

costs to both the government and the contractor.—

New FAR coverage, based on the Act, is presented that expands the exceptions based on adequate price competition and provides for special exceptions for commercial items. A new section addressing “information other than cost or pricing data” is created and a Standard Form 141X is provided for use by contractors. —

The proposed policy at FAR 15.804–1(b)(1)(ii), which recognizes circumstances when it can be determined that adequate price competition exists even though only one offeror has responded to the Government’s requirement, is under review within the executive branch of the Government to insure the policy is a permissible implementation of the Act.

Defining “Cost or Pricing Data”

The second major change accomplished by the proposed coverage is the clarification of the meaning of the term “cost or pricing data.” Currently, the FAR uses the term inconsistently. In some places, “certified cost or pricing data” is used and in other locations, it states “cost or pricing data.” In the proposed coverage, the term has been clarified in the definition to mean that, among other things, “cost or pricing data” is required to be certified in accordance with TINA and FAR 15.804–4, and means all facts that as of the date of agreement on price (or other mutually agreeable date) prudent buyers and sellers would reasonably expect to affect the price significantly.

To avoid possible confusion, the term “certified cost or pricing data” has also been defined as a subset of the more encompassing term “cost or pricing data.” The latter addition is designed to show that “certified cost or pricing data” is a subset of “cost or pricing data” and serves to distinguish between data for which a certificate has not yet been submitted and data for which a certificate has or should have been submitted. If circumstances change such that certification is not required, “cost or pricing data” reverts to “information other than cost or pricing data” and has the same postaward audit value that any other “information other than cost or pricing data” would have. However, “cost or pricing data” is always distinguishable from “information other than cost or pricing data” before award by its intended use. That is, “cost or pricing data” should not be requested unless the contracting officer believes it will be necessary to rely upon it to price the contract and that certification will be required or should have been

required in accordance with FAR 15.804–4. Only in the very limited circumstance where “cost or pricing data” is submitted but an exception is later found to apply would it revert to and become “information other than cost or pricing data” after award of the contract. Thus, the word “certified” need no longer be placed in front of “cost or pricing data” in every location it is used in the FAR in order for the term to have the full meaning provided for in TINA. Furthermore, now that the intent of the use of the data is clear, a bright-line distinction between “cost or pricing data” and all other types of information has been created.

“Information Other Than Cost or Pricing Data”—

Since a bright-line test for “cost or pricing data” has now been established, it is also possible to craft a second category of data—“information other than cost or pricing data”—that may be required by the contracting officer in order to establish cost realism or price reasonableness. This information can include limited cost information, sales data or pricing information. The intent is also clear with respect to this category of information. Because it is not “cost or pricing data,” certification shall not be required and approval to obtain this information is vested in the contracting officer. The proposed FAR coverage gives a detailed discussion of “information other than cost or pricing data” at 15.804–5.

B. Regulatory Flexibility Act—

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the proposed FAR revisions reduce the instances where it is necessary to request “cost or pricing data” from contractors. However, most contracts awarded to small entities are awarded on a competitive, fixed-price basis and do not require the submission of “cost or pricing data”. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 94–721), in correspondence.

C. Paperwork Reduction Act—

The Paperwork Reduction Act, Pub. L. 96–511, is deemed to apply because the proposed rule contains information collection requirements. Accordingly, a

request for approval of a new information collection requirement concerning TINA changes is being submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Public comments concerning this request will be invited through a **Federal Register** notice appearing in a future issue.

List of Subjects in 48 CFR Parts 4, 12, 14, 15, 16, 31, 33, 36, 45, 46, 49, 52, and 53

Government procurement.

Dated: December 27, 1994.

Edward Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, it is proposed that 48 CFR Chapter 1 be amended as set forth below:

1. The authority citation for 48 CFR Chapter 1 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM—

2. Section 1.105 is amended under the “FAR Segment” and “OMB Control Number” headings by removing “52.215–32” and “9000–0105”, and adding entries, in numerical order, to read as follows:

1.105 OMB Approval under the Paperwork Reduction Act.

FAR segment	OMB control No.
* * * * *	
52.215–41–	9000–XXX
52.215–42–	9000–XXX
* * * * *	

PART 4—ADMINISTRATIVE MATTERS

3. Section 4.803 is amended in paragraph (a)(17) by adding before the period at the end of the sentence “, or information other than cost or pricing data”, and paragraph (b)(4) is revised to read as follows:

4.803 Contents of contract files.

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(b) * * *

(4) Cost or pricing data, Certificates of Current Cost or Pricing Data, or information other than cost or pricing data; cost or price analysis; and other documentation supporting contractual