



# **Headquarters Policy Flash**

**FLASH 2001-26**

**DATE:** November 6, 2001  
**TO:** Procurement Directors  
**FROM:** Office of Procurement and Assistance Policy, MA-51  
Office of Procurement and Assistance Management

**SUBJECT:** Federal Acquisition Circular 2001-01

**SUMMARY:** This Policy Flash summarizes the items in FAC 2001-01, published in the Federal Register on October 22, 2001 (66 FR 53478). Contracting personnel should review the details of each item in the full text of the FAC.

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**November 6, 2001**

I. **Application of the Davis-Bacon Act to Construction Contracts with Options to Extend the Term of the Contract**

*Effective Date:*            *December 21, 2001*

This final rule implements the Department of Labor's requirement to incorporate a current Davis-Bacon Act wage determination at the exercise of each option to extend the term of a contract for construction.

II. **Acquisition of Commercial Items**

*Effective Date:*            *December 21, 2001*

This final rule:

- ☛ Amends the FAR to clarify the definition of "commercial item."
- ☛ Provides language that will help contracting officers make determinations related to commercial items.
- ☛ Alerts contracting officers to be aware of customary commercial terms and conditions that may affect the contract price when pricing commercial items.
- ☛ Directs that contracting officers should use standard commercial practices instead of the policies in Subpart 46.8 (Contractor Liability for Loss of or Damage to Property of the Government). The clause at 52.212-4, Limitation of liability, is amended to conform to standard commercial practice.

For further information on this subject contact  
Mr. Michael Raizen on 586-8189 or via e-mail at  
[Michael.Raizen@hq.doe.gov](mailto:Michael.Raizen@hq.doe.gov) .

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**III. Prompt Payment Under Cost-Reimbursement Contracts for Services**

*Effective Date:           October 22, 2001*

*Applicability Date: This amendment is applicable to solicitations issued and contracts awarded on or after October 22, 2001. Any cost reimbursement solicitations issued or contracts awarded for services on or after December 15, 2000, but prior to October 22, 2001 must be amended/modified to incorporate the new Alternate I to 52.232-25. **In no event may agencies pay late payment penalty interest for any delay in payment that occurred prior to December 15, 2000.***

This interim rule:

- ☛ Implements changes in the Office of Management and Budget's (OMB) Prompt Payment Act regulations at 5 CFR 1315 that implemented Section 1010 of the National Defense Authorization Act for Fiscal Year 2001. Those changes were published as an interim final rule and became effective on December 15, 2000 (65 FR 78403) and were applicable to all covered contracts awarded on or after December 15, 2000.
- ☛ Requires agencies to pay an interest penalty in accordance with regulations issued, whenever an interim payment under a cost-reimbursement contract for services is paid more than 30 days after the agency receives a proper invoice from a contractor. **The Act does not permit payment of late payment penalty interest for any period prior to December 15, 2000.**

For further information on this subject, contact Terry Sheppard at (202) 586-8193, or via e-mail at [Terry.Sheppard@hq.doe.gov](mailto:Terry.Sheppard@hq.doe.gov)

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**IV. Veterans' Employment (FAR Case 1998-614)**

*Effective Date: December 21, 2001*

This final rule:

- ☛ Amends the FAR to implement statutory and regulatory changes related to veterans' employment opportunities and reporting.
- ☛ Amends the FAR to prohibit contracting officers from obligating or expending appropriated funds to enter into a contract with a contractor that has not met its veterans' employment reporting requirements (VETS-100 Report).
- ☛ Exempts contracts for commercial items or contracts valued at or below the simplified acquisition threshold.
- ☛ Adds a new solicitation provision that requires each offeror to represent, by submission of its offer, that it is in compliance with the VETS-100 reporting requirements.
- ☛ Provides the contracting officer information on verification of compliance, by checking with the Department of Labor.

*Note: This FAC supersedes the VETS 100 Reporting - FAR Deviation discussed in Flash #99-03 May 28, 1999, effective July 20, 1999. The new FAR coverage satisfies the deviations as previously discussed in Civilian Agency Acquisition Council Letter 98-6.*

For further information on this subject, contact Robert Webb at (202) 586-8264, or via e-mail at [Robert.Webb.@hq.doe.gov](mailto:Robert.Webb.@hq.doe.gov).

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**V. Veterans Entrepreneurship and Small Business Development Act of 1999**

*Effective Date:*      *October 22, 2001*

This interim rule:

- ☛ Amends the FAR to implement section 803 of the Small Business Reauthorization Act of 2000, part of the Consolidated Appropriations Act, 2001 (Pub. L. 106-504) that was enacted on December 21, 2000.
- ☛ Requires subcontracting activity pertaining to service-disabled veteran-owned small business concerns be reported as a separate category under a small business subcontracting plan; and
- ☛ Changes the Standard Form (SF) 294 "Subcontracting Report for Individual Contracts," and the SF 295 "Summary Subcontract Report," to capture this category of information for the contracting officer.

**VI. Very Small Business Pilot Program**

This final rule amends FAR Subpart 19.9 to extend the Very Small Business Pilot Program for three additional years to September 30, 2003, implementing Section 503(c) of the Small Business Reauthorization Act of 2000.

For further information on this subject contact Bob Webb at (202) 586-8264, or via e-mail at [Robert.Webb@hq.doe.gov](mailto:Robert.Webb@hq.doe.gov)

  
for Gwendolyn S. Cowan, Director

cc: PPAG Members