

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES  
ADMINISTRATION**

**NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

**48 CFR Chapter 1**

[Docket No. FAR-2020-0051, Sequence No. 3]

**Federal Acquisition Regulation;  
Federal Acquisition Circular 2020-07;  
Introduction**

**AGENCY:** 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) 2020-07. A  
companion document, the *Small Entity  
Compliance Guide (SECG)*, follows this  
FAC.

**DATES:** For effective dates see the  
separate documents published in the

RULES section of this issue of the  
**Federal Register.**

**FOR FURTHER INFORMATION CONTACT:** The  
analyst whose name appears in the table  
below in relation to the FAR case. For  
information pertaining to status or  
publication schedules, contact the  
Regulatory Secretariat Division at 202-  
501-4755 or [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov).

**RULE LISTED IN FAC 2020-07**

Item	Subject	FAR case	Analyst
I .....	Requirements for DD Form 254, Contract Security Classification Specification .....	2015-002	Glover.
II .....	Increased Micro-Purchase and Simplified Acquisition Thresholds .....	2018-004	Jackson.
III .....	Evaluation Factors for Multiple-Award Contracts .....	2017-010	Jackson.
IV .....	Modifications to Cost or Pricing Data Requirements .....	2018-005	Delgado.
V .....	Orders Issued Via Fax or Electronic Commerce .....	2018-022	Glover.
VI .....	Technical Amendments.		

**ADDRESSES:** The FAC, including the  
SECG, is available via the internet at  
<https://www.regulations.gov>.

**SUPPLEMENTARY INFORMATION:**  
Summaries for each FAR rule follow.  
For the actual revisions and/or  
amendments made by these FAR rules,  
refer to the specific item numbers and  
subjects set forth in the documents  
following these item summaries. FAC  
2020-07 amends the FAR as follows:

**Item I—Requirements for DD Form 254,  
Contract Security Classification  
Specification (FAR Case 2015-002)**

This final rule amends the FAR to  
provide procedures for use of the DD  
Form 254, Contract Security  
Classification Specification, and the use  
of the Procurement Integrated Enterprise  
Environment (PIEE) for electronic  
submission to streamline the  
submission process. It requires use of  
the DD Form 254 by DoD components,  
and by nondefense agencies that have  
industrial security services agreements  
with DoD, and requires the use of the  
National Industrial Security Program  
Contracts Classification System module  
of the PIEE, unless the nondefense  
agency has an existing DD Form 254  
information system.

**Item II—Increased Micro-Purchase and  
Simplified Acquisition Thresholds  
(FAR Case 2018-004)**

This final rule increases the micro-  
purchase threshold (MPT) from \$3,500

to \$10,000, increases the simplified  
acquisition threshold (SAT) from  
\$150,000 to \$250,000, and increases the  
special emergency procurement  
authority in paragraph (2) from  
\$300,000 to \$500,000. The rule also  
clarifies certain procurement terms, as  
well as aligns some non-statutory  
thresholds with the MPT and SAT. It  
implements section 217(b) of the  
National Defense Authorization Act  
(NDAA) for Fiscal Year (FY) 2017 and  
sections 805, 806, and 1702(a) of the  
NDAA for FY 2018.

This final rule will likely have a  
positive significant economic impact on a  
substantial number of small entities.

**Item III—Evaluation Factors for  
Multiple-Award Contracts (FAR Case  
2017-010)**

DoD, GSA, and NASA are issuing a  
final rule amending the FAR to  
implement section 825 of the National  
Defense Authorization Act for Fiscal  
Year 2017 (Pub. L. 114-328). The final  
rule modifies the requirement to  
consider price or cost as an evaluation  
factor for the award of certain multiple-  
award task order contracts issued by  
DoD, NASA, and the Coast Guard.  
Specifically, the rule provides that, at  
the Government's discretion,  
solicitations for multiple-award  
contracts for the same or similar  
services that state the Government  
intends to award a contract to each  
qualifying offeror do not require price or

cost as an evaluation factor for contract  
award. This exception does not apply to  
solicitations for multiple-award  
contracts that provide for sole source  
orders pursuant to 8(a) of the Small  
Business Act (15 U.S.C. 637(a)). When  
price or cost is not evaluated during  
contract award, the contracting officer  
shall consider price or cost as a factor  
for the award of each order under the  
contract. Section 825 also amends 10  
U.S.C. 2304c(b) to add exemptions for  
the use of competitive procedures when  
placing an order under a multiple-award  
contract.

**Item IV—Modifications to Cost or  
Pricing Data Requirements (FAR Case  
2018-005)**

This final rule increases the threshold  
for requesting certified cost or pricing  
data from \$750,000 to \$2 million for  
contracts entered into after June 30,  
2018. For earlier contracts, contractors  
may request a modification to use the  
new clause Alternates, with the new \$2  
million threshold for subcontracts  
awarded on or after July 1, 2018. The  
rule implements section 811 of the  
National Defense Authorization Act for  
Fiscal Year 2018, Public Law 115-91.

This final rule will not have a  
significant economic impact on a  
substantial number of small entities.

**Item V—Orders Issued Via Fax or Electronic Commerce (FAR Case 2018–022)**

This final rule amends a FAR clause to permit the issuance of task or delivery orders via facsimile or electronic commerce and clarify when an order is considered “issued” when using these methods. As a result, contracting officers will no longer need to include supplemental ordering language in the contract when anticipating the use of fax or electronic commerce to issue task or delivery orders. The authority to issue orders orally must still be separately authorized in the contract. A common understanding of when a task or delivery order is considered issued, in such situations, will be applied Governmentwide.

**Item VI—Technical Amendments**

Editorial changes are made at FAR 5.205, 9.109–4, 27.405–3, 52.209–13, and 52.212–5.

**William F. Clark,**

*Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.*

Federal Acquisition Circular (FAC) 2020–07 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2020–07 is effective July 2, 2020 except for Items I, III, IV and V, which are effective August 3, 2020, and item II, which is effective August 31, 2020.

**Kim Herrington,**

*Acting Principal Director, Defense Pricing and Contracting, Department of Defense.*

**Jeffrey A. Koses,**

*Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.*

**William G. Roets, II,**

*Acting Assistant Administrator, Office of Procurement, National Aeronautics and Space Administration.*

[FR Doc. 2020–12761 Filed 7–1–20; 8:45 am]

**BILLING CODE 6820–EP–P**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 1, 2, 4, 52, and 53**

[FAC 2020–07; FAR Case 2015–002; Item I; Docket No. FAR–2015–0002; Sequence No. 1]

RIN 9000–AN40

**Federal Acquisition Regulation: Requirements for DD Form 254, Contract Security Classification Specification**

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

**ACTION:** Final rule.

**SUMMARY:** DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to require electronic submission of the DD Form 254, Contract Security Classification Specification.

**DATES:** *Effective:* August 3, 2020.

**FOR FURTHER INFORMATION CONTACT:** Mr. Curtis E. Glover, Sr., Procurement Analyst, at 202–501–1448 or [curtis.glover@gsa.gov](mailto:curtis.glover@gsa.gov) for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAR Case 2015–002.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 84 FR 33201 on July 12, 2019, proposing to amend the FAR to update and clarify the requirements for using the DD Form 254, Contract Security Classification Specification. This rule amends the FAR, in part, to provide procedures for use of the DD Form 254 and the requirement to use the Procurement Integrated Enterprise Environment (PIEE), to—

- Streamline the submission process for the existing DD Form 254 and enable businesses to submit an electronic form once, instead of repeated paper submissions;
- Require use of the DD Form 254 by nondefense agencies that have industrial security services agreements with DoD, and DoD components, to specify the security classification for a contract involving access to information classified as “Confidential,” “Secret,” or “Top Secret;”

- Require agency preparation of the DD Form 254 using the National Industrial Security Program Contracts Classification System module of the PIEE unless a nondefense agency has an existing DD Form 254 information system.

Five respondents submitted comments on the proposed rule.

**II. Discussion and Analysis**

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A discussion of the comments is provided as follows:

*A. Summary of Significant Changes*

There were no changes from the proposed rule as a result of the public comments received. There were minor editorial changes made to the proposed rule, see Section C below.

*B. Analysis of Public Comments*

**1. Commercial and Government Entity (CAGE) Code Reporting**

*Comment:* Two respondents expressed concern regarding the use of “Unique CAGE code”; stating that in some instances a facility will have multiple locations with the same CAGE codes. Clarification of the term “unique” CAGE code was requested.

*Response:* In accordance with the National Industrial Security Program Operating Manual (NISPOM) DoD 5220.22–M and FAR 52.204–16(g), each contractor and subcontractor location of performance listed on a DD Form 254 is required to have a unique CAGE code; and registration in the System for Award Management (SAM) is not required for contractor and subcontractor performance locations solely for the purposes of the DD Form 254. FAR 52.204–16, Commercial and Government Entity (CAGE) Code Reporting, as prescribed at FAR 4.1804(a), is amended to add paragraph (g) to require subcontractors requiring access to classified information under a contract to be identified with a CAGE code on the DD Form 254. Contractors shall ensure that a subcontractor requiring access to classified information provide its CAGE code with its name and location address or otherwise include it prominently in the proposal. In addition, each location of subcontractor performance must be listed on the DD Form 254 and is required to reflect a corresponding unique CAGE code for each listed location unless the work is being performed at a Government facility, in

which case the agency location code shall be used. The CAGE code must be for that name and location address. The CAGE code is required prior to award. Each listed location must have a unique CAGE code classifying only a single location.

*Comment:* Two respondents opposed the removal of the current CAGE code requirement and stressed the continued need to not increase risk of sharing classified information with an uncleared facility or one where the clearance is no longer active or authorized.

*Response:* The rule does not decrease the security professional's ability to verify security clearance and safeguarding levels as directed by NISPOM via the National Industrial Security System (NISS). The rule will require electronic submission of the DD Form 254, Contract Security Classification Specification.

## 2. DD Form 254

*Comment:* Two respondents recommended submission of the DD Form 254 by company name with an "option" to file by CAGE code and if possible link the form to the website for storage and potential reuse to avoid uploading as part of an application "process" via the contractor's tools and processes for DD Form 254 submission.

*Response:* The intent of the rule is for use of the DD Form 254 for each specific contractual requirement requiring access to classified information. While the NISS website does not currently link to the DD Form 254 repository, Defense Counterintelligence and Security Agency will evaluate that capability during future assessment of requirements.

## 3. Support for the Rule

*Comment:* Two respondents acknowledged that streamlining the DD Form 254 for electronic submission via the National Industrial Security Program (NISP) Contracts Classification System is beneficial as well as clarification of the SAM requirements.

*Response:* The Government acknowledges the benefits with establishment of the rule to provide streamlined submission process procedures for use of the DD Form 254 through the PIEE, to enable businesses to submit an electronic form once, instead of repeated paper submissions.

## 4. Paperwork Reduction Act Applicability

*Comment:* One respondent conveyed concerns regarding the Paperwork Reduction Act burdens associated with the use of DD Form 254.

*Response:* The Paperwork Reduction Act (44 U.S.C. chapter 35) applies; however, the proposed changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under the Office of Management and Budget (OMB) Control Number 0704-0567, entitled "Department of Defense Contract Security Classification Specification".

## 5. Out of Scope

*Comment:* One respondent commented on a variety of topics unrelated to the rule.

*Response:* Comments are out of scope.

## C. Other Changes

There were minor administrative revisions to the format of the provision FAR 52.204-16, Commercial and Government Entity Code Reporting, and the clause FAR 52.204-18, Commercial and Government Entity Code Maintenance, including deleting use of the alternates at FAR 52.204-16(g) and FAR 52.204-18(f), incorporating the paragraphs at FAR 52.204-16(g) and FAR 52.204-18(f) into the base clause for clarity. Additionally, there were minor clarifying edits to the FAR text at FAR 4.402(d)(1) and (2), FAR 4.403(c)(1), and 52.204-16(b) and (g). As a result of conforming changes, revisions to FAR 4.1804 will no longer be required.

## III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

This rule does not create any new provisions or clauses, nor does it change the applicability of any existing provisions or clauses included in solicitations and contracts valued at or below the SAT, or for commercial items, including COTS items.

## IV. Executive Orders 12866 and 13563

E.O.s 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This

rule is not a major rule under 5 U.S.C. 804.

## V. Executive Order 13771

This rule is not subject to E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, because this rule is not a significant regulatory action under E.O. 12866.

## VI. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This final rule is to revise the FAR to update and clarify the requirements for using the DD Form 254, Contract Security Classification Specification. The Government uses the DD Form 254 to convey security requirements to contractors when contract performance requires access to classified information. Prime contractors also use the DD Form 254 to convey security requirements to subcontractors that require access to classified information to perform on a subcontract. Subcontractors may also use the DD Form 254 if access to classified information is required to convey security requirements to additional subcontractors.

There were no significant issues raised by the public comments in response to the initial regulatory flexibility analysis.

The final rule will apply to small businesses awarded contracts or subcontracts by Executive agencies covered by the National Industrial Security Program that require access to classified information. Currently, the Defense Security Service monitors approximately 13,500 contractor facilities that are cleared for access to classified information. Approximately 9,000 facilities are considered less-complex, which includes small businesses and smaller security operations. Subject matter experts estimate that 5,400 (60 percent) of the 9,000 less-complex facilities are small businesses.

The final rule does not impose any Paperwork Reduction Act reporting, recordkeeping, or other compliance requirements on any small entities. The rule does not impose any new reporting, recordkeeping or other compliance requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules.

DoD, GSA, and NASA were unable to identify any alternatives to the rule which would reduce the impact on small entities and still meet the requirements of the rule.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

## VII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies; however, the changes to the FAR do not impose

additional information collection requirements to the paperwork burden previously approved under the Office of Management and Budget (OMB) Control Number 0704-0567, entitled "Department of Defense Contract Security Classification Specification".

The rule addresses use of CAGE codes on the DD Form 254, however, it does not impact information collection requirements concerning the CAGE code, OMB Control Number 9000-0185, Commercial and Government Entity Code.

**List of Subjects in 48 CFR Parts 1, 2, 4, 52, and 53**

Government procurement.

**William F. Clark,**

*Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.*

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 2, 4, 52, and 53 as set forth below:

- 1. The authority citation for 48 CFR parts 1, 2, 4, 52, and 53 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

**PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM**

- 2. In section 1.106 amend the table following by adding an entry for "DD Form 254" at the end of the table to read as follows:

**1.106 OMB approval under the Paperwork Reduction Act.**

FAR segment	OMB control No.
* * * * *	* * * * *
DD Form 254 .....	0706-0567

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

- 3. In section 2.101, amend paragraph (b) by adding in alphabetical order the defined term "Commercial and Government Entity (CAGE) code" to read as follows:

**2.101 Definitions.**

\* \* \* \* \*

*Commercial and Government Entity (CAGE) code* means—

(1) An identifier assigned to entities located in the United States or its outlying areas by the Defense Logistics Agency (DLA) Commercial and Government Entity (CAGE) Branch to identify a commercial or government entity by unique location; or

(2) An identifier assigned by a member of the North Atlantic Treaty Organization (NATO) or by the NATO Support and Procurement Agency (NSPA) to entities located outside the United States and its outlying areas that the DLA Commercial and Government Entity (CAGE) Branch records and maintains in the CAGE master file. This type of code is known as a NATO CAGE (NCAGE) code.

\* \* \* \* \*

**PART 4—ADMINISTRATIVE AND INFORMATION MATTERS**

- 4. Amend section 4.402 by—
  - a. Removing from paragraph (b) introductory text "and the Director of Central Intelligence," and adding "the Director of National Intelligence, and the Secretary of Homeland Security" in its place;
  - b. Removing from paragraph (b)(2) "Industrial Security Regulation (DOD 5220.22-R)," and adding "DoD Manual 5220.22, Volume 2, "National Industrial Security Program: Industrial Security Procedures for Government Activities."" in its place; and
  - c. Redesignating paragraph (d) as (e), and adding a new paragraph (d) to read as follows:

**4.402 General.**

\* \* \* \* \*

(d) Nondefense agencies that have industrial security services agreements with DoD, and DoD components, shall use the DD Form 254, Contract Security Classification Specification, to provide security classification guidance to U.S. contractors, and subcontractors as applicable, requiring access to information classified as "Confidential", "Secret", or "Top Secret".

(1) Provided that the data submittal is unclassified, the DD Form 254 shall be completed electronically in the NISP Contract Classification System (NCCS), which is accessible via the Procurement Integrated Enterprise Environment (PIEE) at <https://wawf.eb.mil>. Nondefense agencies with an existing DD Form 254 information system may use that system.

(2)(i) A contractor, or subcontractor (if applicable), requiring access to classified information under a contract shall be identified with a Commercial and Government Entity (CAGE) code on the DD Form 254 (see subpart 4.18 for information on obtaining and validating CAGE codes).

(ii) Each location of contractor or subcontractor performance listed on the DD Form 254 is required to reflect a corresponding unique CAGE code for each listed location unless the work is

being performed at a Government facility, in which case the agency location code shall be used. Each subcontractor location requiring access to classified information must be listed on the DD Form 254.

(iii) Contractor and subcontractor performance locations listed on the DD Form 254 are not required to be separately registered in the System for Award Management (SAM) solely for the purposes of a DD Form 254 (see subpart 4.11 for information on registering in SAM).

\* \* \* \* \*

- 5. Amend section 4.403 by removing from paragraph (c) introductory text "contract as follows" and adding "contract as identified in the requirement documentation as follows" in its place, and revising paragraph (c)(1) to read as follows:

**4.403 Responsibilities of contracting officers.**

\* \* \* \* \*

(c) \* \* \*

(1) Nondefense agencies that have industrial security services agreements with DoD, and DoD components, shall use the Contract Security Classification Specification, DD Form 254. The contracting officer, or authorized agency representative, is the approving official for the DD Form 254 associated with the prime contract and shall ensure the DD Form 254 is properly prepared, distributed by and coordinated with requirements and security personnel in accordance with agency procedures, see 4.402(d)(1).

\* \* \* \* \*

**4.1801 [Amended]**

- 6. Amend section 4.1801 by removing the defined term "Commercial and Government Entity (CAGE) code".

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

- 7. Amend section 52.204-16 by—
  - a. Revising the date of the provision;
  - b. Removing from the end of paragraph (a)(1) "entity; or" and adding "entity by unique location; or" in its place;
  - c. Revising paragraph (b);
  - d. In paragraph (c)(2) removing the word "offeror" and adding "Offeror" in its places;
  - e. Revising paragraph (e); and
  - f. Adding paragraph (g).

The revisions and addition read as follows:

**52.204-16 Commercial and Government Entity Code Reporting.**

\* \* \* \* \*

**Commercial and Government Entity Code Reporting (Aug 2020)**

\* \* \* \* \*

(b) The Offeror shall provide its CAGE code with its offer with its name and location address or otherwise include it prominently in its proposal. The CAGE code must be for that name and location address. Insert the word "CAGE" before the number. The CAGE code is required prior to award.

\* \* \* \* \*

(e) When a CAGE code is required for the immediate owner and/or the highest-level owner by Federal Acquisition Regulation (FAR) 52.204-17 or 52.212-3(p), the Offeror shall obtain the respective CAGE code from that entity to supply the CAGE code to the Government.

\* \* \* \* \*

(g) If the solicitation includes FAR clause 52.204-2, Security Requirements, a subcontractor requiring access to classified information under a contract shall be identified with a CAGE code on the DD Form 254. The Contractor shall require a subcontractor requiring access to classified information to provide its CAGE code with its name and location address or otherwise include it prominently in the proposal. Each location of subcontractor performance listed on the DD Form 254 is required to reflect a corresponding unique CAGE code for each listed location unless the work is being performed at a Government facility, in which case the agency location code shall be used. The CAGE code must be for that name and location address. Insert the word "CAGE" before the number. The CAGE code is required prior to award.

(End of provision)

■ 8. Amend section 52.204-17 by revising the title and the date of the provision and removing from paragraph (a)(1) "entity; or" and adding "entity by unique location; or" in its place.

The revision reads as follows:

**52.204-17 Ownership or Control of Offeror.**

\* \* \* \* \*

**Ownership or Control of Offeror (Aug 2020)**

\* \* \* \* \*

■ 9. Amend section 52.204-18 by—

- a. Revising the date of the clause;
- b. Removing from paragraph (a)(1) "entity; or" and adding "entity by unique location; or" in its place;
- c. Revising the first sentence of paragraph (b); and
- d. Adding paragraph (f).

The revisions and addition read as follows:

**52.204-18 Commercial and Government Entity Code Maintenance.**

\* \* \* \* \*

**Commercial and Government Entity Code Maintenance (Aug 2020)**

\* \* \* \* \*

(b) Contractors shall ensure that the CAGE code is maintained throughout the life of the

contract for each location of contract, including subcontract, performance. \* \* \*

\* \* \* \* \*

(f) If the contract includes Federal Acquisition Regulation clause 52.204-2, Security Requirements, the contractor shall ensure that subcontractors maintain their CAGE code(s) throughout the life of the contract.

(End of clause)

■ 10. Amend section 52.204-20 by—

■ a. Revising the date of the provision; and

■ b. Removing from paragraph (a)(1) "entity; or" and adding "entity by unique location; or" in its place.

The revision reads as follows:

**52.204-20 Predecessor of Offeror.**

\* \* \* \* \*

**Predecessor of Offeror (Aug 2020)**

\* \* \* \* \*

**PART 53—FORMS**

■ 11. Amend section 53.204-1 by revising the introductory text to read as follows:

**53.204-1 Safeguarding classified information within industry (DD Form 254, DD Form 441).**

The following forms, which are prescribed by the Department of Defense, shall be used by DoD components and those nondefense agencies with which DoD has agreements to provide industrial security services for the National Industrial Security Program if contractor access to classified information is required, as specified in subpart 4.4 and the clause at 52.204-2:

\* \* \* \* \*

**53.300 [Amended]**

■ 12. In section 53.300 amend the table in paragraph (b) in the table 53-2 by removing from Form DD 254 url, <http://www.dtic.mil/whs/directives/forms/eforms/dd0254.pdf> and adding <https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd0254.pdf>; and removing from Form DD 441 url, [http://www.dtic.mil/whs/directives/forms/eforms/dd0441\\_2017.pdf](http://www.dtic.mil/whs/directives/forms/eforms/dd0441_2017.pdf) and adding [https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd0441\\_2020.pdf](https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd0441_2020.pdf) in their places, respectively.

[FR Doc. 2020-12762 Filed 7-1-20; 8:45 am]

**BILLING CODE 6820-EP-P**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 2, 3, 9, 13, 16, 22, 25, and 52**

[FAC 2020-07; FAR Case 2018-004; Item II; Docket No. FAR-2018-0011; Sequence No. 1]

**RIN 9000-AN65**

**Federal Acquisition Regulation: Increased Micro-Purchase and Simplified Acquisition Thresholds**

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

**ACTION:** Final rule.

**SUMMARY:** DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement a section of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 and several sections of the NDAA for FY 2018 that increase the micro-purchase threshold (MPT), increase the simplified acquisition threshold (SAT), and clarify certain procurement terms, as well as align some non-statutory thresholds with the MPT and SAT.

**DATES:** *Effective:* August 31, 2020.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael O. Jackson, Procurement Analyst, at 202-208-4949 or [michaelo.jackson@gsa.gov](mailto:michaelo.jackson@gsa.gov) for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755. Please cite FAC 2020-07, FAR Case 2018-004.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD, GSA, and NASA published a proposed rule on October 2, 2019, at 84 FR 52420, to implement section 217(b) of the NDAA for FY 2017 (Pub. L. 114-328) and sections 805, 806, and 1702(a) of the NDAA for FY 2018 (Pub. L. 115-91).

Section 217(b) amends 41 U.S.C. 1902 to increase the MPT for acquisitions from institutions of higher education or related or affiliated nonprofit entities, or from nonprofit research organizations or independent research institutes, from \$3,500 to \$10,000, or a higher amount as determined appropriate by the head of the agency and consistent with clean

audit findings under 31 U.S.C. Chapter 75, an internal institutional risk assessment, or State law.

Section 806 increases the MPT in 41 U.S.C. 1902(a) to \$10,000.

Section 805 increases the SAT to \$250,000.

Section 1702(a) amends section 15(j)(1) of the Small Business Act (15 U.S.C. 644(j)(1)) to replace specific dollar thresholds with the terms “micro-purchase threshold” and “simplified acquisition threshold.”

These FAR changes also replace non-statutory, stated numerical dollar thresholds that are intended to correspond with the MPT and SAT, with the text “micro-purchase threshold” and “simplified acquisition threshold.” Referencing some stated thresholds by name instead of by a specific dollar value will ease maintenance of regulations, given the likelihood of future changes to the threshold amounts. Text clarifying the use of the approval thresholds, based on the increase of the SAT, for sole source justifications executed under the simplified procedures for certain commercial items has been added to FAR subpart 13.5.

Six respondents submitted comments on the proposed rule.

## II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A discussion of the comments is provided as follows:

### A. Summary of Changes

There are no changes as a result of comments on the proposed rule.

### B. Analysis of Public Comments

*Comment:* Several respondents expressed support for the rule.

*Response:* The Councils acknowledge the public support for the rule.

*Comment:* One respondent questioned whether the FAR text change at FAR 22.1803 was made in error. This respondent also questioned whether the change should have been at FAR 22.1303 in lieu of FAR 22.1803. The respondent noted that there are two more sections in FAR part 22 that reflect the amount of \$150,000, and if they should have been updated to the “simplified acquisition threshold.”

*Response:* The change at FAR 22.1803 was not in error; the change from simplified acquisition threshold to \$150,000 was intentional. The sections cited by the respondent are not based on the SAT statute but on other statutes: 38

U.S.C. 4212 and 40 U.S.C. 3701(b)(3)(iii). The Councils have no other changes for FAR part 22.

*Comment:* One respondent commented that the rule proposes a change to the prime contract coverage threshold for E-Verify (FAR 22.1803) from the simplified acquisition threshold to \$150,000, thereby not exempting contracts between \$150,000 and \$250,000, from E-Verify. The respondent stated that by setting the prime contract threshold below the SAT, particularly when the threshold was previously set at the SAT, goes against the spirit of 41 U.S.C. 1905(b)(2).

*Response:* The Administration has stated its broad desire to “require the use of the electronic status-verification system (“E-Verify”) to ensure the maintenance of a legal workforce in the United States.” See: <https://www.whitehouse.gov/briefings-statements/president-donald-j-trumps-letter-house-senate-leaders-immigration-principles-policies/>. Exempting contracts between \$150,000 and \$250,000 would run counter to the stated policy objective.

### C. Other Changes

Some changes included in the proposed rule are not required in the final rule as a result of publication of the final rule under FAR Case 2018–007 in FAC 2020–06 on May 6, 2020, effective June 5, 2020.

## III. Expected Impact of the Final Rule and Proposed Cost Savings

DoD, GSA, and NASA have performed a regulatory cost analysis on this rule. The following is a summary of the estimated public and Government cost savings. This rule impacts any business, large or small, that prepares quotes exceeding \$3,500 (\$5,000 for DoD) and not exceeding \$10,000 (or higher for select educational institutions); proposals exceeding \$150,000 and not exceeding \$250,000; and proposals exceeding \$300,000 and not exceeding \$500,000, in support of humanitarian or peacekeeping operations. This rule does not add any new solicitation provisions or contract clauses. Rather, it reduces burden on contractors by increasing the thresholds at which various regulatory burdens apply.

Increasing the MPT and SAT means additional awards could be made under the MPT and additional awards could be made under the SAT. The additional awards at or below the MPT would not require provisions or clauses, except as provided in FAR 13.202 and FAR 32.1110, and the additional awards at or below the SAT would be awarded without provisions and clauses which

are prescribed only above the SAT. In addition to including fewer regulations in applicable awards, the rule allows more awards based on quotes in lieu of a formal proposal, thereby reducing the contractor’s bid and proposal costs. Costs associated with contractor financing could also be reduced by increasing the number of micro-purchases, for which the Governmentwide purchase card is the preferred method of purchase and payment (see FAR 13.201(b)).

To determine the dollar amounts and entities affected, data was pulled from the Federal Procurement Data System (FPDS) from fiscal years 2015–2018. For the micro-purchase value change, there was an annual average in total impacted contract awards of \$2,442,317 for small businesses and \$1,359,916 for other than small businesses for contracts with values exceeding \$3,500 (\$5,000 for DOD), but less than or equal to \$10,000 (or higher, for educational institutions). For the simplified acquisition threshold change, there was an annual average in total impacted contract awards of \$300,073,039 for small businesses and \$161,715,144 for other than small businesses for contracts with values exceeding \$150,000, but less than or equal to \$250,000 (from \$300,000 to \$500,000 for contingency, humanitarian, or peacekeeping awards).

Commercial item awards, as well as orders placed through indefinite-quantity contract orders and other large contracting schedule orders, were removed from this calculation to determine the cost reduction on offerors and contractors. Commercial items were removed from this calculation because the simplified threshold for commercial item awards is set at \$7 million, so the increased SAT threshold would not impact compliance or business procedures for contractors with awards conducted through commercial item procedures. To calculate the burden reduction on Government by raising these thresholds, indefinite-quantity contracts were included, as the threshold changes would impact Government acquisition procedures.

The Federal Acquisition Streamlining Act (FASA) made a number of laws inapplicable to items procured under the SAT. This was meant to save both the Government and service providers money while also expediting the entire contract process. This rule decreases the number of regulatory requirements agencies need to include in awards.

Because this rule reduces bid and proposal costs and other administrative burdens and since it does not implement any new requirements on

offerors, this rule is considered to be deregulatory.

The following is a summary of the estimated public and Government cost

savings calculated in perpetuity in 2016 dollars at a 7 percent discount rate:

Summary	Public	Government	Total
Present Value Cost Savings .....	-\$662,413,271	-\$2,216,678,757	-\$2,879,092,029
Annualized Cost Savings .....	-46,368,929	-155,167,513	-201,536,442
Annualized Value Cost Savings as of 2016 if Year 1 is 2020 .....	-37,850,858	-126,662,911	-164,513,770

To access the full Regulatory Cost Analysis for this rule, go to the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov), search for “FAR Case 2018–004,” click “Open Docket,” and view “Supporting Documents.”

**IV. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items**

The rule applies to contracts at or below the simplified acquisition threshold, and to contracts for commercial items, including COTS items. However, it does not add any new solicitation provisions or contract clauses, and it reduces burden on contractors by increasing the thresholds at which various regulatory burdens apply.

**V. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is an economically significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is a major rule under 5 U.S.C. 804.

**VI. Congressional Review Act**

This rule is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and was transmitted to the Congress and to the Comptroller General for review in accordance with such provisions.

**VII. Executive Order 13771**

This final rule is considered to be an E.O. 13771 deregulatory action. The total annualized value of the cost

savings, discounted at a 7 percent rate relative to year 2016 over a perpetual time horizon, is –\$164,513,770. Details on the estimated cost savings can be found in Section III of this preamble.

**VIII. Regulatory Flexibility Act**

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This rule is required to implement section 217(b) of the NDAA for FY 2017 (Pub. L. 114–328) and sections 805, 806, and 1702(a) of the NDAA for FY 2018 (Pub. L. 115–91). This final rule increases the MPT, increases the SAT, clarifies certain procurement terms, as well as aligns non-statutory, stated dollar thresholds that are intended to correspond with the MPT and SAT, with word-based thresholds to ensure continued alignment with the current increase to these thresholds and any future change to the threshold amounts.

There were no significant issues raised by the public in response to the initial regulatory flexibility analysis.

This rule applies to all entities who do business with the Federal Government. This rule will likely have a positive significant economic impact on a substantial number of small entities. According to data from the Federal Procurement Data System (FPDS), there were 505 contracts awarded in FY 2018 with a value exceeding \$3,500 (\$5,000 for DOD), but less than or equal to \$10,000 wherein contractors would have a change in compliance requirements. Of the 505 new awards, 358 (71 percent) of these actions were awarded to 198 unique small business entities.

Data from FPDS also indicates that in FY 2018, there were no (0) small business entities that had additional contract actions for educational or related institutions for contracts with a value exceeding \$10,000, but less than or equal to \$15,000 (equivalent to the upper bound of the expected micro-purchase value for these types of institutions) wherein contractors would have a change in compliance requirements.

Data from FPDS also indicates there were 3,653 new contracts awarded in FY 2018 with a value exceeding 150,000, but less than or equal to \$250,000 wherein contractors would have a change in compliance requirements. Of these, 2,621 (72 percent) of these actions were awarded to 1,680 unique small business entities.

As mentioned previously, commercial items were removed from this calculation because the simplified threshold for commercial item awards is set at \$7 million,

so the increased SAT threshold would not impact compliance or business procedures for contractors with awards conducted through commercial item procedures.

Data from the FPDS further indicates that for contingency, humanitarian, or peacekeeping contract actions, there were 11 new total contracts awarded in FY 2018 with a value exceeding \$300,000 but less than or equal to \$500,000 wherein contractors would have a change in compliance requirements. Of these, 4 (36 percent) of these actions were awarded to 4 unique small business entities.

This rule changes the small business set aside threshold under FAR 19.502; instead of being from greater than \$3,500 to less than or equal to \$150,000, the threshold will be from greater than \$10,000 to less than or equal to \$250,000. This is expected to increase the number of small business entities able to do business with the Government; for contracts affected by this threshold change, (please see full regulatory cost analysis for explanation of excepted contract types), in FY 2018, there were 3,653 records exceeding \$150,000 and less than or equal to \$250,000, while there were 505 records exceeding \$3,500 (\$5,000 for DOD) and less than or equal to \$10,000.

As of September 30, 2017, there were 637,791 active entity registrations in SAM. Of those active entity registrations, 452,310 (71 percent) completed all four modules of the registration, in accordance with the definition “Registered in the System for Award Management (SAM)” at FAR 52.204–7(a), including Assertions (where they enter their size metrics and select their NAICS Codes) and Reqs & Certs (where they certify to the information they provided and the size indicator by NAICS). Of the possible 452,310 active SAM entity registrations, 338,207 (75 percent) certified to meeting the size standard of small for their primary NAICS Code. Therefore, this rule may be beneficial to 338,207 small business entities that submit solicitation responses that may now fall under the MPT or SAT and have streamlined procedures as a result of this rule.

The rule does not include additional reporting or record keeping requirements.

There are no available alternatives to the rule to accomplish the desired objective of the statute.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

**IX. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

**List of Subjects in 48 CFR Parts 2, 3, 9, 13, 16, 22, 25, and 52**

Government procurement.

William F. Clark,

*Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.*

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 3, 9, 13, 16, 22, 25, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 3, 9, 13, 16, 22, 25, and 52 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

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

■ 2. Amend section 2.101, in paragraph (b) by—

■ a. In the definition “Micro-purchase threshold” removing from the introductory text “\$3,500” and adding “\$10,000” in its place, removing from paragraph (2) the word “and” at the end of the sentence, removing from paragraph (3)(ii) “States.” and adding “States; and” in its place, and adding paragraph (4); and

■ b. In the definition “Simplified acquisition threshold” removing from the introductory text “\$150,000” and adding “\$250,000” in its place, and removing from paragraph (2) “\$300,000” and adding “\$500,000” in its place.

The addition reads as follows:

**2.101 Definitions.**

\* \* \* \* \*

(b) \* \* \*

*Micro-purchase threshold* \* \* \*

(4) For acquisitions of supplies or services from institutions of higher education (20 U.S.C. 1001(a)) or related or affiliated nonprofit entities, or from nonprofit research organizations or independent research institutes—

(i) \$10,000; or

(ii) A higher threshold, as determined appropriate by the head of the agency and consistent with clean audit findings under 31 U.S.C. chapter 75, Requirements for Single Audits; an internal institutional risk assessment; or State law.

\* \* \* \* \*

**PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST****3.502–3 [Amended]**

■ 3. Amend section 3.502–3 by removing “the simplified acquisition threshold” and adding “\$150,000” in its place.

**PART 9—CONTRACTOR QUALIFICATIONS****9.104–5 [Amended]**

■ 4. Amend section 9.104–5 by removing from paragraph (a)(2) “\$3,500” and adding “\$10,000” in its place.

**9.406–2 [Amended]**

■ 5. Amend section 9.406–2 by removing from paragraph (b)(1)(v) “\$3,500” and adding “the threshold at 9.104–5(a)(2)” in its place.

**9.407–2 [Amended]**

■ 6. Amend section 9.407–2 by removing from paragraph (a)(7) “\$3,500” and adding “the threshold at 9.104–5(a)(2)” in its place.

**PART 13—SIMPLIFIED ACQUISITION PROCEDURES**

■ 7. Amend section 13.005 by revising paragraph (a) to read as follows:

**13.005 List of laws inapplicable to contracts and subcontracts at or below the simplified acquisition threshold.**

(a) The following laws are inapplicable to all contracts and subcontracts (if otherwise applicable to subcontracts) at or below the simplified acquisition threshold pursuant to 41 U.S.C. 1905:

(1) 41 U.S.C. 8102(a)(1) (Drug-Free Workplace), except for individuals.

(2) 10 U.S.C. 2306(b) and 41 U.S.C. 3901(b) (Contract Clause Regarding Contingent Fees).

(3) 10 U.S.C. 2313 and 41 U.S.C. 4706 (Authority to Examine Books and Records of Contractors).

(4) 10 U.S.C. 2402 and 41 U.S.C. 4704 (Prohibition on Limiting Subcontractors Direct Sales to the United States).

(5) 15 U.S.C. 631 note (HUBZone Act of 1997), except for 15 U.S.C. 657a(b)(2)(B), which is optional for the agencies subject to the requirements of the Act.

(6) 31 U.S.C. 1354(a) (Limitation on use of appropriated funds for contracts with entities not meeting veterans employment reporting requirements).

(7) 22 U.S.C. 2593e (Measures Against Persons Involved in Activities that Violate Arms Control Treaties or Agreements with the United States).

(The requirement at 22 U.S.C. 2593e(c)(3)(B) to provide a certification does not apply).

\* \* \* \* \*

**13.501 [Amended]**

■ 8. Amend section 13.501 by removing from paragraph (a)(2)(ii) “\$700,000” and adding “\$700,000 or the thresholds in paragraph (1) of the definition of simplified acquisition threshold in 2.101,” in its place.

**PART 16—TYPES OF CONTRACTS****16.206–2 [Amended]**

■ 9. Amend section 16.206–2 by removing from the introductory text “\$150,000” and adding “the simplified acquisition threshold” in its place.

**16.206–3 [Amended]**

■ 10. Amend section 16.206–3 by removing from paragraph (a) “\$150,000” and adding “the simplified acquisition threshold” in its place.

**16.207–3 [Amended]**

■ 11. Amend section 16.207–3 by removing from paragraph (d) “\$150,000” and adding “the simplified acquisition threshold” in its place.

**PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS****22.1803 [Amended]**

■ 12. Amend section 22.1803 by removing from the introductory text “the simplified acquisition threshold” and adding “\$150,000” in its place.

**PART 25—FOREIGN ACQUISITION****25.703–2 [Amended]**

■ 13. Amend section 25.703–2 by removing from paragraph (a)(2) “\$3,500” and adding “\$10,000” in its place.

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

■ 14. Amend section 52.209–5 by revising the date of the provision and removing from paragraph (a)(1)(i)(D) introductory text “\$3,500” and adding “the threshold at 9.104–5(a)(2)” in its place.

The revision reads as follows:

**52.209–5 Certification Regarding Responsibility Matters.**

\* \* \* \* \*

**Certification Regarding Responsibility Matters (Aug 2020)**

\* \* \* \* \*

■ 15. Amend section 52.212–3 by—

- (a) Revising the date of the provision; and
- (b) Removing from paragraph (h)(4) introductory text “\$3,500” and adding “the threshold at 9.104–5(a)(2)” in its place.

The revision reads as follows:

**52.212–3 Offeror Representations and Certifications—Commercial Items.**

\* \* \* \* \*

**Offeror Representations and Certifications—Commercial Items (Aug 2020)**

\* \* \* \* \*

[FR Doc. 2020–12763 Filed 7–1–20; 8:45 am]

BILLING CODE 6820–EP–P

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 2, 4, 13, 15, and 16**

[FAC 2020–07; FAR Case 2017–010; Item III; Docket No. FAR–2017–0010; Sequence No. 1]

RIN 9000–AN54

**Federal Acquisition Regulation: Evaluation Factors for Multiple-Award Contracts**

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

**ACTION:** Final rule.

**SUMMARY:** DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement a section of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017.

**DATES:** *Effective:* August 3, 2020.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael O. Jackson, Procurement Analyst, at 202–208–4949 or [michaelo.jackson@gsa.gov](mailto:michaelo.jackson@gsa.gov) for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2020–07, FAR Case 2017–010.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD, GSA, and NASA published a proposed rule at 83 FR 48271 on September 24, 2018, to implement section 825 of the NDAA for FY 2017 (Pub. L. 114–328). Section 825 of the

NDAA for FY 2017 amends 10 U.S.C. 2305(a)(3) to modify the requirement to consider price or cost as an evaluation factor for the award of certain multiple-award task-order contracts issued by DoD, NASA, and the Coast Guard. Section 825 provides that, at the Government’s discretion, solicitations for multiple-award contracts that will be awarded for the same or similar services and state the Government intends to award a contract to each qualifying offeror do not require price or cost as an evaluation factor for contract award. This exception does not apply to solicitations for multiple-award contracts that provide for sole-source orders pursuant to 8(a) of the Small Business Act (15 U.S.C. 637(a)). When price or cost is not evaluated during contract award, the contracting officer shall consider price or cost as a factor for the award of each order under the contract. In accordance with statute, the rule specifies that, when using the authority of section 825, the solicitation must be for the “same or similar services.” This language aligns with the guidance at FAR 16.504(c)(1)(i), which requires contracting officers, to the maximum extent practicable, to give preference to making multiple awards of indefinite-quantity contracts under a single solicitation for the same or similar supplies or services to two or more sources. By ensuring that a solicitation using the authority of section 825 is for the “same or similar services,” the contracting officer will avoid situations in which awardees specialize exclusively in one or a few areas within the statement of work, thus creating the likelihood that orders in those areas will be awarded on a sole-source basis (FAR 16.504(c)(1)(ii)(A)) and, in turn, negating the purpose of the statute to obtain price competition at the task order level—where service requirements are apt to be more definite and offers more meaningfully comparable.

Section 825 also amends 10 U.S.C. 2304c(b) to add the exceptions for the use of other than full and open competition found in FAR 6.302 to the list of exceptions to the fair opportunity process at FAR 16.505(b)(2) when placing an order under a multiple-award contract. Contracting officers shall still follow all of the applicable justification documentation, approval, and posting requirements of part 16.5 when providing an exception to the fair opportunity process and using one of the exceptions of FAR 6.302.

Five respondents submitted comments on the proposed rule.

**II. Discussion and Analysis**

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. No significant changes were made to the rule as a result of public comments. Changes were made to the final rule to clarify the intent of section 825 and the rule text, as a result of public comments. A change is made in the final rule to make the guidance in FAR subpart 4.10 consistent with section 825. A change is made to a sentence in FAR 16.504 to make the text consistent with the policy in FAR part 13. Changes were made to the format of the rule text to enhance readability. The definition of “qualifying offeror” is moved from FAR 13.106–1 and FAR 15.304 to FAR part 2. Discussion of the edits and comments are provided as follows:

*A. Summary of Changes*

FAR subpart 4.10, Uniform Use of Line Items, is amended to align guidance on the information required for a contract line item with usage of the rule. Currently, FAR 4.1005 requires price or cost to be included for each contract line item or subline item. In order to conform the subpart with section 825, the rule amends FAR 4.1005–2 to permit the omission of cost or price at the contract line item or subline item level when awarding multiple-award IDIQ contracts in accordance with the authority of section 825, provided that a total contract minimum and maximum is stated, in accordance with FAR subpart 16.5. This addition does not change the intent of the rule; instead, it conforms internal Government procedures to facilitate use of the rule.

In FAR subpart 16.5, section 16.504, Indefinite-Delivery Contracts, is amended to make the policy for the use of the multiple-award approach consistent with the policy in FAR part 13. Currently, FAR 16.504(c)(1)(ii)(B)(5) states that contracting officers must not use the multiple award approach if the estimated value of the contract is “less than” the simplified acquisition threshold (SAT). This statement was included in FAR 16.504 to comply with the policy in FAR 13.003, which requires the use of simplified acquisition procedures (SAP), to the maximum extent practicable, for purchases not exceeding the SAT. This rule changes the text of FAR 16.504 from “less than” the SAT to “at or below” the SAT, to be consistent with the policy of FAR part 13. Paragraph (G) at FAR 16.505(b)(2)(i) of the proposed

rule added the exceptions permitting other than full and open competition to the list of exceptions to the fair opportunity process.

At FAR 13.106–1(a)(2)(iv), paragraph (A) of the proposed rule is restructured stating the action contracting officers may take when using the authority of section 825, and adding subparagraphs (1)–(3), identifying the requirements a solicitation must meet before a contracting officer can take the action in paragraph (A); at paragraph (C), the definition of “qualifying offeror” is deleted and moved to part 2, with the addition of text clarifying the parts to which the definition is applicable; and the text of renumbered subparagraph (B) was modified to use the statutory language that “if” price or cost was not an evaluation factor for award, as opposed to “whether or not” price or cost was evaluated. Similar changes are made at FAR 15.304(c)(1)(ii). These revisions simply clarify the intent, readability, and applicability of the rule and section 825.

#### B. Analysis of Public Comments

*Comment:* A respondent expressed concern that the rule is not compliant with the implementing statute, because the rule does not include the term “qualifying offeror,” as used in section 825.

*Response:* The definition of “qualifying offeror” is taken directly from the statute and included in the final rule at FAR 2.101, 13.106–1(a)(2)(iv)(A)(3), and 15.304(c)(1)(ii)(A)(3). This requirement helps to ensure there will be sufficient contract holders submitting offers for task orders.

*Comment:* A respondent advised that use of the term “head of the agency” in section 825 makes the statute impractical for use by the contracting community, because the “head of the agency” does not typically issue solicitations. The respondent recommended amending the statutory language to implement section 825 effectively.

*Response:* Section 825 is implemented in the FAR effectively without a change to the statutory language. Unless otherwise stated in statute, the head of the agency may delegate procurement responsibilities to another officer or official in the same agency (see FAR 1.108(b)). FAR 1.102–4(b) further requires decision-making authority to be delegated to the lowest level within the FAR System, consistent with law. As section 825 does not prohibit delegation by the head of the agency, this rule delegates this authority

to the contracting officer in accordance with FAR 1.108(b) and 1.102–4(b).

*Comment:* A respondent advised that the definition of a “qualifying offer” in the rule does not align with the statute. The rule requires that the proposal be “technically acceptable,” which is not required by the statute.

*Response:* The section 825 definition of a “qualifying offeror” includes language that the offeror “submits a proposal that conforms to the requirements of the solicitation.” The rule refers to a “qualifying offeror” as an offeror that “submits a technically acceptable proposal that conforms to the solicitation.” The terms “technically acceptable” and “conforms” have different meanings to Government contracting personnel. A proposal can conform to the requirements for the solicitation (e.g., meeting a required page limit or proposal format), but not demonstrate that the offeror can meet the stated technical requirements (e.g., having necessary certifications or offering the requisite services) of the Government. This clarification ensures contracting officers, when using the authorities in section 825, also evaluate whether a proposal meets the minimum technical requirements stated in the solicitation.

*Comment:* A respondent expressed concern that the rule is requiring the evaluation of price or cost in every source selection at FAR 15.304(c)(1)(i).

*Response:* FAR 15.304(c)(1) currently states that price or cost shall be evaluated in every source selection conducted under the negotiated acquisition procedures of FAR part 15. The cited language was already in the FAR. The rule relocates the text at FAR 15.304(c)(1) to a new subparagraph (i) with a reference to the new subparagraph (ii)(A), which includes the exception to considering price or cost when DoD, NASA, or the Coast Guard are using the authority of section 825.

*Comment:* A respondent suggested that the rule be expanded to include the authority granted under section 876 of the NDAA for FY 2019.

*Response:* Section 876 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 amends Title 41 of United States Code to provide executive agencies with the discretionary authority not to include price as an evaluation factor in certain solicitations for multiple-award and Federal Supply Schedule contracts, when specific conditions are met. Section 825 amends Title 10 of the U.S.C. to implement a similar, but not the same, authority for DoD, NASA, and the Coast Guard. The authority and applicability of these sections are

different; as such, FAR Case 2018–014, Increasing Task Order Level Competition, implements section 876.

*Comment:* A respondent requested clarification regarding the inclusion of language that limits the application of the rule to multiple-award task-order contracts with a value above the simplified acquisition threshold (SAT).

*Response:* Currently, FAR 16.504(c)(1)(ii)(B)(5) does not permit the use of a multiple-award approach if the total estimated value of the IDIQ contract is less than the SAT; therefore, the rule applies the authority of section 825 to solicitations valued above the SAT. Additionally, this rule changes the text of FAR 16.504 from “less than” the SAT to “at or below” the SAT, to be consistent with the policy of FAR part 13, which requires the use of SAP for acquisitions valued at or below the SAT.

*Comment:* A respondent expressed support for establishing fair and reasonable rates at the time of contract award. The respondent recommends modifying the rule to require an evaluation of fair and reasonable pricing when awarding an IDIQ contract. The respondent advises that establishing maximum thresholds for price or cost at the time of contract award would still allow for competition at the task-order level, while assuring that the Government will subsequently receive fair and reasonably priced offers for requirements at the task- and delivery-order level. Another respondent expressed concern about the increased time and labor to be expended by a contracting officer placing an order under a multi-agency contract (MAC) awarded using the authority of section 825, as certain pricing information will no longer be available to support market research activities and associated acquisition decisions.

*Response:* The rule implements the intent of the statute. Section 825 provides DoD, NASA, and Coast Guard contracting officers with the ability not to include price or cost as an evaluation factor in certain solicitations for multiple-award contracts, if specific conditions are met. When determining whether to use the authority of section 825 or place an order under a resulting contract, a contracting officer must consider all of the circumstances and available information relating to the acquisition to decide the most appropriate procurement approach. Contracting officers are not required to use the authority of section 825 and may, instead, use the current solicitation, evaluation, and award procedures, which require that price be determined fair and reasonable prior to contract award.

In regard to the applicability of the rule to MACs, a MAC is a task-order or delivery-order contract established by one agency for use by Government agencies to obtain supplies and services, consistent with the Economy Act. This rule applies to multiple award contracts, which are: Contracts issued under the Multiple Award Schedule (MAS) authority described in FAR part 38; multiple-award task-order or delivery-order contracts issued in accordance with FAR subpart 16.5; or other indefinite-delivery indefinite-quantity contracts entered into with two or more sources pursuant to the same solicitation. A multiple award contract may also be a MAC, but the two terms are not interchangeable in identifying the same set of contracts. To avoid any potential confusion when applying section 825, some paragraphs of the rule text are renumbered to reinforce their applicability to section 825 and make the text more readable.

**III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items**

This rule does not contain any solicitation provisions or contract clauses that apply to contracts at or below the SAT, or contracts for the acquisition of commercial items, including commercially available off-the-shelf items.

**IV. Expected Cost Savings**

Currently, contracting officers must evaluate price or cost as a factor in the selection decision for both the award of the multiple-award contract and each order placed against the multiple-award contract. When applied to applicable multiple-award solicitations, this rule alleviates offerors' need to gather and analyze internal cost or pricing information or propose a price or cost for each line item in the solicitation. Subsequently, contracting officers do not need to review, analyze, and determine in writing that the proposed costs and prices are fair and reasonable for the award of the multiple-award contracts. When used, this rule impacts all offerors responding to a solicitation for a multiple-award contract for the same or similar services issued by the DoD, NASA, or the Coast Guard.

The Government has performed a regulatory cost analysis on this rule. The following is a summary of the estimated public cost savings in millions, which are calculated in 2016 dollars at a 7 percent discount rate:

Present Value Costs .....	-\$4,813,740
Annualized Costs .....	- 336,962
Annualized Value Costs as of 2016 if Year 1 is 2019	- 275,061

To access the full regulatory cost analysis for this rule, go to the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov), search for "FAR case 2017-010," click "Open Docket," and view "Supporting Documents."

**V. Executive Orders 12866 and 13563**

E.O.s 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**VI. Executive Order 13771**

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866. However, this rule is considered to be a deregulatory action. Details on the estimated cost savings can be found in Section IV of this rule.

**VII. Regulatory Flexibility Act**

DoD, GSA, and NASA do not expect this rule 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.* However, a Final Regulatory Flexibility Analysis (FRFA) has been prepared and is summarized as follows:

The reason for this action is to implement section 825 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114-328). The objective of this rule is to permit contracting officers to omit price or cost as an evaluation factor for award in certain solicitations for multiple-award contracts, if certain conditions are met. When applied to applicable multiple-award solicitations, this rule alleviates offerors' need to gather and analyze internal cost or pricing information or propose a price or cost for each line item in the solicitation.

No public comments were received in response to the initial regulatory flexibility analysis.

DoD, GSA, and NASA do not have data on the total number of small business entities that respond to multiple-award solicitations for the same or similar services. However, the Federal Procurement Data System (FPDS)

provides information on the number of small business entities that received an award resulting from a multiple-award solicitation for services issued by DoD, NASA, and the Coast Guard. According to data from FPDS for FY 2015 through 2017, DoD, NASA, and the Coast Guard awarded an average of 1,905 multiple-award indefinite-delivery indefinite-quantity (IDIQ) contracts for services, and of those 1,905 contracts, an average of 1,292 contracts were awarded to 1,144 unique small business entities annually. The Government expects the number of small business entities impacted by the rule to be slightly larger than this estimate, as the data does not capture the small business entities that submit offers to applicable solicitations, but do not receive an award. This rule impacts all entities that submit offers in response to multiple-award solicitations for services that utilize the authority of section 825 issued by DoD, NASA, and the Coast Guard.

This rule does not include any new reporting, recordkeeping, or other compliance requirements. There are no known significant alternative approaches to the rule that would meet the requirements of the applicable statute.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat. The Regulatory Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

**VIII. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

**List of Subjects in 48 CFR Parts 2, 4, 13, 15, and 16**

Government procurement.

**William F. Clark,**

*Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.*

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 4, 13, 15, and 16 as set forth below:

- 1. The authority citation for 48 CFR parts 2, 4, 13, 15, and 16 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

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

- 2. In section 2.101, amend paragraph (b) by adding the defined term "Qualifying offeror" in alphabetical order to read as follows:

**2.101 Definitions.**

\* \* \* \* \*

(b) \* \* \*

*Qualifying offeror*, as used in 13.106–1 and 15.304, means an offeror that is determined to be a responsible source, submits a technically acceptable proposal that conforms to the requirements of the solicitation, and the contracting officer has no reason to believe would be likely to offer other than fair and reasonable pricing (10 U.S.C. 2305(a)(3)(D)).

\* \* \* \* \*

**PART 4—ADMINISTRATIVE AND INFORMATION MATTERS**

■ 3. Amend section 4.1005–2 by revising paragraph (a)(2) to read as follows:

**4.1005–2 Exceptions.**

(a) \* \* \*

(2) *Indefinite-delivery indefinite-quantity (IDIQ) and requirements contracts.* (i) IDIQ and requirements contracts may omit the quantity at the line item level for the base award provided that the total contract minimum and maximum, or the estimate, respectively, is stated.

(ii) Multiple-award IDIQ contracts awarded using the procedures at 13.106–1(a)(2)(iv)(A) or 15.304(c)(1)(ii)(A) may omit price or cost at the line item or subline item level for the contract award, provided that the total contract minimum and maximum is stated (see 16.504(a)(1)).

\* \* \* \* \*

**PART 13—SIMPLIFIED ACQUISITION PROCEDURES**

■ 4. Amend section 13.106–1 by revising paragraph (a)(2) to read as follows:

**13.106–1 Soliciting competition.**

(a) \* \* \*

(2)(i) When soliciting quotations or offers, the contracting officer shall notify potential quoters or offerors of the basis on which award will be made (price alone or price and other factors, e.g., past performance and quality).

(ii) Contracting officers are encouraged to use best value.

(iii) Solicitations are not required to state the relative importance assigned to each evaluation factor and subfactor, nor are they required to include subfactors.

(iv) In accordance with 10 U.S.C. 2305(a)(3), for DoD, NASA, and the Coast Guard—

(A) The contracting officer may choose not to include price or cost as an evaluation factor for award when a solicitation—

(1) Has an estimated value above the simplified acquisition threshold;

(2) Will result in multiple-award contracts (see subpart 16.5) that are for the same or similar services; and

(3) States that the Government intends to make an award to each and all qualifying offerors (see 2.101).

(B) If the contracting officer chooses not to include price or cost as an evaluation factor for the contract award, in accordance with paragraph (a)(2)(iv)(A) of this section, the contracting officer shall consider price or cost as one of the factors in the selection decision for each order placed under the contract.

(C) The exception in paragraph (a)(2)(iv)(A) of this section shall not apply to solicitations for multiple-award contracts that provide for sole source orders pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

**PART 15—CONTRACTING BY NEGOTIATION**

■ 5. Amend section 15.304 by revising paragraph (c)(1) and paragraph (e) introductory text to read as follows:

**15.304 Evaluation factors and significant subfactors.**

\* \* \* \* \*

(c) \* \* \*

(1)(i) Price or cost to the Government shall be evaluated in every source selection (10 U.S.C. 2305(a)(3)(A)(ii) and 41 U.S.C. 3306(c)(1)(B)) (also see part 36 for architect-engineer contracts), subject to the exception listed in paragraph (c)(1)(ii)(A) of this section for use by DoD, NASA, and the Coast Guard.

(ii) In accordance with 10 U.S.C. 2305(a)(3), for DoD, NASA, and the Coast Guard—

(A) The contracting officer may choose not to include price or cost as an evaluation factor for award when a solicitation—

(1) Has an estimated value above the simplified acquisition threshold;

(2) Will result in multiple-award contracts (see subpart 16.5) that are for the same or similar services; and

(3) States that the Government intends to make an award to each and all qualifying offerors (see 2.101).

(B) If the contracting officer chooses not to include price or cost as an evaluation factor for the contract award, in accordance with paragraph (c)(1)(ii)(A) of this section, the contracting officer shall consider price or cost as one of the factors in the selection decision for each order placed under the contract.

(C) The exception in paragraph (c)(1)(ii)(A) of this section shall not

apply to solicitations for multiple-award contracts that provide for sole source orders pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

\* \* \* \* \*

(e) Unless the exception at paragraph (c)(1)(ii)(A) of this section applies, the solicitation shall also state, at a minimum, whether all evaluation factors other than cost or price, when combined, are—

\* \* \* \* \*

**PART 16—TYPES OF CONTRACTS**

**16.504 [Amended]**

■ 6. Amend section 16.504 by removing from paragraph (c)(1)(ii)(B)(5) “is less than the simplified” and adding “is at or below the simplified” in its place.

■ 7. Amend section 16.505 by adding paragraph (b)(2)(i)(G); and removing from paragraph (b)(2)(ii)(B)(10) “(b)(2)(i)(A) through (E) of” and adding “(b)(2)(i)(A) through (E) and (G) of” in its place.

The addition reads as follows:

**16.505 Ordering.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(i) \* \* \*

(G) For DoD, NASA, and the Coast Guard, the order satisfies one of the exceptions permitting the use of other than full and open competition listed in 6.302 (10 U.S.C. 2304c(b)(5)). The public interest exception shall not be used unless Congress is notified in accordance with 10 U.S.C. 2304(c)(7).

\* \* \* \* \*

[FR Doc. 2020–12764 Filed 7–1–20; 8:45 am]

BILLING CODE 6820–EP–P

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 14, 15, 30, and 52**

[FAC 2020–07; FAR Case 2018–005; Item IV; Docket No. FAR–2018–0006, Sequence No. 1]

RIN 9000–AN69

**Federal Acquisition Regulation: Modifications to Cost or Pricing Data Requirements**

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

**ACTION:** Final rule.

**SUMMARY:** DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement a section of the National Defense Authorization Act for Fiscal Year 2018 to increase the threshold for requiring certified cost or pricing data.

**DATES:**

*Effective:* August 3, 2020.

*Applicability:* In the case of a change or modification made to a prime contract that was entered into before July 1, 2018, the threshold for obtaining certified cost or pricing data remains \$750,000, with the following exception. Upon the request of a contractor that was required to submit certified cost or pricing data in connection with a prime contract entered into before July 1, 2018, the contracting officer shall modify the contract without requiring consideration to reflect a \$2 million threshold for obtaining certified cost or pricing data from subcontractors. Similarly for sealed bidding, upon request by a contractor, the contracting officer shall modify the contract without requiring consideration to replace the relevant clause. (See FAR 14.201–7(c)(1)(ii) and 15.408).

**FOR FURTHER INFORMATION CONTACT:** Ms. Zenaida Delgado, Procurement Analyst, at 202–969–7207 or [zenaida.delgado@gsa.gov](mailto:zenaida.delgado@gsa.gov) for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov). Please cite FAC 2020–07, FAR Case 2018–005.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD, GSA, and NASA published a proposed rule on October 2, 2019, at 84

FR 52428, to increase the threshold for requesting certified cost or pricing data from \$750,000 to \$2 million for contracts entered into after June 30, 2018. The threshold for Cost Accounting Standards applicability is required by 41 U.S.C. 1502(b)(1)(B) to be the same threshold as the one for requesting certified cost or pricing data.

This FAR change implements section 811 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Pub. L. 115–91) that amends 10 U.S.C. 2306a and 41 U.S.C. 3502. Cost or Pricing Data: Truth in Negotiations, 10 U.S.C. 2306a, and Required cost or pricing data and certification, 41 U.S.C. 3502, require that the Government obtain certified cost or pricing data for certain contract actions listed at 15.403–4(a)(1), such as negotiated contracts, certain subcontracts and certain contract modifications. Two respondents submitted comments on the proposed rule.

**II. Discussion and Analysis**

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A discussion of the comments is provided as follows:

*A. Summary of Changes*

There are no changes as a result of comments on the proposed rule.

*B. Analysis of Public Comments*

*Comment:* One respondent opposed the proposed rule and believed it will result in higher prices to the Government.

*Response:* This FAR change is required to implement section 811 of

the NDAA for FY 2018 that amends 10 U.S.C. 2306a and 41 U.S.C. 3502.

*Comment:* One respondent suggested revision of FAR 15.403–4(a)(3) to reflect the \$2 million threshold for both prime contracts and subcontracts entered into on and after July 1, 2018, to ensure consistency across the entire Truth in Negotiations Act certification process.

*Response:* The Councils cannot accept the suggestion because it is not consistent with the statute being implemented.

*C. Other Changes*

Some changes included in the proposed rule are no longer necessary because of publication of the final rule under FAR Case 2018–007, FAC 2020–006, on May 6, 2020, effective June 5, 2020.

**III. Expected Impact of the Final Rule and Proposed Cost Savings**

DoD, GSA, and NASA have performed a regulatory cost analysis on this rule. The following is a summary of the estimated public and Government cost savings. This rule will impact large and small businesses which currently compete on solicitations issued using FAR part 15 negotiation procedures and are valued between \$750,000 and \$2 million as these firms will no longer be required to submit certified cost or pricing data between those amounts. In addition, because of the comparable increase in the cost accounting standards threshold, fewer contractors will be required to comply with FAR clauses that implement the cost accounting standards. The following is a summary of the estimated cost savings calculated in 2016 dollars at a 7-percent discount rate and in perpetuity:

Summary	Public	Government	Total
Present Value Cost Savings .....	– \$588,988,385	– \$90,669,628	– \$679,658,013
Annualized Cost Savings .....	– 41,229,187	– 6,346,874	– 47,576,061
Annualized Value Cost Savings as of 2016 if Year 1 is 2020 .....	– 31,453,549	– 4,841,999	– 36,295,548

To access the full Regulatory Cost Analysis for this rule, go to the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov), search for “FAR Case 2018–005,” click “Open Docket,” and view “Supporting Documents.”

**IV. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items**

The changes are not applicable to contracts at or below the simplified

acquisition threshold or to contracts for the acquisition of commercial items.

**V. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of

quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, is not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**VI. Executive Order 13771**

This final rule is considered to be an E.O. 13771 deregulatory action. The total annualized value of the cost

savings is –\$36,295,548 (as of 2016 if Year 1 is 2020). Details on the estimated cost savings can be found in section III of this preamble.

## VII. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This rule is required to implement section 811 of the National Defense Authorization Act for Fiscal Year 2018 which amends 10 U.S.C. 2306a and 41 U.S.C. 3502 to increase the threshold for requesting certified cost or pricing data from \$750,000 to \$2 million. The threshold for Cost Accounting Standards applicability is required by 41 U.S.C. 1502(b)(1)(B) to be the same threshold as the one for requesting certified cost or pricing data.

There were no significant issues raised by the public in response to the initial regulatory flexibility analysis.

This rule will impact small entities who compete on solicitations issued using FAR part 15, Contracting by Negotiation, valued between \$750,000 and \$2 million. It also impacts subcontracts and contract modifications, including those contracts awarded under sealed bidding procedures, valued between \$750,000 and \$2 million. Offerors and contractors under the revised threshold will no longer be required to submit “certified cost or pricing data” and will now submit “data other than certified cost or pricing data,” which takes less time to prepare.

In order to calculate the savings due to the increased threshold, the same FY 2016 Federal Procurement Data System (FPDS) data was utilized that was used to calculate information collection burdens associated with submission of certified cost or pricing data and of data other than certified cost or pricing data under the Office of Management and Budget (OMB) Control Number 9000–0013, which was cleared in January 2018. For contracts and orders awarded using FAR part 15 that were valued between \$750,000 and \$2 million, reflecting the actions impacted by the increase in the threshold, there were 2,697 contract awards/orders issued, 636 modifications to contracts or orders, an estimated 1,288 subcontracts awarded, and 592 subcontract modifications. Of these responses, 3,364 were from small entities. Of the 1,871 small entities that were awarded contracts or issued orders, 1,501 were unique small entities (about 1.25 contracts/orders per small entity). We estimate a comparable ratio of actions to entities in the other categories. This ratio is less than the overall ratio of actions to entities because this is just a small slice of the total range covered by the information collection clearance. The cost accounting standards do not apply to small entities, therefore that threshold change only affects other than small entities.

The rule does not include additional reporting or record keeping requirements.

There are no available alternatives to the rule to accomplish the desired objective of the statute. However, the impact on small

entities will be beneficial, as it will relieve them of the requirement to provide certified cost or pricing data when the acquisition is less than \$2 million. Instead, in most cases they would submit data other than certified cost or pricing data which is estimated to save 40 hours of labor effort and related cost savings for each submission not requiring certification.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

## VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 35) does apply. The rule contains information collection requirements. OMB has cleared this information collection requirement under OMB Control Numbers: 9000–0013, Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, and 9000–0129, Cost Accounting Standards Administration. No comments were received on the revision to OMB Control Number 9000–0013 that was provided in the proposed rule. The annual reporting burden under OMB Control Number 9000–0129 was revised using the \$2 million threshold; a 30-day notice was published on October 8, 2019, at 84 FR 53727.

### List of Subjects in 48 CFR Parts 14, 15, 30, and 52

Government procurement.

**William F. Clark,**

*Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.*

Therefore, DoD, GSA, and NASA amend 48 CFR parts 14, 15, 30, and 52 as set forth below:

■ 1. The authority citation for parts 14, 15, 30, and 52 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

### PART 14—SEALED BIDDING

■ 2. Amend section 14.201–7 by revising paragraph (c)(1) to read as follows:

#### 14.201–7 Contract clauses.

\* \* \* \* \*

(c)(1) When contracting by sealed bidding, the contracting officer shall—

(i) Insert the clause at 52.214–28, Subcontractor Certified Cost or Pricing Data—Modifications—Sealed Bidding, in solicitations and contracts if the contract amount is expected to exceed

the threshold for submission of certified cost or pricing data at 15.403–4(a)(1); or

(ii) Upon request of a contractor in connection with a prime contract entered into before July 1, 2018, the contracting officer shall modify the contract without requiring consideration to replace clause 52.214–28, Subcontractor Certified Cost or Pricing Data—Modifications—Sealed Bidding, with its Alternate I.

\* \* \* \* \*

### PART 15—CONTRACTING BY NEGOTIATION

■ 3. Amend section 15.403–4 by—

■ a. Revising the third sentence of paragraph (a)(1) introductory text;

■ b. Revising the second sentence of paragraph (a)(1)(iii) introductory text; and

■ c. Adding paragraph (a)(3).

The revisions and addition read as follows:

#### 15.403–4 Requiring certified cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. chapter 35).

(a)(1) \* \* \* The threshold for obtaining certified cost or pricing data is \$750,000 for prime contracts awarded before July 1, 2018, and \$2 million for prime contracts awarded on or after July 1, 2018. \* \* \*

\* \* \* \* \*

(iii) \* \* \* Price adjustment amounts must consider both increases and decreases (e.g., a \$500,000 modification resulting from a reduction of \$1,500,000 and an increase of \$1,000,000 is a \$2,500,000 pricing adjustment exceeding the \$2,000,000 threshold).

\* \* \*

\* \* \* \* \*

(3) Upon the request of a contractor that was required to submit certified cost or pricing data in connection with a prime contract entered into before July 1, 2018, the contracting officer shall modify the contract, without requiring consideration, to reflect a \$2 million threshold for obtaining certified cost or pricing data on subcontracts entered on and after July 1, 2018. See 15.408.

\* \* \* \* \*

■ 4. Amend section 15.408 by revising paragraphs (d) and (e) to read as follows:

#### 15.408 Solicitation provisions and contract clauses.

\* \* \* \* \*

(d) *Subcontractor Certified Cost or Pricing Data.* The contracting officer shall—

(1) Insert the clause at 52.215–12, Subcontractor Certified Cost or Pricing Data, in solicitations and contracts

when the clause prescribed in paragraph (b) of this section is included; or

(2) Upon the request of a contractor that was required to submit certified cost or pricing data in connection with a prime contract entered into before July 1, 2018, the contracting officer shall modify the contract without requiring consideration, to replace clause 52.215-12, Subcontractor Certified Cost or Pricing Data, with its Alternate I.

(e) *Subcontractor Certified Cost or Pricing Data—Modifications.* The contracting officer shall—

(1) Insert the clause at 52.215-13, Subcontractor Certified Cost or Pricing Data—Modifications, in solicitations and contracts when the clause prescribed in paragraph (c) of this section is included; or

(2) Upon the request of a contractor that was required to submit certified cost or pricing data in connection with a prime contract entered into before July 1, 2018, the contracting officer shall modify the contract without requiring consideration, to replace clause 52.215-13, Subcontractor Certified Cost or Pricing Data—Modifications, with its Alternate I.

\* \* \* \* \*

**PART 30—COST ACCOUNTING STANDARDS ADMINISTRATION**

**30.201-4 [Amended]**

■ 5. Amend section 30.201-4, in paragraph (b)(1), by removing “\$750,000” and adding “\$2 million” in its place.

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

■ 6. Amend section 52.214-28 by—  
■ a. Removing from the clause prescription “14.201-7(c)” and adding “14.201-7(c)(1)(i)” in its place; and  
■ b. Adding Alternate I.

The addition reads as follows:

**52.214-28 Subcontractor Certified Cost or Pricing Data—Modifications—Sealed Bidding.**

\* \* \* \* \*

**Subcontractor Certified Cost or Pricing Data—Modifications—Sealed Bidding (May 2020)**

\* \* \* \* \*

*Alternate I (AUG 20).* As prescribed in 14.201-7(c)(1)(ii), substitute the following paragraph (b) in place of paragraph (b) of the basic clause:

(b) Unless an exception under FAR 15.403-1(b) applies, the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), as part of the subcontractor’s proposal in accordance with FAR 15.408, Table 15-2 (to include any

information reasonably required to explain the subcontractor’s estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price)—

(1) Before modifying any subcontract that was awarded prior to July 1, 2018, involving a pricing adjustment expected to exceed \$750,000; or

(2) Before awarding any subcontract expected to exceed \$2 million on or after July 1, 2018, or modifying any subcontract that was awarded on or after July 1, 2018, involving a pricing adjustment expected to exceed \$2 million.

- 7. Amend section 52.215-12 by—  
■ a. Removing from the clause prescription “15.408(d)” and adding “15.408(d)(1)” in its place; and  
■ b. Adding Alternate I.

The addition reads as follows:

**52.215-12 Subcontractor Certified Cost or Pricing Data.**

\* \* \* \* \*

**Subcontractor Certified Cost or Pricing Data (May 2020)**

\* \* \* \* \*

*Alternate I (AUG 20).* As prescribed in 15.408(d)(2), substitute the following paragraph (a) in place of paragraph (a) of the basic clause:

(a) Unless an exception under FAR 15.403-1 applies, the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408, Table 15-2 (to include any information reasonably required to explain the subcontractor’s estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price)—

(1) Before modifying any subcontract that was awarded prior to July 1, 2018, involving a pricing adjustment expected to exceed \$750,000; or

(2) Before awarding any subcontract expected to exceed \$2 million on or after July 1, 2018, or modifying any subcontract that was awarded on or after July 1, 2018, involving a pricing adjustment expected to exceed \$2 million.

- 8. Amend section 52.215-13 by—  
■ a. Removing from the clause prescription “15.408(e)” and adding “15.408(e)(1)” in its place; and  
■ b. Adding Alternate I.

The addition reads as follows:

**52.215-13 Subcontractor Certified Cost or Pricing Data—Modifications.**

\* \* \* \* \*

**Subcontractor Certified Cost or Pricing Data—Modifications (May 2020)**

\* \* \* \* \*

*Alternate I (AUG 20).* As prescribed in 15.408(e)(2), substitute the following

paragraphs (a), (b), and (d) for paragraphs (a), (b), and (d) of the basic clause:

(a) The requirements of paragraphs (b) and (c) of this clause shall—

(1) Become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4(a)(1); and

(2) Be limited to such modifications.

(b) Unless an exception under FAR 15.403-1 applies, the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408, Table 15-2 (to include any information reasonably required to explain the subcontractor’s estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price)—

(1) Before modifying any subcontract that was awarded prior to July 1, 2018, involving a pricing adjustment expected to exceed \$750,000; or

(2) Before modifying any subcontract that was awarded on or after July 1, 2018, involving a pricing adjustment expected to exceed \$2 million.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds \$2 million.

**52.230-2 [Amended]**

■ 9. Amend section 52.230-2 by removing from the clause prescription “30.201-4(a)” and adding “30.201-4(a)(1)” in its place.

**52.230-4 [Amended]**

■ 10. Amend section 52.230-4 by removing from the clause prescription “30.201-4(c)” and adding “30.201-4(c)(1)” in its place.

**52.230-5 [Amended]**

■ 11. Amend section 52.230-5 by removing from the clause prescription “30.201-4(e)” and adding “30.201-4(e)(1)” in its place.

[FR Doc. 2020-12765 Filed 7-1-20; 8:45 am]

BILLING CODE 6820-EP-P

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES  
ADMINISTRATION**

**NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

**48 CFR Part 52**

[FAC 2020–07; FAR Case 2018–022; Item V; Docket No. FAR–2019–0010; Sequence No. 1]

RIN 9000–AN80

**Federal Acquisition Regulation: Orders Issued via Fax or Electronic Commerce**

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

**ACTION:** Final rule.

**SUMMARY:** DoD, GSA, and NASA are issuing a final rule amending a Federal Acquisition Regulation (FAR) clause to permit the issuance of task or delivery orders via facsimile or electronic commerce and clarify when an order is considered “issued” when using these methods.

**DATES:** *Effective:* August 3, 2020.

**FOR FURTHER INFORMATION CONTACT:** Mr. Curtis E. Glover, Sr., Procurement Analyst, at (202) 501–1448 or [curtis.glover@gsa.gov](mailto:curtis.glover@gsa.gov) for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at (202) 501–4755. Please cite FAC 2020–07, FAR Case 2018–022.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 84 FR 44270 on August 23, 2019, to update a clause to permit the issuance of task or delivery orders via fax or electronic commerce and clarify when an order is considered “issued” when using these methods. Two respondents submitted comments on the proposed rule.

FAR clause 52.216–18, Ordering, currently states that task or delivery orders may be issued orally, by fax, or electronic commerce only if authorized in the contract schedule. If mailed, task or delivery orders are considered “issued” when the Government puts the order in the mail. The clause is included in solicitations and contracts when an indefinite-delivery definite-quantity, requirements, or indefinite-delivery indefinite-quantity contract is contemplated.

As part of today’s business environment, the Government and Federal contractors frequently use email, fax (via computer, online service, or machine), or other electronic commerce methods to communicate with one another. In an effort to reflect current business practices and maintain speed and efficiency in the ordering process, this rule updates FAR clause 52.216–18 to no longer require a separate authorization in the contract to use electronic commerce or fax to issue task or delivery orders. The rule also identifies when a task or delivery order is considered “issued” when using such methods. As a result, contracting officers will no longer need to include supplemental ordering language in the contract when anticipating the use of fax or electronic commerce to issue task or delivery orders. Ordering information will be located in one place in the contract. A common understanding of when a task or delivery order is considered issued, in such situations, will be applied Governmentwide.

As task or delivery orders are not issued orally as frequently as other issuance methods and the use of such a method is dependent upon the particular circumstances of the procurement, the authority to issue orders orally must still be separately authorized under the contract and is not being amended by this rule.

**II. Discussion and Analysis**

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. Both comments were outside of the scope of this rule and no changes were made to the final rule as a result of public comments.

**III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items**

This final rule does not create any new provisions or clauses, nor does it change the applicability or burden of any existing provisions or clauses included in solicitations and contracts valued at or below the SAT, or for commercial items, including COTS items.

**IV. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits

(including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**V. Executive Order 13771**

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

**VI. Regulatory Flexibility Act**

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

The Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA) are amending a Federal Acquisition Regulation (FAR) clause to automatically permit the issuance of task or delivery orders via fax or electronic commerce, without additional authorization text in the contract and to clarify when an order is considered to be “issued” when using these methods. The objective of the rule is to update the clause to reflect current business practices and maintain speed and efficiency when issuing task and delivery orders under a contract.

No public comments were received in response to the initial regulatory flexibility analysis. DoD, GSA, and NASA do not expect this rule 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.* The rule simply formalizes a current business practice. The Government does not collect data on the total number of task and delivery orders issued by mail, fax, and/or electronic commerce. However, the Federal Procurement Data System (FPDS) provides the following information for fiscal year 2018:

The Federal Government awarded approximately 17,690 new indefinite-delivery indefinite-quantity, indefinite-delivery definite-quantity, and requirements contracts; of which approximately 62 percent were awarded to approximately 7,420 unique small business entities.

This rule does not impose any Paperwork Reduction Act reporting, recordkeeping, or other compliance requirements on any small entities. There are no known significant alternative approaches to the rule that would meet the stated objectives.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a

copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

**VII. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

**List of Subjects in 48 CFR Part 52**

Government procurement.

**William F. Clark,**

*Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.*

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. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

- 2. Amend section 52.216–18 by—
- a. Revising the date of the clause;
- b. Revising paragraph (c); and
- c. Adding paragraph (d).

The revisions and addition read as follows:

**52.216–18 Ordering.**

\* \* \* \* \*

**Ordering (Aug 2020)**

\* \* \* \* \*

(c) A delivery order or task order is considered “issued” when—

- (1) If sent by mail (includes transmittal by U.S. mail or private delivery service), the Government deposits the order in the mail;
- (2) If sent by fax, the Government transmits the order to the Contractor’s fax number; or
- (3) If sent electronically, the Government either—

(i) Posts a copy of the delivery order or task order to a Government document access system, and notice is sent to the Contractor; or

(ii) Distributes the delivery order or task order via email to the Contractor’s email address.

(d) Orders may be issued by methods other than those enumerated in this clause only if authorized in the contract.

(End of clause)

[FR Doc. 2020–12766 Filed 7–1–20; 8:45 am]

**BILLING CODE 6820–EP–P**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 4, 5, 9, 18, 27, and 52**

[FAC 2020–07; Item VI; Docket No. FAR–2020–0052; Sequence No. 2]

**Federal Acquisition Regulation; Technical Amendments**

**AGENCY:** 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 (FAR) in order to make needed editorial changes.

**DATES:** Effective: July 2, 2020.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lois Mandell, Regulatory Secretariat Division (MVCB), at 202–501–4755 or [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov). Please cite FAC 2020–07, Technical Amendments.

**SUPPLEMENTARY INFORMATION:** In order to update certain elements in 48 CFR parts 5, 9, 27, and 52 this document makes editorial changes to the FAR.

**List of Subjects in 48 CFR Parts 4, 5, 9, 18, 27, and 52**

Government procurement.

**William F. Clark,**

*Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.*

Therefore, DoD, GSA, and NASA amend 48 CFR parts 4, 5, 9, 18, 27, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 4, 5, 9, 18, 27, and 52 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

**PART 4—ADMINISTRATIVE AND INFORMATION MATTERS**

**4.1603 [Amended]**

■ 2. In section 4.1603 amend paragraph (a)(1) by removing “[http://www.gsa.gov/graphics/fas/Civilian\\_contacts.pdf](http://www.gsa.gov/graphics/fas/Civilian_contacts.pdf)” and adding “<https://community.max.gov/x/24foL>” in its place.

**PART 5—PUBLICIZING CONTRACT ACTIONS**

**5.205 [Amended]**

■ 3. In section 5.205 amend paragraph (f) by removing “national buy”.

**PART 9—CONTRACTOR QUALIFICATIONS**

**9.109–4 [Amended]**

■ 4. Amend section 9.109–4 in paragraph (a)(1)(i) by removing “<https://www.state.gov/t/avc/rls/rpt/>” and adding “<https://www.state.gov/bureaus-offices/under-secretary-for-arms-control-and-international-security-affairs/bureau-of-arms-control-verification-and-compliance/>” in its place.

**PART 18—EMERGENCY ACQUISITIONS**

**18.205 [Amended]**

■ 5. In section 18.205 amend paragraph (a) by removing “<http://www.fema.gov/emergency/nrf/>” and adding “<https://www.fema.gov/media-library/assets/documents/117791>” in its place.

**PART 27—PATENTS, DATA, AND COPYRIGHTS**

**27.405–3 [Amended]**

■ 6. In section 27.405–3 amend paragraph (b) by removing “with paragraph (a)(1) of” and adding “with paragraph (a) of” in its place.

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

■ 7. Amend section 52.209–13 by: ■ a. Revising the date of the provision; and

■ b. Removing from paragraphs (b)(1)(i) and (ii) “<https://www.state.gov/t/avc/rls/rpt/>” and adding “<https://www.state.gov/bureaus-offices/under-secretary-for-arms-control-and-international-security-affairs/bureau-of-arms-control-verification-and-compliance/>” in its place.

The revision reads as follows:

**Violation of Arms Control Treaties or Agreements—Certification**

**Violation of Arms Control Treaties or Agreements—Certification (JUL 2020)**

\* \* \* \* \*

■ 8. Amend section 52.212–5 by—

- a. Revising the date of the clause;
- b. Removing from paragraph (b)(14)(ii) “(MAR 2020)” and adding “(MAR 2020) of 52.219–6” in its place;
- c. Redesignating paragraph (b)(18) as (b)(18)(i) and adding (b)(18)(ii);

- d. Removing from paragraph (b)(22)(i) “(MAR 2020)” and adding “(MAY 2020)” in its place; and
- e. Removing from paragraph (b)(42) “(DEC 2007)” and adding “(MAY 2020)” in its place.

The addition reads as follows:

**52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.**

\* \* \* \* \*

**Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (JUL 2020)**

\* \* \* \* \*

(b) \* \* \*

(18) \* \* \*

(ii) Alternate I (MAR 2020) of

52.219–13.

\* \* \* \* \*

[FR Doc. 2020–12757 Filed 7–1–20; 8:45 am]

BILLING CODE 6820–EP–P

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

[Docket No. FAR–2020–0051, Sequence No. 3]

**Federal Acquisition Regulation; Federal Acquisition Circular 2020–07; Small Entity Compliance Guide**

**AGENCY:** 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 DOD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in

accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 2020–07, which amends the Federal Acquisition Regulation (FAR). An asterisk (\*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2020–07, which precedes this document. These documents are also available via the internet at <https://www.regulations.gov>.

**DATES:** July 2, 2020.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2020–07 and the FAR Case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov).

**RULE LISTED IN FAC 2020–07**

Item	Subject	FAR case	Analyst
*I .....	Requirements for DD Form 254, Contract Security Classification Specification .....	2015–002	Glover.
*II .....	Increased Micro-Purchase and Simplified Acquisition Thresholds .....	2018–004	Jackson.
*III .....	Evaluation Factors for Multiple-Award Contracts .....	2017–010	Jackson.
*IV .....	Modifications to Cost or Pricing Data Requirements .....	2018–005	Delgado.
*V .....	Orders Issued Via Fax or Electronic Commerce .....	2018–022	Glover.
VI .....	Technical Amendments .....	.....	.....

**ADDRESSES:** The FAC, including the SECG, is available via the internet at <https://www.regulations.gov>.

**SUPPLEMENTARY INFORMATION:**

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2020–07 amends the FAR as follows:

**Item I—Requirements for DD Form 254, Contract Security Classification Specification (FAR Case 2015–002)**

This final rule amends the FAR to provide procedures for use of the DD Form 254, Contract Security Classification Specification, and the use of the Procurement Integrated Enterprise Environment (PIEE) for electronic submission to streamline the submission process. It requires use of the DD Form 254 by DoD components, and by nondefense agencies that have industrial security services agreements with DoD, and requires the use of the National Industrial Security Program Contracts Classification System module of the PIEE, unless the nondefense

agency has an existing DD Form 254 information system.

**Item II—Increased Micro-Purchase and Simplified Acquisition Thresholds (FAR Case 2018–004)**

This final rule increases the micro-purchase threshold (MPT) from \$3,500 to \$10,000, increases the simplified acquisition threshold (SAT) from \$150,000 to \$250,000, and increases the special emergency procurement authority in paragraph (2) from \$300,000 to \$500,000. The rule also clarifies certain procurement terms, as well as aligns some non-statutory thresholds with the MPT and SAT. It implements section 217(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 and sections 805, 806, and 1702(a) of the NDAA for FY 2018.

This final rule will likely have a positive significant economic impact on a substantial number of small entities.

**Item III—Evaluation Factors for Multiple-Award Contracts (FAR Case 2017–010)**

DoD, GSA, and NASA are issuing a final rule amending the FAR to implement section 825 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114–328). The final rule modifies the requirement to consider price or cost as an evaluation factor for the award of certain multiple-award task order contracts issued by DoD, NASA, and the Coast Guard. Specifically, the rule provides that, at the Government’s discretion, solicitations for multiple-award contracts for the same or similar services that state the Government intends to award a contract to each qualifying offeror do not require price or cost as an evaluation factor for contract award. This exception does not apply to solicitations for multiple-award contracts that provide for sole source orders pursuant to 8(a) of the Small Business Act (15 U.S.C. 637(a)). When price or cost is not evaluated during contract award, the contracting officer shall consider price or cost as a factor for the award of each order under the

contract. Section 825 also amends 10 U.S.C. 2304c(b) to add exemptions for the use of competitive procedures when placing an order under a multiple-award contract.

**Item IV—Modifications to Cost or Pricing Data Requirements (FAR Case 2018-005)**

This final rule increases the threshold for requesting certified cost or pricing data from \$750,000 to \$2 million for contracts entered into after June 30, 2018. For earlier contracts, contractors may request a modification to use the new clause Alternates, with the new \$2 million threshold for subcontracts awarded on or after July 1, 2018. The rule implements section 811 of the

National Defense Authorization Act for Fiscal Year 2018, Public Law 115-91.

This final rule will not have a significant economic impact on a substantial number of small entities.

**Item V—Orders Issued Via Fax or Electronic Commerce (FAR Case 2018-022)**

This final rule amends a FAR clause to permit the issuance of task or delivery orders via facsimile or electronic commerce and clarify when an order is considered “issued” when using these methods. As a result, contracting officers will no longer need to include supplemental ordering language in the contract when anticipating the use of fax or electronic

commerce to issue task or delivery orders. The authority to issue orders orally must still be separately authorized in the contract. A common understanding of when a task or delivery order is considered issued, in such situations, will be applied Governmentwide.

**Item VI—Technical Amendments**

Editorial changes are made at FAR 5.205, 9.109-4, 27.405-3, 52.209-13, and 52.212-5.

**William F. Clark,**

*Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.*  
[FR Doc. 2020-12758 Filed 7-1-20; 8:45 am]

**BILLING CODE 6820-EP-P**