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Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

**48 CFR Chapter 1 and Part 19 et al.
Federal Acquisition Circular 97-16;
Introduction; Federal Acquisition
Regulation; Small Business Competiveness
Demonstration Program; Progress
Payments and Related Financing Policies;
Technical Amendments; Small Entity
Compliance Guide; Interim and Final
Rules**

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Chapter 1****Federal Acquisition Circular 97-16;
Introduction**

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

ACTION: Summary presentation of final and interim rules, and technical amendments.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules issued by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 97-16. 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 97-16 and specific FAR case number(s). Interested parties may also visit our website at <http://www.arnet.gov/far>.

Item	Subject	FAR case	Analyst
I	Small Business Competitiveness Demonstration Program (Interim).	1999-012	Moss.
II	Progress Payments and Related Financing Policies	1998-400 (98-400)	Olson.
III	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 97-16 amends the FAR as specified below:

**Item I—Small Business
Competitiveness Demonstration
Program (FAR Case 1999-012)**

This interim rule amends FAR Subpart 19.10 to clarify language pertaining to the Small Business Competitiveness Demonstration (Comp. Demo.) Program, consistent with revisions to the Program that were contained in an OFPP and SBA joint final policy directive dated May 25, 1999.

The interim rule—

- Advises the contracting officer to consider the 8(a) Program and HUBZone Program, in addition to small business set-asides, for acquisitions of \$25,000 or less in one of the four designated industry groups that will not be set aside for emerging small business concerns.

- Adds FAR 19.1006, Exclusions, to specify acquisitions to which Subpart 19.10 does not apply. None of the Small Business Comp. Demo. policies and procedures apply to orders under the Federal Supply Schedule Program or to contracts awarded to educational and nonprofit institutions or governmental entities.

This interim rule only will affect contracting officers at participating agencies when acquiring supplies or services subject to the procedures of the Small Business Comp. Demo. Program. The participating agencies are: Department of Agriculture; Department of Defense, except the National Imagery and Mapping Agency; Department of Energy; Department of Health and Human Services; Department of the Interior; Department of Transportation; Department of Veterans Affairs; Environmental Protection Agency; General Services Administration; and National Aeronautics and Space Administration.

**Item II—Progress Payments and
Related Financing Policies (FAR Case
1998-400) (98-400)**

This final rule revises certain financing policies at FAR Part 32, Contract Financing, and related contract provisions at FAR Part 52. The rule—

- Emphasizes that performance-based payments are the preferred method of contract financing. Performance-based payments are contract financing payments made after achievement of predetermined goals, such as performance objectives or defined events. Contracting officers should consider performance-based payments and deem their use impracticable before deciding to provide customary progress payments;

- Permits contracting officers to provide contract financing on contracts awarded to large businesses if the individual contract is \$2 million or

more. Previously, the threshold in the FAR for financing a contract with a large business was \$1 million;

- Permits a large business to bill the Government for subcontract costs that the large business has incurred but not actually paid, if certain conditions are met. Previously, the FAR permitted only small business concerns to bill for subcontract costs that have been incurred but not paid;
- Permits the contracting officer to use performance-based payments in contracts for research and development, and in contracts awarded through competitive negotiation procedures; and
- Is effective on March 27, 2000.

However, it is mandatory only for solicitations issued on or after May 26, 2000. Contracting officers may, at their discretion, include the clauses and provisions in this rule in solicitations issued before that date.

Item III—Technical Amendments

These amendments update references and make editorial changes at sections 1.106, 1.201-1, 1.304, 6.305, 9.404, 9.405, 15.404-1, 49.105-2, 52.212-1, 52.217-9, and 52.219-23.

Dated: March 20, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 97-16 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 97-16 are effective March 27, 2000. For Item II, the rule is mandatory for solicitations issued on or after May 26, 2000, but contracting officers may, at their discretion, include the clauses and provisions in solicitations issued before May 26, 2000. For Item I, the rule is applicable to solicitations issued on or after the rule's effective date.

Dated: March 15, 2000.

R.D. Kerrins, Jr.,

Acting Director, Defense Procurement.

Dated: March 20, 2000.

Sue McIver,

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

Dated: March 16, 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 Part 19

[FAC 97-16; FAR Case 1999-012; Item I]

RIN 9000-A164

Federal Acquisition Regulation; Small Business Competitiveness Demonstration Program

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 the Office of Federal Procurement Policy (OFPP) and Small Business Administration (SBA) final policy directive to provide updated guidance on the Small Business Competitiveness Demonstration Program.

DATES: *Effective Date:* March 27, 2000.

Applicability Date: The FAR, as amended by this rule, is applicable to

solicitations issued on or after March 27, 2000.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before May 26, 2000 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: farcase.1999-012@gsa.gov. Please submit comments only and cite FAC 97-16, FAR case 1999-012 in all correspondence related to this case.

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 97-16, FAR case 1999-012.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends FAR Subpart 19.10 to provide updated guidance regarding the Small Business Competitiveness Demonstration Program (Program). The Program was originally established in 1988 by Title VII of Public Law 100-656, as amended, and subsequently implemented in the FAR. As statutory amendments were made to the Program, OFPP issued conforming modifications to its policy directive. With the enactment of Public Law 105-135, the Small Business Reauthorization Act of 1997, the Program was made permanent. The OFPP and SBA published a joint final policy directive on the Program in the **Federal Register** at 64 FR 29693, June 2, 1999. Specific guidance published in the OFPP and SBA final policy directive requires that DoD, GSA, and NASA revise the FAR to provide this updated guidance.

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

B. Regulatory Flexibility Act

This 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 the rule merely makes ministerial changes to the existing

language and does not change existing policy. Therefore, the Councils have not performed an Initial Regulatory Flexibility Analysis. Comments are invited from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR subpart in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 1999-012), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104-13) 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 rule implements a joint OFPP/SBA policy directive that became effective on October 1, 1999. 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 Part 19

Government procurement.

Dated: March 20, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 19 as set forth below:

PART 19—SMALL BUSINESS PROGRAMS

1. The authority citation for 48 CFR part 19 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 19.502-2 in paragraph (a) by revising the last sentence; and in paragraph (d) by removing “(see 19.1006(b))” and adding “(see 19.1007(b))” in its place. The revised text reads as follows:

19.502-2 Total small business set-asides.

(a) * * * The small business reservation does not preclude the award