



DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 7

[FAR Case 2017-017; Docket No. 2017-0017, Sequence No. 1]

RIN: 9000-AN63

Federal Acquisition Regulation: Rental Cost Analysis in Equipment Acquisitions

AGENCIES: 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 clarify the term "lease."

DATES: Interested parties should submit 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 2017-017 by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by entering "FAR Case 2017-017" under the heading "Enter

Keyword or ID" and selecting "Search." Select the link "Comment Now" that corresponds with "FAR Case 2017-017." Follow the instructions provided on the screen. Please include your name, company name (if any), and "FAR Case 2017-017" on your attached document.

- Mail: General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Lois Mandell, 1800 F Street, NW, 2nd floor, Washington, DC 20405.

Instructions: Please submit comments only and cite "FAR case 2017-017" in all correspondence related to this case. All comments received 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: For clarification of content, contact Mr. Michael O. Jackson, Procurement Analyst, at 202-208-4949. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755. Please cite "FAR Case 2017-017."

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to amend the FAR to clarify, in FAR subpart 7.4, Equipment Lease or Purchase, that the term "lease," as used in the subpart, includes the "rental" of equipment. This change clarifies that agencies should be evaluating comparative costs and other factors when considering whether to lease or rent equipment versus purchase equipment. The rule also adds a helpful link to a GSA site that provides additional guidance on renting and leasing equipment and updates the GSA office from which agencies may request information when making lease or purchase decisions. In addition, weblinks have been added to the rule for Office of Management and Budget (OMB) guidance for lease-purchase analysis, see Special Guidance for Lease-purchase Analysis (Section 13 of (OMB) Circular A-94, also see 8.c.(2)); and OMB Circular A-11 Appendix B Budgetary Treatment of Lease-Purchases and Leases of Capital Assets.

II. Discussion and analysis.

This rule proposes to amend FAR subpart 7.4, as follows:

- Adding language to the scope of the subpart to clarify that the term "lease", as used in the subpart, applies to both the lease and rental of equipment, and

to identify some general factors that may vary when leasing or renting equipment.

- Adding a GSA website that provides information that could assist the contracting officer in making equipment lease or purchase decisions, and updating the GSA office to contact when an agency requests assistance with the lease versus purchase analysis decision. In addition, weblinks have been added to the rule for OMB guidance for lease-purchase analysis.

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

This rule amends the FAR to clarify that although the term "lease" applies to both the lease and rental of equipment, there are some differences between renting and leasing in many industries, and there is no standard distinction between both renting and leasing that spans across all industries. This case does not add any new provisions or clauses or impact any existing provisions or clauses.

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 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 codified at 5 U.S.C. 601 et seq. However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to clarify, in FAR subpart 7.4, that the term "lease" includes the "rental" of equipment. This change clarifies that agencies should be evaluating comparative costs and other factors when

considering whether to lease or rent equipment versus purchase equipment.

The objective of the rule is to ensure the value of rental agreements are included in the decision on whether to lease or purchase equipment. The legal basis for the FAR is 40 U.S.C. 121(c), 10 U.S.C. chapter 137, and 51 U.S.C. 20113.

Based on Fiscal Year 2016 data from the Federal Procurement Data System, the Government issued approximately 34,925 contract actions for the rent/lease or purchase of equipment. Of the 34,925 contract actions, approximately 20,100 awards were made to 6,670 unique small business entities. The average award to small businesses was valued at approximately \$700,000.

This 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. There are no known significant alternative approaches to the proposed rule that would meet the applicable requirement.

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 rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule consistent with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2017-017) in correspondence.

VII. 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 Part 7

Government procurement.

Dated: August 30, 2018.

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

Therefore, DoD, GSA, and NASA are proposing to amend 48 CFR part 7 as set forth below:

PART 7—ACQUISITION PLANNING

1. The authority citation for part 7 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. Revise section 7.400 to read as follows:

7.400 Scope of subpart.

This subpart provides guidance pertaining to the decision to acquire equipment by lease or purchase. It applies to both the initial acquisition of equipment and the renewal or extension of existing equipment leases. The term "lease", as used in this subpart, applies to both the lease and rental of equipment. While there are some differences between renting and leasing in many industries, there is no standard distinction between both renting and leasing that spans across all industries. Rental agreements are typically for shorter periods of time than lease agreements. Additionally, maintenance requirements and financial terms (e.g., fees or payment terms) differ between a lease and a rental agreement.

7.401 [Amended]

2. Amend section 7.401 by removing from paragraph (a) (3) "rental payments" and adding "lease, or other periodic payments, however described," in its place.

3. Amend section 7.403 by revising the section heading and paragraph (b), and adding paragraph (c) to read as follows:

7.403 General Services Administration assistance and OMB Guidance.

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(b) Agencies may request information from the following GSA office: GSA FAS National Customer Service Center by phone at 1-800-488-3111 or by email at ncscustomer.service@gsa.gov. Additional information to assist with deciding whether to purchase or lease equipment is available at <https://www.gsa.gov/acquisition/purchasing-programs/gsa-schedules/list-of-gsa-schedules/schedule-51-vhardware-superstore/equipment-rental-and-leasing>.

(c) See Special Guidance for Lease-purchase Analysis (Section 13 of OMB Circular A-94, also see 8.c.(2)) at <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A94/a094.pdf> and OMB Circular A-11 Appendix B Budgetary Treatment of Lease-Purchases and Leases of Capital Assets at https://www.whitehouse.gov/wp-content/uploads/2018/06/app_b.pdf.

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