



This document is scheduled to be published in the Federal Register on 06/06/2016 and available online at <http://federalregister.gov/a/2016-13189>, and on FDsys.gov

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 14, 19, 22, 25, 28, 43, 47, 49, 52, and 53

[FAR Case 2015-035; Docket 2015-0035; Sequence 1]

RIN 9000-AN23

Federal Acquisition Regulation; Removal of Regulations

Relating to Telegraphic Communication

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

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to delete the use of "telegram", "telegraph", and related terms. The objective is to delete reference to obsolete technologies no longer in use and replace with references to electronic communications. In addition, conforming changes are proposed covering expedited notice of termination and change orders.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addresses shown below on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** to be considered in the formulation of a final rule.

ADDRESSES: Submit comments in response to FAR Case 2015-035 by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>.
Submit comments via the Federal eRulemaking portal by searching for "FAR Case 2015-035". Select the link "Comment Now" that corresponds with FAR Case 2015-035. Follow the instructions provided at the "Comment Now" screen. Please include your name, company name (if any), and "FAR Case 2015-035" on your attached document.
- Mail: General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Ms. Flowers, 1800 F Street, NW, 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR Case 2015-035, in all correspondence related to this case. Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Zenaida Delgado, Procurement Analyst, at 202-969-7207, 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 2015-035.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to amend the FAR to delete the use of the terms "telegram", "telegraph", "telegraphic", and related terminology.

The word "telegram" emerged shortly after the invention of the electrical telegraph in the 1840s. This terminology and way of communicating was incorporated into the first issue of the FAR, effective April 1, 1984. The emergence of electronic means of communication, starting with the facsimile machine, and then followed by email and mobile-phone text messages in the 1990s, resulted in the sparing use of telegraph services and use of telegrams. On this basis, the Councils are proposing to delete telegraphic services from the FAR and replace these terms with an option for electronic communications.

This case is consistent with the Office of Federal Procurement Policy (OFPP) Memorandum dated December 4, 2014 on transforming the marketplace, which describes ongoing actions to support the needs of a 21st century Government.

II. Discussion and Analysis

(1) This rulemaking proposes to delete all references to "telegraph" and "telegram" and replace these terms with an option for electronic communication.

(2) At FAR 49.601-1, a revised policy statement is added to allow the use of electronic means to notify the contractor of a termination for convenience. The objective is to provide an expeditious way to notify the contractor of the termination. This change is necessary because the abbreviated version of the notice of termination for the convenience of the Government is currently linked with the telegraphic notice procedure.

(3) At FAR 49.102, a conforming change is added to allow the use of electronic means to notify the contractor of a termination whether the termination is for convenience or default.

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

IV. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this proposed 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, an Initial Regulatory Flexibility Analysis (IRFA) has been prepared consistent with 5 U.S.C. 603. The analysis is summarized as follows:

The reason for this action is to delete the use of "telegram", "telegraph", and related terms. The Councils are proposing to replace these terms with an option for electronic communications. The objective is to delete reference to obsolete technologies no longer in use within the context of the FAR requirements. The proposed rule would apply to all entities, both small and other than small, performing as contractors or subcontractors on U.S. Government contracts. In 2014 there were about 350,000 active registrants in the System for Award Management (SAM). DoD, GSA, and NASA estimate approximately half of the registrants in SAM (175,000) are small entities that will receive a contract or subcontract in a given year. In 2014 small entities received 1,398,605 or about 9 percent of all actions in that year per the Federal Procurement Data System (FPDS). However, the small entities will not be materially affected by this rule, as the only change provided in this rule is recognition of current options for transmitting documents between the Government and contractors. It does not change the policy requiring the Government to notify contractors of a contract termination. The Government is still responsible to obtain evidence of receipt of termination from the contractor.

There are no reporting or recordkeeping requirements associated with this rule.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There were no significant alternatives identified that would meet the objective of the rule.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this proposed rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the proposed rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (FAR Case 2015-035), in correspondence.

V. Paperwork Reduction Act

The proposed 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 5, 14, 19, 22, 25, 28, 43,
47, 49, 52, and 53**

Government procurement.

Dated: May 31, 2016.

William Clark,
Director,
Office of Government-wide
Acquisition Policy,
Office of Acquisition Policy,
Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 5, 14, 19, 22, 25, 28, 43, 47, 49, 52, and 53 as set forth below:

1. The authority citation for 48 CFR parts 5, 14, 19, 22, 25, 28, 43, 47, 49, 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 5—PUBLICIZING CONTRACT ACTIONS

5.504 [Amended]

2. Amend section 5.504 by removing from paragraph (d) “, telegrams,”.

PART 14—SEALED BIDDING

14.201-6 [Amended]

3. Amend section 4.201-6 by removing and reserving paragraph (g).

14.202-2 [Removed and Reserved]

4. Remove and reserve section 14.202-2.

5. Amend section 14.208 by revising paragraph (b) to read as follows:

14.208 Amendment of invitation for bids.

* * * * *

(b) Before amending an invitation for bids, the contracting officer shall consider the period of time

remaining until bid opening and the need to extend this period.

* * * * *

14.301 [Amended]

6. Amend section 14.301 by removing and reserving paragraph (b).

7. Revise section 14.302 to read as follows:

14.302 Bid submission.

Bids shall be submitted so that they will be received in the office designated in the invitation for bids not later than the exact time set for opening of bids.

8. Amend section 14.303 by revising paragraph (a) to read as follows:

14.303 Modification or withdrawal of bids.

(a) (1) Bids may be modified or withdrawn by any method authorized by the solicitation, if notice is received in the office designated in the solicitation not later than the exact time set for opening of bids. If the solicitation authorizes facsimile bids, bids may be modified or withdrawn via facsimile received at any time before the exact time set for receipt of bids, subject to the conditions specified in the provision prescribed in 14.201-6(v). Modifications received by facsimile shall be sealed in an envelope by a proper official. The official shall write on the envelope:

(i) The date and time of receipt and by whom; and

(ii) The number of the invitation for bids, and shall sign the envelope.

(2) No information contained in the envelope shall be disclosed before the time set for bid opening.

* * * * *

14.407-3 [Amended]

9. Amend section 14.407-3 by removing paragraph (g) (4), and redesignating paragraph (g) (5) as (g) (4).

14.408-1 [Amended]

10. Amend section 14.408-1 by removing from paragraph (d) (2) "telegrams or electronic transmissions," and adding "electronic communications," in its place.

PART 19—SMALL BUSINESS PROGRAMS

19.302 [Amended]

11. Amend section 19.302 by removing from paragraph (d) (1) (ii) "telegram,".

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1003-3 [Amended]

12. Amend section 22.1003-3 by removing from paragraph (d) "telegraph,".

PART 25—FOREIGN ACQUISITION

25.401 [Amended]

13. Amend section 25.401 in the table, by removing from paragraph (b) (2) (iii) the words "telegraph services,".

and removing "47 U.S.C. 153(20))" and adding "47 U.S.C. 153(24))" in its place.

PART 28—BONDS AND INSURANCE

28.101-4 [Amended]

14. Amend section 28.101-4 by removing paragraph (c) (6), and redesignating paragraphs (c) (7) through (9) as paragraphs (c) (6) through (8), respectively.

PART 43—CONTRACT MODIFICATIONS

15. Amend section 43.201 by revising paragraph (c) to read as follows:

43.201 General.

* * * * *

(c) The contracting officer may issue a change order by electronic means without a SF 30 under unusual or urgent circumstances, provided that the message contains substantially the information required by the SF 30 and immediate action is taken to issue the SF 30.

PART 47—TRANSPORTATION

16. Amend section 47.305-10 by revising paragraph (c) to read as follows:

47.305-10 Packing, marking, and consignment instructions.

* * * * *

(c) If necessary to meet required delivery schedules, the contracting officer may issue instructions by telephone or electronic means. The contracting officer shall confirm

telephonic instructions in writing, and confirm electronic instructions if the contracting officer did not receive confirmation of receipt.

* * * * *

PART 49—TERMINATION OF CONTRACTS

17. Amend section 49.102, paragraph (a), by revising the first and second sentences of the introductory text, to read as follows:

49.102 Notice of termination.

(a) General. The contracting officer shall terminate contracts for convenience or default only by a written notice to the contractor. The notice of termination may be expedited by means of electronic communication capable of providing confirmation of receipt by the contractor. When the notice is mailed, it shall be sent by certified mail, return receipt requested. * * *

* * * * *

18. Amend section 49.601-1 by—

a. Revising the section heading; and adding an introductory paragraph;

b. Removing from paragraph (a) "telegraphic", "[insert "immediately"", and "Telegraph", and adding "electronic", "[insert "immediately", (today's date)", and "Provide by electronic means" in their places, respectively; and

c. Removing from paragraph (b) "telegraphic", "[insert "immediately"", and "Telegraph", and adding "electronic", "[insert "immediately", (today's date)", and "Provide by electronic means" in their places, respectively.

The revision and addition reads as follows:

49.601-1 Electronic notice.

The contracting officer may provide expedited notice of termination, by electronic means, that includes a requirement for the contractor to confirm receipt. If the contractor does not confirm receipt promptly, the contracting officer shall resend the notice electronically, and expedite the letter notice described in 49.601-2. If confirmation of the electronic notice is received, and the electronic notice includes all content in 49.601-2, the contracting officer, at her or his discretion, need not send the letter notice described in 49.601-2.

* * * * *

19. Amend section 49.601-2 by-

a. Revising the third and fourth sentences of the introductory paragraph;

b. Removing from paragraph (a) "telegram" and adding "electronic notice" in their places, two times; and

c. Revising the introductory paragraph of the Alternate notice.

The revisions read as follows:

49.601-2 Letter notice.

* * * This notice shall be sent by certified mail, return receipt requested, or electronically, provided evidence of receipt is received by the contracting officer. If no prior electronic notice was issued, or if no confirmation of an electronic notice was received, use the alternate notice that follows this notice.

* * * * *

Alternate notice. Substitute the following paragraph (a) for paragraph (a) of 49.601-2, Notice of Termination to Prime Contractors, if no prior electronic notice was issued, or if no confirmation of an electronic notice was received:

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 20. Amend section 52.214-3 by—
 - a. Revising the date of the provision; and
 - b. Revising paragraph (b).

The revisions read as follows:

52.214-3 Amendments to Invitations for Bids.

* * * * *

AMENDMENTS TO INVITATIONS FOR BIDS (DATE)

* * * * *

(b) (1) Bidders shall acknowledge receipt of any amendment to this solicitation:

- (i) By signing and returning the amendment;
 - (ii) By identifying the amendment number and date in space provided for this purpose on the form for submitting a bid;
 - (iii) By letter;
 - (iv) By facsimile, if facsimile bids are authorized in the solicitation; or
 - (v) By email, if email bids are authorized in the solicitation.
- (2) The Government must receive the acknowledgment by the time and at the place specified for receipt of bids.

21. Amend section 52.214-5 by—

- a. Revising the date of the provision;
- b. Removing paragraph (c); and
- c. Redesignating paragraphs (d) and (e), as paragraphs (c) and (d), respectively.

The revision reads as follows:

52.214-5 Submission of Bids.

* * * *

SUBMISSION OF BIDS (DATE)

* * * * *

52.214-13 [Removed and Reserved]

22. Remove and reserve section 52.214-13.

PART 53—FORMS

53.213 [Amended]

23. Amend section 53.213 by removing from paragraph (b) "(10/83)" and adding "(Date)" in its place.

53.215-1 [Amended]

24. Amend section 53.215-1 by removing from paragraph (b) "(10/83)" and adding "(Date)" in its place.

53.243 [Amended]

25. Amend section 53.243 introductory text by removing "(10/83)" and adding "(Date)" in its place.

26. Revise section 53.301-30 to read as follows:

53.301-30 Standard Form 30, Amendment of Solicitation/Modification of Contract.

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT				1. CONTRACT ID CODE	PAGE OF PAGES
2. AMENDMENT/MODIFICATION NUMBER		3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQUISITION NUMBER	5. PROJECT NUMBER (If applicable)	
6. ISSUED BY CODE		7. ADMINISTERED BY (If other than Item 6) CODE			
8. NAME AND ADDRESS OF CONTRACTOR (Number, street, county, State and ZIP Code)				<input checked="" type="checkbox"/>	9A. AMENDMENT OF SOLICITATION NUMBER
				<input type="checkbox"/>	9B. DATED (SEE ITEM 11)
				<input type="checkbox"/>	10A. MODIFICATION OF CONTRACT/ORDER NUMBER
				<input type="checkbox"/>	10B. DATED (SEE ITEM 13)
CODE		FACILITY CODE			

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended. is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or electronic communication which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by letter or electronic communication, provided each letter or electronic communication makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

**13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS.
IT MODIFIES THE CONTRACT/ORDER NUMBER AS DESCRIBED IN ITEM 14.**

CHECK ONE	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NUMBER IN ITEM 10A.
<input type="checkbox"/>	
<input type="checkbox"/>	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation data, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
<input type="checkbox"/>	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
<input type="checkbox"/>	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor is not is required to sign this document and return _____ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)	
15B. CONTRACTOR/OFFEROR		15C. DATE SIGNED	16B. UNITED STATES OF AMERICA
(Signature of person authorized to sign)			(Signature of Contracting Officer)
			16C. DATE SIGNED

Previous edition unusable

STANDARD FORM 30 (REV. [DATE])
Prescribed by GSA FAR (48 CFR) 53.243

INSTRUCTIONS (Back Page):

Instructions for items other than those that are self-explanatory, are as follows:

- (a) **Item 1 (Contract ID Code).** Insert the contract type identification code that appears in the title block of the contract being modified.
- (b) **Item 3 (Effective date).**
 - (1) For a solicitation amendment, change order, or administrative change, the effective date shall be the issue date of the amendment, change order, or administrative change.
 - (2) For a supplemental agreement, the effective date shall be the date agreed to by the contracting parties.
 - (3) For a modification issued as an initial or confirming notice of termination for the convenience of the Government, the effective date and the modification number of the confirming notice shall be the same as the effective date and modification number of the initial notice.
 - (4) For a modification converting a termination for default to a termination for the convenience of the Government, the effective date shall be the same as the effective date of the termination for default.
 - (5) For a modification confirming the contracting officer's determination of the amount due in settlement of a contract termination, the effective date shall be the same as the effective date of the initial decision.
- (c) **Item 6 (Issued By).** Insert the name and address of the issuing office. If applicable, insert the appropriate issuing office code in the code block.
- (d) **Item 8 (Name and Address of Contractor).** For modifications to a contract or order, enter the contractor's name, address, and code as shown in the original contract or order, unless changed by this or a previous modification.
- (e) **Items 9, (Amendment of Solicitation Number - Dated), and 10, (Modification of Contract/Order Number - Dated).** Check the appropriate box and in the corresponding blanks insert the number and date of the original solicitation, contract, or order.
- (f) **Item 12 (Accounting and Appropriation Data).** When appropriate, indicate the impact of the modification on each affected accounting classification by inserting one of the following entries:
 - (1) Accounting classification
Net increase \$
 - (2) Accounting classification
Net decrease \$
- (g) **Item 13.** Check the appropriate box to indicate the type of modification. Insert in the corresponding blank the authority under which the modification is issued. Check whether or not contractor must sign this document. (See FAR 43.103.)
- (h) **Item 14 (Description of Amendment/Modification).**
 - (1) Organize amendments or modifications under the appropriate Uniform Contract Format (UCF) section headings from the applicable solicitation or contract. The UCF table of contents, however, shall not be set forth in this document.
 - (2) Indicate the impact of the modification on the overall total contract price by inserting one of the following entries:
 - (i) Total contract price increased by \$
 - (ii) Total contract price decreased by \$
 - (iii) Total contract price unchanged.
 - (3) State reason for modification.
 - (4) When removing, reinstating, or adding funds, identify the contract items and accounting classifications.
 - (5) When the SF 30 is used to reflect a determination by the contracting officer of the amount due in settlement of a contract terminated for the convenience of the Government, the entry in Item 14 of the modification may be limited to --
 - (i) A reference to the letter determination; and
 - (ii) A statement of the net amount determined to be due in settlement of the contract.
 - (6) Include subject matter or short title of solicitation/contract where feasible.
- (i) **Item 16B.** The contracting officer's signature is not required on solicitation amendments. The contracting officer's signature is normally affixed last on supplemental agreements.

NOTE: If there are changes to multiple accounting classifications that cannot be placed in block 12, insert an asterisk and the words "See continuation sheet".

STANDARD FORM 30 (REV. [DATE]) BACK

[BILLING CODE 6820-EP]

[FR Doc. 2016-13189 Filed: 6/3/2016 8:45 am; Publication Date: 6/6/2016]