a protest”; and

d. Remove “, as used in this subpart,” from the definition “Protest” and redesignate paragraphs (a) through (d), as (1) through (4), respectively. The added text reads as follows:

**33.101 Definitions.**

As used in this subpart—  
\* \* \* \* \*

86. Amend section 33.201 as follows:

a. Add an introductory paragraph;  
b. Revise the first sentence of the definition “Accrual of a claim”;

c. Remove “as used in this subpart,” from the definitions “Claim” and “Defective certification”;

d. Remove “, as used in this part,” from the definition “Misrepresentation of fact”;

e. In the introductory paragraph of the definition “Issue in controversy” remove “which” and add “that” in its place; and

f. Remove the definition “Neutral person”.

The added and revised text reads as follows:

**33.201 Definitions.**

As used in this subpart—

*Accrual of a claim* means the date when all events, that fix the alleged liability of either the Government or the contractor and permit assertion of the

claim, were known or should have been known. \* \* \*  
\* \* \* \* \*

**PART 34—MAJOR SYSTEM ACQUISITION**

**34.001 [Amended]**

87. Amend section 34.001 in the definition “Effective competition” by removing “which” and adding “that” (twice) in its place.

**34.101 [Amended]**

88. Amend section 34.101 in the definition “Item of supply” by removing “for the purpose of” and adding “as used in” in its place.

**PART 35—RESEARCH AND DEVELOPMENT CONTRACTING**

**35.001 [Amended]**

89. Amend section 35.001 by removing the definitions “Basic research”, “Broad agency announcement”, “Cost sharing”, and “Federally Funded Research and Development Centers (FFRDC’s)”.

90. Amend section 35.017 in paragraph (b) by adding an introductory paragraph; by removing “, as used in this section,” from the definitions “Nonsponsor” and “Primary sponsor”; and by removing the definition “Special competency”. The added text reads as follows:

**35.017 Federally Funded Research and Development Centers.**

\* \* \* \* \*

(b) *Definitions.* As used in this section—

\* \* \* \* \*

**PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**

91. Amend section 36.102 as follows:

a. Add an introductory paragraph;

b. Remove “, as used in this part” from the definitions “Contract”, “Design”, “Design-bid-build”, “Design-build”, “Firm”, “Plans and specifications”, “Record drawings”, and “Two-phase design-build selection procedures”; and

c. Remove the definitions “Architect-engineer services”, “As-built drawings”, and “Shop drawings”.

**36.102 Definitions.**

As used in this part—  
\* \* \* \* \*

**36.601-3 [Amended]**

92. Amend section 36.601-3 in paragraph (d) by removing “36.102” and adding “2.101” in its place.

**PART 37—SERVICE CONTRACTING**

93. Amend section 37.101 by adding an introductory paragraph; by removing the definitions “Performance-based contracting” and “Personal services contract”; and in the definition “Service contract” by redesignating paragraphs (a) through (i) as (1) through (9), respectively. The added text reads as follows:

**37.101 Definitions.**

As used in this part—

\* \* \* \* \*

**37.103 [Amended]**

94. Amend section 37.103 in paragraph (a)(1) by removing “in 37.101” and adding “at 2.101 and 37.101” in its place.

**37.104 [Amended]**

95. Amend section 37.104 in the first sentence of paragraph (a) by removing “As indicated in 37.101, a” and adding “A” in its place.

**37.201 [Amended]**

96. Amend section 37.201 by removing “, as used in this subpart,” from the definition “Covered personnel”; and by redesignating paragraphs (a)(1) through (a)(6) as (a)(i) through (a)(vi), paragraphs (a) through (c) as (1) through (3), respectively.

**37.502 [Amended]**

97. Amend section 37.502 in paragraph (a)(3) by removing “36.102” and adding “2.101” in its place.

**PART 39—ACQUISITION OF INFORMATION TECHNOLOGY**

98. Amend section 39.002 as follows:

a. Add an introductory paragraph;

b. Remove “, as used in this part,” from the definitions “Modular contracting” and “National security system”;

c. In the definition “National security system”, redesignate paragraphs (a) through (e) as (1) through (5), respectively; and

d. In the definition “Year 2000 compliant”, remove “as used in this part, means,” and add “means” after the word “technology,”.

The added text reads as follows:

**39.002 Definitions.**

As used in this part—

\* \* \* \* \*

**PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES****42.001 [Reserved]**

99. Remove and reserve section 42.001.

**42.302 [Amended]**

100. Amend section 42.302 in the last sentence of the introductory text of paragraph (a) by removing “(see 42.001)” and adding “(see 2.101)” in its place.

**42.503–2 [Amended]**

101. Amend section 42.503–2 by removing “(see 43.101)” from the fourth sentence.

**42.701 Definition.**

102. Amend section 42.701 as follows:  
a. Revise the section heading as set forth above;

b. In the introductory paragraph of the definition “Billing rate” remove “means” and add “as used in this subpart means”, and redesignate paragraphs (a) and (b) as (1) and (2), respectively; and

c. Remove the definitions “Business unit”, “Final indirect cost rate”, “Forward pricing rate agreement”, “Indirect cost”, and “Indirect cost rate”.

**42.1201 [Reserved]**

103. Remove and reserve section 42.1201.

**PART 43—CONTRACT MODIFICATIONS**

104. Amend section 43.101 by adding an introductory paragraph; by removing the definitions “Change order”, “Contract modification”, and “Supplemental agreement”, and the introductory text of the definition “Effective date” including the heading *Effective date*.

The added text reads as follows:

**43.101 Definitions.**

As used in this part—

\* \* \* \* \*

105. Amend section 43.103 by revising paragraph (b)(3) to read as follows:

**43.103 Types of contract modifications.**

\* \* \* \* \*

(b) \* \* \*

(3) Make changes authorized by clauses other than a changes clause (e.g., Property clause, Options clause, or Suspension of Work clause); and

\* \* \* \* \*

**PART 44—SUBCONTRACTING POLICIES AND PROCEDURES**

106. Amend section 44.101 by adding an introductory paragraph; by removing the definition “Consent to subcontract”; and by removing “, as used in this part,” from the definitions “Contractor”, “Subcontract”, and “Subcontractor”. The added text reads as follows:

**44.101 Definitions.**

As used in this part—

\* \* \* \* \*

**PART 46—QUALITY ASSURANCE**

107. Amend section 46.101 by adding an introductory paragraph; by removing “, as used in this part,” from the definitions “Acceptance” and “Conditional acceptance”; and by removing the definitions “Commercial item”, “Inspection”, and “Latent defect”. The added text reads as follows:

**46.101 Definitions.**

As used in this part—

\* \* \* \* \*

**46.701 [Reserved]**

108. Remove and reserve section 46.701.

109. Amend section 46.710 by adding a sentence to the end of paragraphs (a)(1) and (b)(1) to read as follows:

**46.710 Contract clauses.**

\* \* \* \* \*

(a)(1) \* \* \* If the contractor’s design rather than the Government’s design will be used, insert the word “design” before “material” in paragraph (b)(1)(i).

\* \* \* \* \*

(b)(1) \* \* \* If the contractor’s design rather than the Government’s design will be used, insert the word “design” before “material” in paragraph (b)(1).

\* \* \* \* \*

**PART 47—TRANSPORTATION**

110. Amend section 47.001 by adding an introductory paragraph; by removing “as used in this part” from the definition “Common carrier”, and removing the definitions “F.o.b.”, “F.o.b. origin”, “F.o.b. destination”, “Freight”, and “Shipment”. The added text reads as follows:

**47.001 Definitions.**

As used in this part—

\* \* \* \* \*

111. Amend section 47.201 by adding an introductory paragraph; and removing “, as used in this subpart” from the definitions “General freight”, “Household goods”, and “Office

furniture". The added text reads as follows:

#### 47.201 Definitions.

As used in this subpart—

\* \* \* \* \*

112. Amend section 47.401 by adding an introductory paragraph; and by removing “, as used in this subpart,” from the definition “United States”. The added text reads as follows:

#### 47.401 Definitions.

As used in this subpart—

\* \* \* \* \*

113. Amend section 47.501 as follows:  
 a. Add an introductory paragraph;  
 b. Remove “, as used in this subpart” from the definitions “Government vessel”, “Privately owned U.S.-flag commercial vessel”, and “U.S.-flag vessel”;  
 c. In the definition “Privately owned U.S.-flag commercial vessel” redesignate paragraphs (a) through (d) as (1) through (4).

The added text reads as follows:

#### 47.501 Definitions.

As used in this subpart—

\* \* \* \* \*

### PART 48—VALUE ENGINEERING

114. Amend section 48.001 as follows:  
 a. Add an introductory paragraph;  
 b. Remove “, as used in this part,” from the definitions “Acquisition savings”, “Collateral costs”, “Collateral savings”, “Contracting office”, “Contractor’s development and implementation costs”, and “Value engineering proposal”;

c. In the definition “Acquisition savings” redesignate paragraphs (a) through (c) as (1) through (3), respectively;

d. Revise the newly designated paragraph (1);

e. In the newly designated paragraphs (2) and (3), remove “which” and add “that” in their places;

f. In the definition “Future unit cost reduction”, “Instant contract”, “Sharing base”, “Sharing period”, and “Unit”, remove “, as used in this part.”;

g. In the definition “Future unit cost reduction”, redesignate paragraphs (a) and (b) as (1) and (2), respectively; and in the newly designated paragraph (2) remove “which” and add “that” in its place;

h. Revise the definition “Government costs”; and

i. Remove the definitions “Value engineering” and “Value engineering change proposal (VECP)”.

The added and revised text reads as follows:

#### 48.001 Definitions.

As used in this part—

\* \* \* \* \*

*Acquisition savings* \* \* \*

(1) Instant contract savings, that are the net cost reductions on the contract under which the VECP is submitted and accepted, and that are equal to the instant unit cost reduction multiplied by the number of instant contract units affected by the VECP, less the contractor’s allowable development and implementation costs;

\* \* \* \* \*

*Government costs* means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistics support. The term does not include the normal administrative costs of processing the VECP or any increase in instant contract cost or price resulting from negative instant contract savings, except that for use in 52.248–3, see the definition at 52.248–3(b).

\* \* \* \* \*

### PART 49—TERMINATION OF CONTRACTS

115. Amend section 49.001 as follows:

a. Add an introductory paragraph;

b. Remove “, as used in this part,” from the definitions “Claim”, “Continued portion of the contract”, “Other work”, and “Settlement proposal”;

c. Remove the definitions “Effective date of termination” and “Termination contracting officer”;

d. Revise the definition “Settlement agreement”.

The added and revised text reads as follows:

#### 49.001 Definitions.

As used in this part—

\* \* \* \* \*

*Settlement agreement* means a written agreement in the form of a contract modification settling all or a severable portion of a settlement proposal.

\* \* \* \* \*

### PART 50—EXTRAORDINARY CONTRACTUAL ACTIONS

116. Amend section 50.001 by adding an introductory paragraph; and removing “, as used in this part,” from the definitions “Approving authority” and “Secretarial level”. The added text reads as follows:

#### 50.001 Definitions.

As used in this part—

\* \* \* \* \*

### PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

#### 52.101 [Amended]

117. Amend section 52.101 in the heading of paragraph (a) by removing “Definitions” and adding “Definition” in its place; and by removing the definitions “Alternate”, “Contract clause” or “clause”, “Solicitation provision” or “provision”, and “Substantially as follows” or “substantially the same as”.

118. Amend section 52.202–1 as follows:

a. Revise the introductory paragraph, the date of the clause, and paragraphs (a) and (d) of the clause;

b. Remove paragraph (f) and redesignate paragraph (e) as (f), and add a new paragraph (e);

c. In the newly designated paragraph (f)(2), remove “(e)(1)” and add “(f)(1)” in its place; and in the newly designated (f)(3) remove “(e)(1) or (e)(2)” and add “(f)(1) or (f)(2)” in its place; and

d. In Alternate I of the clause, remove “(Apr 1984)” and add “(Mar 2001)” in its place; and remove “paragraph (c)” and add “paragraph (g)” in its place. The revised and new text reads as follows:

#### 52.202–1 Definitions.

As prescribed in section 2.201, insert the following clause:

#### DEFINITIONS (MAR 2001)

(a) *Agency head* or *head of the agency* means the Secretary (Attorney General, Administrator, Governor, Chairperson, or other chief official, as appropriate) of the agency, unless otherwise indicated, including any deputy or assistant chief official of the executive agency.

\* \* \* \* \*

(d) *Component* means any item supplied to the Government as part of an end item or of another component, except that for use in 52.225–9, and 52.225–11 see the definitions in 52.225–9(a) and 52.225–11(a).

(e) *Contracting Officer* means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

\* \* \* \* \*

(End of clause)

#### 52.212–3 [Amended]

119. Amend section 52.212–3 in the heading of the clause by removing “(OCT 2000)” and adding “(MAR 2001)” in its place; and in paragraph (a) in the definition “Women-owned small business concern” by removing from paragraph (1) “Which” and “women or”

and adding "That" and "women; or" in their places, respectively.

120. Amend section 52.214–21 by revising the date of the provision and the first sentence in paragraph (a).

**52.214–21 Descriptive Literature.**

\* \* \* \* \*

DESCRIPTIVE LITERATURE (MAR 2001)

(a) *Descriptive Literature*, as used in this provision, means information (e.g., cuts, illustrations, drawings, and brochures) that is submitted as part of a bid. \* \* \*

\* \* \* \* \*

121. Amend section 52.215–1 by revising the date of the provision; and in paragraph (a) of the provision by revising the definition "In writing" or "written" to read as follows:

**52.215–1 Instructions to Offerors—Competitive Acquisition.**

\* \* \* \* \*

INSTRUCTIONS TO OFFERORS—  
COMPETITIVE ACQUISITION (MAR 2001)

(a) \* \* \*

*In writing, writing, or written* means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

\* \* \* \* \*

**52.219–1 [Amended]**

122. Amend section 52.219–1 in the provision heading by removing "(OCT 2000)" and adding "(MAR 2001)" in its place; and in paragraph (c) under the definition "Women-owned small business concern", by removing from paragraph (1) "Which" and "women or" and adding "That" and "women; or" in their places, respectively.

123. Amend section 52.219–23 by revising the date of the clause; and in paragraph (a) of the clause by revising the definition "Minority institution" to read as follows:

**52.219–23 Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.**

\* \* \* \* \*

NOTICE OF PRICE EVALUATION  
ADJUSTMENT FOR SMALL  
DISADVANTAGED BUSINESS CONCERNS  
(MAR 2001)

(a) \* \* \*

*Minority institution* means an institution of higher education meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1067k, including a Hispanic-serving institution of higher education, as defined in Section 316(b)(1) of the Act (20 U.S.C. 1101a)).

\* \* \* \* \*

**52.223–6 [Amended]**

124.–125. Amend section 52.223–6 in the clause heading by removing "(JAN 1997)" and adding "(MAR 2001)" in its place; and in the definition "drug-free workplace" by removing "at which" and adding "where" in its place.

126. Amend section 52.223–11 by revising the date of the clause and paragraph (a) of the clause to read as follows:

**52.223–11 Ozone-Depleting Substances.**

\* \* \* \* \*

OZONE-DEPLETING SUBSTANCES (MAR 2001)

(a) *Definition. Ozone-depleting substance*, as used in this clause, means any substance the Environmental Protection Agency designates in 40 CFR part 82 as—

- (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or
- (2) Class II, including, but not limited to, hydrochlorofluorocarbons.

\* \* \* \* \*

127. Revise section 52.226–2 to read as follows:

**52.226–2 Historically Black College or University and Minority Institution Representation.**

As prescribed in 26.304, insert the following provision:

HISTORICALLY BLACK COLLEGE OR  
UNIVERSITY AND MINORITY  
INSTITUTION REPRESENTATION (MAR 2001)

(a) *Definitions.* As used in this provision—  
*Historically black college or university* means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. For the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, the term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

*Minority institution* means an institution of higher education meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1067k, including a Hispanic-serving institution of higher education, as defined in Section 316(b)(1) of the Act (20 U.S.C. 1101a)).

(b) *Representation.* The offeror represents that it—

[ ] is [ ] is not a historically black college or university;

[ ] is [ ] is not a minority institution.

(End of provision)

**52.232–25, 52.232–26, and 52.232–27 [Amended]**

128. Amend sections 52.232–25, 52.232–26, and 52.232–27 in the clause headings by removing "(JUN 1997)" and adding "(MAR 2001)" in its place; and in the third sentence of the undesignated introductory paragraph by

removing "section 32.902" and adding "sections 2.101 and 32.902" in its place.

129. Amend section 52.242–3 in the clause heading by removing "(OCT 1995)" and adding "(MAR 2001)" in its place; and by revising paragraph (c) to read as follows:

**52.242–3 Penalties for Unallowable Costs.**

\* \* \* \* \*

(c) The Contractor shall not include in any proposal any cost that is unallowable, as defined in Subpart 2.1 of the FAR, or an executive agency supplement to the FAR.

\* \* \* \* \*

130. Amend section 52.246–3 as follows:

a. In the clause heading, remove "(APR 1984)" and add "(MAR 2001)" in its place;

b. In the heading of paragraph (a), add "As used in this clause—" after the word "Definitions";

c. In the definition "Contractor's managerial personnel," remove "as used in this clause," and in paragraph (2) remove "at which" and add "where" in its place; and

d. In the definition "Supplies," remove "as used in this clause,".

131. Amend section 52.246–6 as follows:

a. In the clause heading, remove "(Jan 1986)" and add "(Mar 2001)" in its place;

b. In the heading of paragraph (a), add "As used in this clause—" after the word "Definitions.";

c. In the definition "Contractor's managerial personnel," remove "as used in this clause," and in paragraph (2) remove "at which" and add "where" in its place; and

d. In the definition "Materials," remove "as used in this clause,".

132. Amend section 52.246–8 as follows:

a. In the clause heading, remove "(Apr 1984)" and add "(Mar 2001)" in its place;

b. In the heading of paragraph (a), add "As used in this clause—" after the word "Definitions.";

c. In the definition "Contractor's managerial personnel," remove "as used in this clause," and in paragraph (2) remove "at which" and add "where" in its place; and

d. In the definition "Work," remove "as used in this clause,".

133. Amend section 52.246–17 by revising the introductory paragraph, the date of the clause, and paragraph (a) of the clause to read as follows:

**52.246-17 Warranty of Supplies of a Noncomplex Nature.**

As prescribed in 46.710(a)(1), insert a clause substantially as follows:

## WARRANTY OF SUPPLIES OF A NONCOMPLEX NATURE (MAR 2001)

(a) *Definitions.* As used in this clause—  
*Acceptance* means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing supplies, or approves specific services as partial or complete performance of the contract.

*Supplies* means the end items furnished by the Contractor and related services required under this contract. The word does not include “data.”

\* \* \* \* \*

134. Amend section 52.246-18 by revising the introductory paragraph, the date of the clause, and paragraph (a) of the clause to read as follows:

**52.246-18 Warranty of Supplies of a Complex Nature.**

As prescribed in 46.710(b)(1), insert a clause substantially as follows:

## WARRANTY OF SUPPLIES OF A COMPLEX NATURE (MAR 2001)

(a) *Definitions.* As used in this clause—  
*Acceptance* means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services rendered, as partial or complete performance of the contract.

*Supplies* means the end items furnished by the Contractor and related services required under this contract. The word does not include “data.”

\* \* \* \* \*

135. Amend section 52.246-19 by revising the introductory paragraph, the date of the clause, and paragraph (a) of the clause to read as follows:

**52.246-19 Warranty of Systems and Equipment under Performance Specifications or Design Criteria.**

As prescribed in 46.710(c)(1), the contracting officer may insert a clause substantially as follows:

## WARRANTY OF SYSTEMS AND EQUIPMENT UNDER PERFORMANCE SPECIFICATIONS OR DESIGN CRITERIA (MAR 2001)

(a) *Definitions.* As used in this clause—  
*Acceptance* means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services rendered, as partial or complete performance of the contract.

*Defect* means any condition or characteristic in any supplies or services furnished by the Contractor under the contract that is not in compliance with the requirements of the contract.

*Supplies* means the end items furnished by the Contractor and related services required

under this contract. Except when this contract includes the clause entitled Warranty of Data, supplies also mean “data.”

\* \* \* \* \*

136. Amend section 52.246-20 by revising the introductory paragraph and the date of the clause; and in paragraph (a) of the clause by removing the paragraph heading “Definitions” and adding “Definition” in its place; and by removing the definition “Correction”. The revised text reads as follows:

**52.246-20 Warranty of Services.**

As prescribed in 46.710(d), insert a clause substantially as follows:

## WARRANTY OF SERVICES (MAR 2001)

\* \* \* \* \*

[FR Doc. 01-11 Filed 1-9-01; 8:45 am]

BILLING CODE 6820-EP-P

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Parts 30 and 52

[FAC 97-22; FAR Case 2000-301; Item II]  
RIN 9000-A179**Federal Acquisition Regulation; Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage**

**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 802 of the National Defense Authorization Act for Fiscal Year 2000 and the Cost Accounting Standards (CAS) Board’s final rule, Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage. The FAR rule revises CAS applicability requirements, dollar thresholds, and waiver requirements.

**DATES:** *Effective Date:* January 10, 2001.  
**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 Nelson, Procurement Analyst, at

(202) 501-1900. Please cite FAC 97-22, FAR case 2000-301.

**SUPPLEMENTARY INFORMATION:****A. Background**

Section 802 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106-65)—

- Revised, at 41 U.S.C. 422(f)(2)(B), the categories of contracts and subcontracts that are exempt from all CAS requirements;
- Required the Administrator for Federal Procurement Policy to revise the rules and procedures issued under 41 U.S.C. 422(f) to increase the dollar threshold for full CAS coverage from \$25 million to \$50 million; and
- Revised 41 U.S.C. 422(f) to permit the head of an executive agency to waive the applicability of CAS under certain conditions.

In response to Public Law 106-65, the CAS Board in the Office of Federal Procurement Policy published an interim rule in the **Federal Register** on February 7, 2000 (65 FR 5990). The CAS Board rule, Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage, amended the regulations at 48 CFR part 9903 to implement Section 802. After analysis of public comments, the CAS Board converted its interim rule to a final rule, with no change, and published the final rule in the **Federal Register** on June 9, 2000 (65 FR 36768).

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 65 FR 36028, June 6, 2000. One respondent submitted public comments on the interim rule. The Councils considered all comments before agreeing to convert the interim rule to a final rule without change.

This FAR rule—

- Amends the provision at FAR 52.230-1, Cost Accounting Standards Notices and Certification, to remove the requirement that a contractor or subcontractor must have received at least one CAS-covered contract exceeding \$1 million (“trigger contract”) to be subject to “full CAS coverage,” since the CAS Board removed this “trigger contract” amount from its corresponding solicitation provision, Cost Accounting Standards Notices and Certification, at 48 CFR 9903.201-3. The CAS Board added a new “trigger contract” dollar amount of \$7.5 million at paragraph (b)(7) of 48 CFR 9903.201-1, CAS applicability, which is already referenced at FAR 30.201-1;
- Revises FAR 30.201-4(b)(1), Disclosure and consistency of cost accounting practices, and amends the provision at FAR 52.230-1 to reflect changes made by the CAS Board to

increase the dollar threshold for full CAS coverage from \$25 million to \$50 million; and

- Revises the CAS waiver procedures and conditions at FAR 30.201–5, as required by Section 802 of Pub. L. 106–65.

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 contracts and subcontracts with small businesses are exempt from all CAS requirements in accordance with 48 CFR 9903.201–1(b)(3).

### 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 30 and 52

Government procurement.

Dated: December 22, 2000.

**Al Matera,**

*Acting Director, Federal Acquisition Policy Division*

### Interim Rule Adopted as Final Without Change

Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR parts 30 and 52, which was published in the **Federal Register** at 65 FR 36028, June 6, 2000, as a final rule without change.

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).  
[FR Doc. 01–12 Filed 1–9–01; 8:45 am]

**BILLING CODE 6820–EP–P**

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 32 and 52

[FAC 97–22; FAR Case 1999–016; Item III]

RIN 9000–AI74

#### Federal Acquisition Regulation; Advance Payments for Non-Commercial Items

**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 permit federally insured credit unions to participate in the maintenance of special accounts for advance payments.

**DATE:** Effective Date: March 12, 2001.

**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. Jeremy Olson, at (202) 501–4755. Please cite FAC 97–22, FAR case 1999–016.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Prior to publication of this final FAR rule, FAR Subpart 32.4, Advance Payments for Non-Commercial Items, required, unless exempted by FAR 32.409–3(e) or (f), that contractors deposit advance payments in special accounts separate from their general or other funds. FAR 32.411 and other FAR text excluded credit unions from participating in the maintenance of these special accounts by requiring that contractors establish these special accounts only at banks that are members of the Federal Reserve System (FRS) or insured by the Federal Deposit Insurance Corporation (FDIC). However, many credit unions are federally insured through the National Credit Union Administration (NCUA). Therefore, these credit unions also are able to provide the Government a measure of security for Federal funds advanced to contractors.

This final rule amends FAR Subpart 32.4 and FAR 52.232–12 to change

certain terminology (*e.g.*, change the word “bank” to “financial institution”) to provide contractors an additional option of depositing advance payments in special accounts maintained by credit unions that are federally insured by NCUA. This revision will foster competition among financial institutions that are in the business of providing special accounts for advance payment funds, without increasing the risk to the Government.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 25614, May 2, 2000. Two respondents submitted public comments on the proposed rule. The Councils considered all comments before agreeing to convert the proposed rule to a final rule without change.

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 only applies to the very limited number of contractors that receive advance payments and deposit these payments in special accounts.

### 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 32 and 52

Government procurement.

Dated: December 22, 2000.

**Al Matera,**

*Acting Director, Federal Acquisition Policy Division*

Therefore, DoD, GSA, and NASA amend 48 CFR parts 32 and 52 as set forth below:

1. The authority citation for 48 CFR parts 32 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 32—CONTRACT FINANCING**

2. Revise paragraph (a)(1) of section 32.407 to read as follows:

**32.407 Interest.**

(a) \* \* \*

(1) The published prime rate of the financial institution (depository) in which the special account (see 32.409–3) is established; or

\* \* \* \* \*

**32.408 [Amended]**

3. Amend paragraph (b)(4) of section 32.408 by removing “bank” both times it appears and adding “financial institution” in its place.

4. Amend section 32.409–3 as follows:  
a. In paragraph (a) remove “bank” and add “special” in its place;

b. In paragraphs (b)(2), (c)(2), and (e) remove “bank”.

c. Revise paragraph (f)(1); and  
d. In paragraph (g) remove “bank” both times it appears.

The revised text reads as follows:

**32.409–3 Security, supervision, and covenants.**

\* \* \* \* \*

(f) \* \* \*

(1) The use under a cost-reimbursement contract of Federal funds deposited in the contractor’s account at a financial institution (without the contractor acquiring title to the funds); and

\* \* \* \* \*

5. In section 32.410, revise the second sentence in paragraph (a)(4) of the “Findings, Determination, and Authorization for Advance Payments Findings” to read as follows:

**32.410 Findings, determination, and authorization.**

\* \* \* \* \*

(a) \* \* \*

(4) \* \* \* The clause requires that all payments will be deposited in a special account at the Contractor’s financial institution and that the Government will have a paramount lien on (i) the credit balance in the special account, (ii) any supplies contracted for, and (iii) any material or other property acquired for performance of the contract. \* \* \*

\* \* \* \* \*

6. Revise 32.411 to read as follows:

**32.411 Agreement for special account at a financial institution.**

The contracting officer must use substantially the following form of agreement for a special account for advance payments:

Agreement for Special Account

This agreement is entered into this \_\_\_\_ day of \_\_\_\_, 20\_\_\_\_, between the United

States of America (the Government), represented by the Contracting Officer executing this agreement, \_\_\_\_\_ [Insert the name of the Contractor], a \_\_\_\_\_ [Insert the name of the State of incorporation] corporation (the Contractor), and \_\_\_\_\_, a financial institution operating under the laws of \_\_\_\_\_, located at \_\_\_\_\_ (the financial institution).

Recitals

(a) Under date of \_\_\_\_\_, 20\_\_\_\_, the Government and the Contractor entered into Contract No. \_\_\_\_, or a related supplemental agreement, providing for advance payments to the Contractor. A copy of the advance payment terms was furnished to the financial institution.

(b) The contract or supplemental agreement requires that amounts advanced to the Contractor be deposited separate from the Contractor’s general or other funds, in a Special Account at a member bank of the Federal Reserve System, any “insured” bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (12 U.S.C. 1811), or a credit union insured by the National Credit Union Administration. The parties agree to deposit the amounts with the financial institution, which meets the requirement.

(c) This Special Account is designated “\_\_\_\_\_ [Insert the Contractor’s name], \_\_\_\_\_ [Insert the name of the Government agency] Special Account.”

Covenants

In consideration of the foregoing, and for other good and valuable considerations, the parties agree to the following conditions:

(a) The Government shall have a lien on the credit balance in the account to secure the repayment of all advance payments made to the Contractor. The lien is paramount to any lien or claim of the financial institution regarding the account.

(b) The financial institution is bound by the terms of the contract relating to the deposit and withdrawal of funds in the Special Account, but is not responsible for the application of funds withdrawn from the account. The financial institution shall act on written directions from the Contracting Officer, the administering office, or a duly authorized representative of either. The financial institution is not liable to any party to this agreement for any action that complies with the written directions. Any written directions received by the financial institution through the Contracting Officer on \_\_\_\_\_ [Insert the name of the agency] stationery and purporting to be signed by, or by the direction of \_\_\_\_\_ or duly authorized representative, shall be, as far as the rights, duties, and liabilities of the financial institution are concerned, considered as being properly issued and filed with the financial institution by the \_\_\_\_\_ [Insert the name of the agency].

(c) The Government, or its authorized representatives, shall have access to the books and records maintained by the financial institution regarding the Special Account at all reasonable times and for all reasonable purposes, including (but not limited to), the inspection or copying of the books and records and any and all pertinent

memoranda, checks, correspondence, or documents. The financial institution shall preserve the books and records for a period of 6 years after the closing of this Special Account.

(d) In the event of the service of any writ of attachment, levy of execution, or commencement of garnishment proceedings regarding the Special Account, the financial institution will promptly notify \_\_\_\_\_ [Insert the name of the administering office].

(e) While this Special Account exists, the financial institution shall inform the Government each month of the financial institution’s published prime interest rate and changes to the rate during the month. The financial institution shall give this information to the Contracting Officer on the last business day of the month. [This covenant will not be included in the Special Account Agreements covering interest-free advance payments.]

Each of the parties to this agreement has executed the agreement on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_

[Signatures and Official Titles]

**32.412 [Amended]**

7. Amend paragraph (f) of section 32.412 by removing “bank”.

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

8. Amend section 52.232–12 as follows:

- a. Revise the date of the clause;
- b. Revise paragraph (b);
- c. Remove “bank” from paragraphs (c) and (d);
- d. Revise paragraph (f)(3);
- e. Revise paragraph (g);
- f. Remove “bank” from paragraphs (h), (k)(1) introductory text, (k)(1)(iv), (k)(2)(i), and (m)(1) each time it appears;
- g. Revise paragraph (p)(11);
- h. Amend Alternate II by revising the date to read “(Mar 2001)”; and removing “bank” from paragraph (c); and
- i. Amend Alternate V by revising the date to read “(Mar 2001)”; removing from the introductory paragraph “bank”; and revising the heading of the clause and paragraph (m)(11) of Alternate V to read as follows:

\_\_\_\_\_

**52.232–12 Advance Payments.**

\* \* \* \* \*

Advance Payments (Mar 2001)

\* \* \* \* \*

(b) *Special account.* Until (1) the Contractor has liquidated all advance payments made under the contract and related interest charges and (2) the administering office has approved in writing the release of any funds due and payable to the Contractor, all advance payments and other payments under this contract shall be made by check payable to the Contractor marked for deposit only in the Contractor’s

special account with the \_\_\_\_\_ [insert the name of the financial institution]. None of the funds in the special account shall be mingled with other funds of the Contractor. Withdrawals from the special account may be made only by check of the Contractor countersigned by the Contracting Officer or a Government countersigning agent designated in writing by the Contracting Officer.

\* \* \* \* \*

(f) \* \* \*

(3) If interest is required under the contract, the Contracting Officer shall determine a daily interest rate based on the higher of (i) the published prime rate of the financial institution (depository) in which the special account is established or (ii) the rate established by the Secretary of the Treasury under Pub. L. 92-41 (50 U.S.C. App. 1215(b)(2)). The Contracting Officer shall revise the daily interest rate during the contract period in keeping with any changes in the cited interest rates.

\* \* \* \* \*

(g) *Financial institution agreement.* Before an advance payment is made under this contract, the Contractor shall transmit to the administering office, in the form prescribed by the administering office, an agreement in triplicate from the financial institution in which the special account is established, clearly setting forth the special character of the account and the responsibilities of the financial institution under the account. The Contractor shall select a financial institution that is a member bank of the Federal Reserve System, an "insured" bank within the meaning of the Federal Deposit Insurance Corporation Act (12 U.S.C. 1811), or a credit union insured by the National Credit Union Administration.

\* \* \* \* \*

(p) \* \* \*

(11) Deposit any of its funds except in a bank or trust company insured by the Federal Deposit Insurance Corporation or a credit union insured by the National Credit Union Administration;

\* \* \* \* \*

Advance Payments Without Special Account (Mar 2001)

\* \* \* \* \*

(m) \* \* \*

(11) Deposit any of its funds except in a bank or trust company insured by the Federal Deposit Insurance Corporation or a credit union insured by the National Credit Union Administration;

\* \* \* \* \*

[FR Doc. 01-13 Filed 1-9-01; 8:45 am]

BILLING CODE 6820-EP-P

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 52

[FAC 97-22; FAR Case 1999-021; Item IV]

RIN 9000-AJ05

#### Federal Acquisition Regulation; Part 12 and Assignment of Claims

**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 add, in the contract clause addressing terms and conditions for commercial items, the prohibition for a contractor to assign its rights to receive payment in accordance with the Assignment of Claims Act (31 U.S.C. 3727) when a third party makes payment under the contract (e.g., use of the Governmentwide commercial purchase card). This prohibition is currently in the contract clause addressing terms and conditions required to implement statutes or Executive orders for commercial items.

**DATES:** *Effective Date:* March 12, 2001.

**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 97-22, FAR case 1999-021.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Paragraph (e) of the clause at FAR 52.232-36, Payment by Third Party, states that a contractor may not assign its rights to receive payment under the assignment of claims terms of the contract if payment is made by a third party (e.g., use of the Governmentwide commercial purchase card). This clause is included in paragraph (b)(25) of the clause at FAR 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

Paragraph (b) of the clause at FAR 52.212-4, Contract Terms and Conditions—Commercial Items, states

that a contractor may assign its rights to receive payments due as a result of performance of the contract, but paragraph (b) does not include the prohibition against the assignment of claims if payment is made by a third party (e.g., use of the Governmentwide commercial purchase card). FAR 12.302(b) further states that the contracting officer shall not tailor FAR 52.212-4(b).

The purpose of this rule is to correct the inconsistency between FAR 52.212-4(b) and FAR 52.212-5(b)(25). The rule revises FAR 52.212-4(b) to add the prohibition against the assignment of claims when payment is made by a third party.

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 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 part 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.* (FAC 97-22, FAR case 1999-021), 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.*

##### List of Subjects in 48 CFR part 52

Government procurement.

Dated: December 22, 2000.

Al Matera,

Acting Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 52 as set forth below:

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

1. The authority citation for 48 CFR part 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).

2. Amend section 52.212-4 by revising the date of the clause and paragraph (b) to read as follows:



**52.212-4 Contract Terms and Conditions—Commercial Items.**

\* \* \* \* \*

Contract Terms and Conditions—Commercial Items (Mar 2001)

\* \* \* \* \*

(b) *Assignment.* The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes payment (e.g., use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

\* \* \* \* \*

[FR Doc. 01-14 Filed 1-9-01; 8:45 am]

BILLING CODE 6820-EP-P

**DEPARTMENT OF DEFENSE****GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Part 52**

[FAC 97-22; FAR Case 1996-023; Item V]

RIN 9000-AJ06

**Federal Acquisition Regulation; Clause Flowdown—Commercial Items**

**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 requirements for the inclusion of FAR clauses in subcontracts for commercial items awarded under contracts for other than commercial items.

**DATES:** *Effective Date:* March 12, 2001.

**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 97-22, FAR case 1996-023.

**SUPPLEMENTARY INFORMATION:****A. Background**

This final rule amends the clause at FAR 52.244-6, Subcontracts for Commercial Items, to revise the list of

clauses the contractor must flow down to subcontractors and to clarify that contractors may flow down a minimal number of other clauses.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 62 FR 49903, September 23, 1997. Four sources submitted comments in response to the proposed rule. The Councils considered all comments in the development of the final rule.

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 merely clarifies existing requirements regarding the inclusion of clauses in subcontracts for commercial items awarded under contracts for other than commercial items.

**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 Part 52**

Government procurement.

Dated: December 22, 2000.

**Al Matera,**

*Acting Director, Federal Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA amend 48 CFR part 52 as set forth below:

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

1. The authority citation for 48 CFR part 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).

**52.213-4 [Amended]**

2. Amend section 52.213-4 by removing from the clause heading "(July 2000)" and adding "(Mar 2001)" in its place; and be removing "(Oct 1998)" from paragraph (a)(2)(vi) of the clause and adding "Mar 2001" in its place.

3. Amend section 52.244-6 by revising the section heading, the introductory text of paragraph (a), and the clause heading; removing "as used in this clause," from the definitions "Commercial item" and "Subcontract"; and by revising paragraph (c) to read as follows:

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

\* \* \* \* \*

Subcontracts for Commercial Items (Mar 2001)

(a) Definitions. As used in this clause—

\* \* \* \* \*

(c)(1) The following clauses shall be flowed down to subcontracts for commercial items:

(i) 52.219-8, Utilization of Small Business Concerns (OCT 2000) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222-26, Equal Opportunity (FEB 1999) (E.O. 11246).

(iii) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (APR 1998) (38 U.S.C. 4212(a)).

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (JUN 1998) (29 U.S.C. 793).

(v) 52.247-64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (JUN 2000) (46 U.S.C. Appx 1241) (flowdown not required for subcontracts awarded beginning May 1, 1996).

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

\* \* \* \* \*

[FR Doc. 01-15 Filed 1-9-01; 8:45 am]

BILLING CODE 6820-EP-P

**DEPARTMENT OF DEFENSE****GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 1, 19, 22, 42, 52, and 53**

[FAC 97-22; Item VI]

**Federal Acquisition Regulation; Technical Amendments**

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

**ACTION:** Final rule.

**SUMMARY:** This document makes amendments to the Federal Acquisition

Regulation in order to update references and make editorial changes.

**DATES:** *Effective Date:* January 10, 2001.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755.

**List of Subjects in 48 CFR parts 1, 19, 22, 42, 52, and 53**

Government procurement.

Dated: December 22, 2000.

**Al Matera,**

*Acting Director, Federal Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 19, 22, 42, 52, and 53 as set forth below:

1. The authority citation for 48 CFR parts 1, 19, 22, 42, 52, and 53 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 1—FEDERAL ACQUISITION REGULATIONS SYSTEM**

**1.106 [Amended]**

2. Amend section 1.106 in the table following the introductory paragraph at entry 52.215-19 by removing the OMB Control Number "9000-0015" and adding "9000-0115" in its place.

**PART 19—SMALL BUSINESS PROGRAMS**

3. Amend section 19.812 by revising paragraph (a) to read as follows:

**19.812 Contract administration.**

(a) The contracting officer shall assign contract administration functions, as required, based on the location of the 8(a) contractor (see Federal Directory of Contract Administration Services Components (available via the Internet at <http://www.dcmsa.mil/casbook/casbook.htm>)).

\* \* \* \* \*

**PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS**

4. Amend section 22.403-4 as follows:

a. Redesignate paragraphs "(a)", "(b)", "(c)", "(d)", and "(e)" as "(b)(1)", "(b)(2)", "(b)(3)", "(b)(4)", and "(b)(5)", respectively;

b. Designate the introductory paragraph as paragraph (a), and amend it by removing "The Department of Labor regulations include—";

c. Add paragraph (b) introductory text;

d. In newly designated paragraph (b)(5), remove the last sentence; and  
e. Add a new paragraph (c) to read as follows:

**22.403-4 Department of Labor regulations.**

\* \* \* \* \*

(b) The Department of Labor regulations include—

\* \* \* \* \*

(c) Refer all questions relating to the application and interpretation of wage determinations (including the classifications therein) and the interpretation of the Department of Labor regulations in this subsection to the Administrator, Wage and Hour Division.

**PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES**

5. Amend section 42.201 by revising paragraph (b) to read as follows:

**42.201 Contract administration responsibilities.**

\* \* \* \* \*

(b) The Defense Contract Management Agency and other agencies offer a wide variety of contract administration and support services.

6. Revise section 42.203 to read as follows:

**42.203 Contract administration services directory.**

The Defense Contract Management Agency (DCMA) maintains and distributes the Federal Directory of Contract Administration Services Components. The directory lists the names and telephone numbers of those DCMA and other agency offices that offer contract administration services within designated geographic areas and at specified contractor plants. Federal agencies may obtain a free copy of the directory on disk by writing to—Defense Contract Management Agency, ATTN: DCMA-FBP, 8725 John J. Kingman Road, Fort Belvoir, VA 22060-6221, or access it on the Internet at <http://www.dcmsa.mil/casbook/casbook.htm>.

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

**52.247-51 [Amended]**

7. Amend section 52.247-51 in the provision heading by removing "(FEB 1995)" and adding "(JAN 2001)" in its place; in the first sentence of paragraph (c)(1) by removing "F.o.b. port of loading with inspection and acceptance

at origin."; and in the third column of the table following paragraph (d), add a comma after "i.e.".

**PART 53—FORMS**

**53.215-1 [Amended]**

8. Amend section 53.215-1 by removing from paragraph (a) "15.509(b)" and adding "15.509" in its place; and by removing from paragraphs (e) and (f) "15.509(a)" and adding "15.509" in their place.

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Ch. 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) 97-22 which amend the FAR. An asterisk (\*) next to a rule indicates that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 97-22 which precedes this document. These documents are also available via the Internet at <http://www.arnet.gov/far>.

**FOR FURTHER INFORMATION CONTACT:** Laurie Duarte, FAR Secretariat, (202) 501-4225. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 97-22

Item	Subject	FAR Case	Analyst
I .....	Definitions .....	1999-403	Linfield.
II .....	Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage.	2000-301	Nelson.
III .....	Advance Payments for Non-Commercial Items.	1999-016	Olson.
IV .....	Part 12 and Assignment of Claims .....	1999-021	Moss.
V .....	Clause Flowdown—Commercial Items .....	1996-023	Moss.

**SUPPLEMENTARY INFORMATION:**

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Federal Acquisition Circular 97-22 amends the FAR as specified below:

**Item I—Definitions (FAR Case 1999-403)**

This final rule clarifies the applicability of definitions used in the FAR, eliminates redundant or conflicting definitions, and makes definitions easier to find. The rule—

- Relocates definitions of terms that are used in more than one FAR part with the same meaning to 2.101;
- Relocates other definitions of terms to the “Definitions” section of the highest level FAR division (part, subpart, or section) where the term as defined is used. For example, if a term was defined in a FAR section, but the term is used as defined in another section of that subpart, then the definition was moved to the “Definitions” section of that subpart;
- Clarifies that a term, defined in FAR 2.101, has the same meaning throughout the FAR unless the context in which the term is used clearly requires a different meaning; or unless another FAR part, subpart, or section provides a different definition for that particular part, subpart, or section;
- Adds cross-references to definitions of terms in FAR 2.101 that are defined differently in another part, subpart, or section of the FAR; and
- Makes technical corrections throughout the FAR.

**Item II—Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage (FAR Case 2000-301)**

The interim rule published as Item VIII of FAC 97-18 (65 FR 36028, June

6, 2000) is converted to a final rule without change. This rule amends FAR Subpart 30.2, CAS Program Requirements, and the FAR clause at 52.230-1, Cost Accounting Standards Notices and Certification, to implement Section 802 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106-65) and the Cost Accounting Standards (CAS) Board’s final rule, Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage. The FAR rule revises policies affecting which contractors and subcontractors must comply with CAS by—

- Removing the requirement at FAR 52.230-1, Cost Accounting Standards Notices and Certification, that a contractor or subcontractor must have received at least one CAS-covered contract exceeding \$1 million (“trigger contract”) to be subject to “full CAS coverage.” The CAS Board added a new “trigger contract” dollar amount of \$7.5 million at paragraph (b)(7) of 48 CFR 9903.201-1, CAS applicability, which is already referenced at FAR 30.201-1;
- Revising FAR 30.201-4(b), Disclosure and consistency of cost accounting practices, and FAR 52.230-1 to increase the dollar threshold for full CAS coverage from \$25 million to \$50 million; and
- Revising the CAS waiver procedures and conditions at FAR 30.201-5.

**Item III—Advance Payments for Non-Commercial Items (FAR Case 99-016)**

This final rule amends the FAR to permit federally insured credit unions, in addition to banks, to participate in the maintenance of special accounts for advance payments. The rule will only affect contracting officers that provide contract financing using advance payments for non-commercial items.

**Item IV—Part 12 and Assignment of Claims (FAR Case 1999-021)**

This final rule amends the FAR to correct an inconsistency between two clauses related to the assignment of claims. FAR 52.232-36, Payment by Third Party, prohibits a contractor from assigning its rights to receive payment under the contract if payment is made by a third party, such as when a Governmentwide commercial purchase card is used. This clause is cited in the contract clause at FAR 52.212-5 that addresses terms and conditions required to implement statutes or Executive orders for commercial items.

FAR 52.212-4, Contract Terms and Conditions—Commercial Items, addresses assignment of claims but does not include the third party prohibition. This rule revises FAR 52.212-4(b) to add the prohibition.

**Item V—Clause Flowdown—Commercial Items (FAR Case 1996-023)**

This final rule amends the clause at FAR 52.244-6, Subcontracts for Commercial Items, to revise the listing of clauses the contractor must flow down to subcontractors. The rule revises the listing to add the clause at FAR 52.219-8, Utilization of Small Business Concerns, when specified circumstances have been met. In addition, the rule adds language to inform contractors that they may flow down a minimal number of additional clauses to subcontractors to satisfy their contractual obligations.

Dated: December 22, 2000.

**Al Matera,**

*Acting Director, Federal Acquisition Policy Division.*

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