

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 46 and 52****[FAR Case 92-035]****RIN 9000-AG76****Federal Acquisition Regulation; Clause
Flowdown**

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

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to reduce the number of contract clauses requiring flowdown to subcontractors. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: Comments should be submitted on or before February 26, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., room 4037 Washington, DC 20405.

Please cite FAR case 92-035 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Rosinski at (202) 501-0692 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAR case 92-035.

SUPPLEMENTARY INFORMATION:**A. Background**

The Councils conducted an extensive review of all FAR clauses requiring flowdown to subcontractors in an effort to eliminate any unnecessary flowdown requirements. As a result, the Councils are proposing to eliminate requirements for flowdown of the clauses at FAR 52.215-26, 52.216-5, 52.216-6, 52.216-16, 52.216-17, 52.222-1, 52.236-21, 52.244-2(i), 52.246-23, 52.246-24, and 52.246-25.

B. Regulatory Flexibility Act

The proposed changes may 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 it will reduce administrative burden for Government contractors and their subcontractors. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 92-035), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which 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 46 and 52

Government procurement.

Dated: December 18, 1995.

Edward C. Loeb,

Acting Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 46 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 46 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 46—QUALITY ASSURANCE**46.806 [Removed]**

2. Section 46.806 is removed.

**PART 52—SOLICITATION PROVISIONS
AND CONTRACT CLAUSES****52.215-26 [Amended]**

3. Section 52.215-26 is amended by revising the date of the clause to read "(DATE)" and by removing paragraph (d).

4. 52.216-5 is amended by revising the introductory paragraph, the date of the clause, and paragraph (i) to read as follows:

**52.216-5 Price Redetermination—
Prospective.**

As prescribed in 16.205-4, insert the following clause:

**PRICE REDETERMINATION—PROSPECTIVE
(DATE)**

* * * * *

(i) *Subcontracts.* No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.

* * * * *

(End of clause)

5. Section 52.216-6 is amended by revising the introductory text, the date of the clause, and paragraph (h) to read as follows:

**52.216-6 Price Redetermination—
Retroactive.**

As prescribed in 16.206-4, insert the following clause:

**PRICE REDETERMINATION—
RETROACTIVE (DATE)**

* * * * *

(h) *Subcontracts.* No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.

* * * * *

(End of clause)

6. Section 52.216-16 is amended by revising the introductory paragraph, the date of the clause, and paragraph (h) to read as follows:

**52.216-16 Incentive Price Revision—Firm
Target.**

As prescribed in 16.405(a), insert the following clause:

**INCENTIVE PRICE REVISION—FIRM
TARGET (DATE)**

* * * * *

(h) *Subcontracts.* No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.

* * * * *

(End of clause)

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7. Section 52.216-17 is amended by revising the introductory paragraph, the date of the clause, and paragraph (j) to read as follows:

**52.216-17 Incentive Price Revision—
Successive Targets.**

As prescribed in 16.405(b), insert the following clause:

**INCENTIVE PRICE REVISION—SUCCESSIVE
TARGETS (DATE)**

* * * * *

(j) *Subcontracts.* No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.

* * * * *

(End of clause)

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8. Section 52.222-1 is amended by revising the introductory paragraph and the date of the clause; by removing the paragraph designation "(a)" in paragraph (a); and by removing paragraph (b). The revised text reads as follows: