

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

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CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS-COMMERCIAL ITEMS (OCT 2004)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) 52.233-3, Protest After Award (AUG 1996) (31 U.S.C. 3553).

(2) 52.233-4, Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78).

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■ 4. Amend section 52.213-4 by revising the date of the clause; and by adding paragraph (a)(1)(vi) to read as follows:

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

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TERMS AND CONDITIONS-SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL ITEMS) (OCT 2004)

(a) * * *

(1) * * *

(vi) 52.233-4, Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78).

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52.225-3 [Amended]

■ 5. Amend section 52.225-3 by revising the date of the clause to read "(OCT 2004)"; and removing paragraph (d) of the clause.

52.225-5 [Amended]

■ 6. Amend section 52.225-5 by revising the date of the clause to read "(OCT 2004)"; and removing paragraph (c) of the clause.

52.225-11 [Amended]

■ 7. Amend section 52.225-11 by revising the date of the clause to read "(OCT 2004)"; and removing paragraph (e) of the clause.

■ 8. Add section 52.233-4 to read as follows:

52.233-4 Applicable Law for Breach of Contract Claim.

As prescribed in 33.215(b), insert the following clause:

APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004)

United States law will apply to resolve any claim of breach of this contract.

(End of clause)

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 7, 11, 13, 15

[FAC 2001-25; FAR Case 2003-025; Item III]

RIN 9000-AK03

Federal Acquisition Regulation; Telecommuting for Federal Contractors

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

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 1428 of the Services Acquisition Reform Act of 2003, Title XIV of Public Law 108-136, Authorization of

Telecommuting for Federal Contractors.

DATES: *Effective Date:* October 5, 2004. *Comment Date:* Interested parties should submit comments to the FAR Secretariat at the address shown below on or before December 6, 2004 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2001-25, FAR case 2003-025, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Agency Web Site: <http://www.acqnet.gov/far/ProposedRules/proposed.htm>. Click on the FAR Case number to submit comments.

- E-mail: farcase.2003-025@gsa.gov. Include FAC 2001-25, FAR case 2003-025, in the subject line of the message.

- Fax: 202-501-4067.

- Mail: General Services Administration, Regulatory Secretariat (V), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2001-25, FAR case 2003-025, in all correspondence related to this case. All comments received will be posted without change to <http://www.acqnet.gov/far/ProposedRules/proposed.htm>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Gerald Zaffos, Procurement Analyst, at (202) 208-6091. Please cite FAC 2001-25, FAR case 2003-025.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule implements Section 1428 of the Services Acquisition Reform Act of 2003 (Title XIV of Public Law 108-136). Section 1428 requires the amendment of the FAR to permit telecommuting by employees of Federal Government contractors in the performance of contracts entered into with executive agencies. Specifically, Section 1428 states that solicitations for the acquisition of property or services may not include any requirement or evaluation criteria that would render an offeror ineligible to enter into a contract because it proposes to permit its employees to telecommute, unless the contracting officer determines that the requirements of the agency, including security requirements, cannot be met if telecommuting is permitted. The contracting officer must document in writing the basis for the determination. Also, the solicitation cannot contain any evaluation criteria that would reduce the scoring of an offer because the offeror proposes to permit its employees to telecommute, unless the contracting officer determines that the requirements of the agency, including security requirements, would be adversely impacted if telecommuting is allowed. The contracting officer must document in writing the basis for this determination as well.

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 interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because by not automatically prohibiting telecommuting, the Government will be making it easier for small businesses to recruit and maintain employees for work on Government contracts. Until now, there has been no Governmentwide policy or practice concerning contractor employee telecommuting. This rule will not be a major change, but instead a small

positive benefit to small businesses. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 7, 11, 13, and 15 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, et seq. (FAC 2001-25, FAR case 2003-025), 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.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because this statute requires that the FAR be amended no later than 180 days after enactment. The statute was enacted on November 24, 2003, which required amending the FAR by May 22, 2004. However, pursuant to Public Law 98-577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 7, 11, 13, and 15

Government procurement.

Dated: September 28, 2004.

Ralph J. De Stefano,

Acting Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 7, 11, 13, and 15 as set forth below:

■ 1. The authority citation for 48 CFR parts 7, 11, 13, and 15 is revised to read as follows:

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

PART 7—ACQUISITION PLANNING

■ 2. Add section 7.108 to read as follows:

7.108 Additional requirements for telecommuting.

In accordance with section 1428 of Public Law 108-136, an agency shall generally not discourage a contractor from allowing its employees to

telecommute in the performance of Government contracts. Therefore, agencies shall not—

(a) Include in a solicitation a requirement that prohibits an offeror from permitting its employees to telecommute unless the contracting officer first determines that the requirements of the agency, including security requirements, cannot be met if telecommuting is permitted. The contracting officer shall document the basis for the determination in writing and specify the prohibition in the solicitation; or

(b) When telecommuting is not prohibited, unfavorably evaluate an offer because it includes telecommuting, unless the contracting officer first determines that the requirements of the agency, including security requirements, would be adversely impacted if telecommuting is permitted. The contracting officer shall document the basis for the determination in writing and address the evaluation procedures in the solicitation.

PART 11—DESCRIBING AGENCY NEEDS

■ 3. Amend section 11.002 by adding paragraph (g) to read as follows:

11.002 Policy.

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(g) Agencies shall not include in a solicitation a requirement that prohibits an offeror from permitting its employees to telecommute unless the contracting officer executes a written determination in accordance with FAR 7.108(a).

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 4. Amend section 13.106-2 by redesignating paragraphs (b)(2) and (b)(3) as (b)(3) and (b)(4), respectively, and adding a new paragraph (b)(2) to read as follows:

13.106-2 Evaluation of quotations or offers.

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(b) * * *

(2) If telecommuting is not prohibited, agencies shall not unfavorably evaluate an offer because it includes telecommuting unless the contracting officer executes a written determination in accordance with FAR 7.108(b).

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PART 15—CONTRACTING BY NEGOTIATION

■ 5. Amend section 15.304 by adding paragraph (c)(6) to read as follows:

15.304 Evaluation factors and significant subfactors.

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(c) * * *

(6) If telecommuting is not prohibited, agencies shall not unfavorably evaluate an offer that includes telecommuting unless the contracting officer executes a written determination in accordance with FAR 7.108(b).

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 39

[FAC 2001-25; FAR Case 2004-020; Item IV]

RIN 9000-AK05

Federal Acquisition Regulations; Section 508 Micropurchase Exemption

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

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to extend the micropurchase exemption for purchasing electronic and information technology (EIT) that conforms to the requirements of Section 508 of the Rehabilitation Act of 1973 from October 1, 2004, to April 1, 2005. No further extensions will be granted. The extension until April 1, 2005, will provide agencies time to update their purchase card training modules on the 508 requirements and train their personnel.

DATES: *Effective Date:* October 5, 2004.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before December 6, 2004 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2001-25, FAR case 2004-020 by any of the following methods: