

FEDERAL ACQUISITION CIRCULAR

January 10, 2001

Number 97-22 (Correction)

Federal Acquisition Circular (FAC) 97-22 is corrected to clarify filing instructions for pages in Part 22 and the Appendix for the Cost Accounting Standards; and to remove duplication of text in Part 32.

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

FAC 97-22 Corrections

The corrections below are to the looseleaf version of FAC 97-22:

Summary of Items

Please remove and replace pages i through iv of the "Summary of Items."

Filing Instructions

Please remove and replace the "Filing Instructions" page for January 10, 2001.

Please remove and replace the second page of the "Filing Instructions" for March 10, 2001.

FAR Looseleaf Pages

Please remove and replace pages 32-21 and 32-22.

Appendix

Looseleaf pages for the Appendix are not currently available. Please go to the FAR website at www.arnet.gov/far/97/html/appendix.html and access sections 9903.201-1, 9903.201-2, 9903.201-3, 9903.201-4, 9903.201-5, 9903.201-6, 9903.201-8, and 9903.202-1 of the Appendix in the FAR to review or download changes noted in FAC 97-22.

For a description of these changes, please review the official title of the Cost Accounting Standards Board at 48 CFR Part 99, or the Federal Register publications at 65 FR 5989, February 7, 2000; 65 FR 36767, June 9, 2000; and 65 FR 37469, June 14, 2000.

FAC 97-22 SUMMARY of ITEMS

Federal Acquisition Circular (FAC) 97-22 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Definitions (FAR Case 1999-403)

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

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

Replacement pages: Structure i and ii; 1-9 and 1-10; 2-1 thru 2-5 (2-6 thru 2-12 added); 3-9 thru 3-12; 3-19 and 3-20; 4-1 thru 4-4; 4-11 thru 4-13; 5-3 and 5-4; 5-11 and 5-12; 6-1 thru 6-6; 7-1 and 7-2; 7-9 thru 7-11; 8-5 thru 8-8; 8-11 and 8-12; 9-1 and 9-2; 9-5 and 9-6; 9-9 thru 9-16; 9-21 and 9-22; 9-25 and 9-26; 11-7 and 11-8; 13-1 and 13-2; 13-13; 14-9 and 14-10; 15-1 thru 15-4; 15-9 and 15-10; 15-11 thru 15-16; 15-21 and 15-22; 15-25 and 15-26; 15-29 and 15-30; 15-37 and 15-38; 17-1 and 17-2; 17-5 thru 17-8; 19-1 thru 19-10 (19-10.1 removed); 19-21 thru 19-24; 19-35 and 19-36; 22-1 and 22-2; 22-3 and 22-4; 22-7 and 22-8; 22-27 and 22-28; 22-39 thru 22-42; 23-1 thru 23-4; 23-7 and 23-8; 24-1 and 24-2; 26-1 and 26-2; 27-7 and 27-8; 27-17 thru 27-20; 28-1 thru 28-4; 28-13 and 28-14; 29-1 and 29-2; 31-1 thru 31-8; 31-25 and 31-26; 31-31 and 31-32; 31-35 and 31-36; 31-41 thru 31-44; 32-1 thru 32-12.1; 32-37 thru 32-40; 32-49 and 32-50; 33-1 and 33-2; 33-5 thru 33-8; 34-1 and 34-2; 35-1 thru 35-4; 35-7 and 35-8; 36-1 thru 36-4; 36-9 and 36-10; 37-1 and 37-2; 37-5 thru 37-9 (remove 37-10); 39-1 and 39-2; 42-1 thru 42-4; 42-7 thru 42-12; 42-17 thru 42-20; 43-1 and 43-2; 44-1 and 44-2; 46-1 and 46-2; 46-9 thru 46-12; 47-1 and 47-2; 47-5 and 47-6; 47-23 thru 47-27; 48-1 and 48-2; 49-1 and 49-2; 50-1 thru

50-4; 52-7 and 52-8; 52-11 and 52-12; 52-37 and 52-38; 52-49 and 52-50; 52-55 and 52-56; 52-95 and 52-96; 52-104.3 and 52-104.4; 52-129 and 52-130; 52-133 and 52-134; 52-148.1; 52-215 thru 52-222; 52-255 and 52-256; 52-297 thru 52-302; and 52-305 thru 52-312.

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

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

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

Replacement pages: None.

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

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

Replacement pages: 32-1 and 32-2; 32-17 thru 32-22; and 52-199 thru 52-208.

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

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

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

Replacement pages: 52-41 and 52-42.

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

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

Replacement pages: 52-5 and 52-6; 52-44.1 and 52-44.2; 52-265 thru 52-267; and Matrix 45 and Matrix 46.

Item VI—Technical Amendments

These amendments update references and make editorial changes at sections 1.106, 19.812, 22.403-4, 42.201, 42.203, 52.247-51, and 53.215-1.

Replacement pages: 1-5 and 1-6; 19-35 and 19-36; 22-9 and 22-10; 42-3 and 42-4; 52-329 and 52-330; and 53-7 and 53-8.

Looseleaf Corrections Only

The following correction is made to the looseleaf version only of the FAR:

52.247-51 [Corrected]

Section 52.247-51 is corrected in the fourth sentence of paragraph (e) by removing the word "offer" and adding "offers" in its place.

Replacement pages: 52-329 and 52-330.

Appendix

Please go to the FAR website at www.arnet.gov/far/97/html/appendix.html and access sections 9903.201-1, 9903.201-2, 9903.201-3, 9903.201-4, 9903.201-5, 9903.201-6, 9903.201-8, and 9903.202-1 of the Appendix in the FAR to review or download changes noted in FAC 97-22..

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FAC 97-22 FILING INSTRUCTIONS

NOTE: The following pages reflect FAR technical amendments that are effective on January 10, 2001.

Remove Pages

1-5 and 1-6

19-35 and 19-36

22-9 and 22-10

42-3 and 42-4

52-329 and 52-330

53-7 and 53-8

Insert Pages

1-5 and 1-6

19-35 and 19-36

22-9 and 22-10

42-3 and 42-4

52-329 and 52-330

53-7 and 53-8

Note on the Appendix:

Looseleaf pages for the Appendix are not currently available. Please go to the FAR website at www.arnet.gov/far/97/html/appendix.html and access sections 9903.201-1, 9903.201-2, 9903.201-3, 9903.201-4, 9903.201-5, 9903.201-6, 9903.201-8, and 9903.202-1 of the Appendix in the FAR to review or download changes noted in FAC 97-22.

Remove Pages

17-1 and 17-2
17-5 thru 17-8

19-1 thru 19-10.1
19-21 thru 19-24
19-35 and 19-36

22-1 and 22-2
22-3 and 22-4
22-7 and 22-8
22-27 and 22-28
22-39 thru 22-42

23-1 thru 23-4
23-7 and 23-8

24-1 and 24-2

26-1 and 26-2

27-7 and 27-8
27-17 thru 27-20

28-1 thru 28-4
28-13 and 28-14

29-1 and 29-2

31-1 thru 31-8
31-25 and 31-26
31-31 and 31-32
31-35 and 31-36
31-41 thru 31-44

32-1 thru 32-12.1
32-17 thru 32-22
32-37 thru 32-40
32-49 and 32-50

33-1 and 33-2
33-5 thru 33-8

34-1 and 34-2

35-1 thru 35-4
35-7 and 35-8

36-1 thru 36-4
36-9 and 36-10

Insert Pages

17-1 and 17-2
17-5 thru 17-8

19-1 thru 19-10
19-21 thru 19-24
19-35 and 19-36

22-1 and 22-2
22-3 and 22-4
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23-1 thru 23-4
23-7 and 23-8

24-1 and 24-2

26-1 and 26-2

27-7 and 27-8
27-17 thru 27-20

28-1 thru 28-4
28-13 and 28-14

29-1 and 29-2

31-1 thru 31-8
31-25 and 31-26
31-31 and 31-32
31-35 and 31-36
31-41 thru 31-44

32-1 thru 32-12.1
32-17 thru 32-22
32-37 thru 32-40
32-49 and 32-50

33-1 and 33-2
33-5 thru 33-8

34-1 and 34-2

35-1 thru 35-4
35-7 and 35-8

36-1 thru 36-4
36-9 and 36-10

the appropriate terms.] (All prior authorizations for advance payments under Contract No. _____ are superseded.)

[Signature]

[Name Typed]

[Title of Authorized Official]

[Each Findings, Determination, and Authorization shall be individually prepared to fit the particular circumstances at hand. Paragraphs (a)(1), (2), (3) and (4) and paragraphs (b) and (c) shall be used in each case. If the contract is (a) for experimental, developmental or research work and with a nonprofit educational or research institution, or (b) only for management and operation of a Government-owned plant, paragraph (a)(5) should not be included. If the advance payment is to be made without interest to the contractor, include paragraph (a)(6), (7), or (8). If any advance payments have previously been authorized for the contract, include the final sentence of paragraph (c). The alternate parenthetical wording or other modifications may be used as appropriate. The paragraphs actually used shall be renumbered sequentially.]

32.411 Agreement for special account at a financial institution.

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

AGREEMENT FOR SPECIAL ACCOUNT

This agreement is entered into this _____ day of _____, 20____, between the United States of America (the Government), represented by the Contracting Officer executing this agreement, _____ [Insert the name of the Contractor], a _____ [Insert the name of the State of incorporation] corporation (the Contractor), and _____, a financial institution operating under the laws of _____, located at _____ (the financial institution).

RECITALS

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

(b) The contract or supplemental agreement requires that amounts advanced to the Contractor be deposited separate from the Contractor's general or other funds, in a Special Account at a member bank of the Federal Reserve System,

any "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (12 U.S.C. 1811), or a credit union insured by the National Credit Union Administration. The parties agree to deposit the amounts with the financial institution, which meets the requirement.

(c) This Special Account is designated "____ [Insert the Contractor's name], _____ [Insert the name of the Government agency] Special Account."

COVENANTS

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

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

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

(c) The Government, or its authorized representatives, shall have access to the books and records maintained by the financial institution regarding the Special Account at all reasonable times and for all reasonable purposes, including (but not limited to), the inspection or copying of the books and records and any and all pertinent memoranda, checks, correspondence, or documents. The financial institution shall preserve the books and records for a period of 6 years after the closing of this Special Account.

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

(e) While this Special Account exists, the financial institution shall inform the Government each month of the financial institution's published prime interest rate and changes to the rate during the month. The financial institution shall give this information to the Contracting Officer on the

last business day of the month. *[This covenant will not be included in the Special Account Agreements covering interest-free advance payments.]*

Each of the parties to this agreement has executed the agreement on _____, 20____.

[Signatures and Official Titles]

32.412 Contract clause.

(a) The contracting officer shall insert the clause at 52.232-12, Advance Payments, in solicitations and contracts under which the Government will provide advance payments, except as provided in 32.412(b).

(b) If the agency desires to waive the countersignature requirement because of the contractor's financial strength, good performance record, and favorable experience concerning cost disallowances, the contracting officer shall use the clause with its Alternate I.

(c) If a cost-reimbursement contract is contemplated, the contracting officer shall use the clause with its Alternate II.

(d) If the agency considers a more rapid liquidation appropriate, the contracting officer shall use the clause with its Alternate III.

(e) If the agency provides advance payments under the contract at no interest to the prime contractor, the contracting officer shall use the clause with its Alternate IV.

(f) If the requirement for a special account is eliminated in accordance with 32.409-3(e) or (g), the contracting officer shall insert in the solicitation or contract the clause set forth in Alternate V of 52.232-12, Advance Payments, instead of the basic clause.

Subpart 32.5—Progress Payments Based on Costs

32.500 Scope of subpart.

This subpart prescribes policies, procedures, forms, solicitation provisions, and contract clauses for providing contract financing through progress payments based on costs. This subpart does not apply to—

(a) Payments under cost-reimbursement contracts, but see 32.110 for progress payments made to subcontractors under cost-reimbursement prime contracts; or

(b) Contracts for construction or for shipbuilding or ship conversion, alteration, or repair, when the contracts provide for progress payments based on a percentage or stage of completion.

32.501 General.

Progress payments may be customary or unusual. Customary progress payments are those made under the gen-

eral guidance in this subpart, using the customary progress payment rate, the cost base, and frequency of payment established in the Progress Payments clause, and either the ordinary liquidation method or the alternate method as provided in subsections 32.503-8 and 32.503-9. Any other progress payments are considered unusual, and may be used only in exceptional cases when authorized in accordance with subsection 32.501-2.

32.501-1 Customary progress payment rates.

(a) The customary progress payment rate is 80 percent, applicable to the total costs of performing the contract. The customary rate for contracts with small business concerns is 85 percent.

(b) The contracting officer must—

(1) Consider any rate higher than those permitted in paragraph (a) of this section an unusual progress payment; and

(2) Not include a higher rate in a contract unless advance agency approval is obtained as prescribed in 32.501-2.

(c) When advance payments and progress payments are authorized under the same contract, the contracting officer must not authorize a progress payment rate higher than the customary rate.

(d) In accordance with 10 U.S.C. 2307(e)(2) and 41 U.S.C. 255, the limit for progress payments is 80 percent on work accomplished under undefinitized contract actions. The contracting officer must not authorize a higher rate under unusual progress payments or other customary progress payments for the undefinitized actions.

32.501-2 Unusual progress payments.

(a) The contracting officer may provide unusual progress payments only if—

(1) The contract necessitates predelivery expenditures that are large in relation to contract price and in relation to the contractor's working capital and credit;

(2) The contractor fully documents an actual need to supplement any private financing available, including guaranteed loans; and

(3) The contractor's request is approved by the head of the contracting activity or a designee. In addition, see 32.502-2.

(b) The excess of the unusual progress payment rate approved over the customary progress payment rate should be the lowest amount possible under the circumstances.

(c) Progress payments will not be considered unusual merely because they are on letter contracts or the definitive contracts that supersede letter contracts.