Federal Register

Friday,
September 30, 2005

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1, Parts 1, 2, 3, et al.
Federal Acquisition Regulations; Interim and Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 2005–06; Introduction

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

ACTION: Summary presentation of interim and final rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2005–06. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.acqnet.gov/far*.

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, at (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2005–06 and specific FAR case number(s). Interested parties may also visit our Web site at *http://www.acqnet.gov/far*.

Item	Subject	FAR case	Analyst
I	Information Technology Security (Interim)	2004–018	Davis.
II	Improvements in Contracting for Architect-EngineerServices	2004–001	Davis.
III	Title 40 of United States Code Reference Corrections	2005–010	Zaffos.
IV	Implementation of the Anti-Lobbying Statute	1989–093	Woodson.
V	Increased Justification and Approval Threshold for DOD, NASA, and Coast Guard	2004–037	Jackson.
VI	Addition of Landscaping and Pest Control Services to the Small Business Competitiveness Demonstration Program.	2004–036	Marshall.
VII	Powers of Attorney for Bid Bonds	2003–029	Davis.
VIII	Expiration of the Price Evaluation Adjustment(Interim)	2005–002	Cundiff.
IX	Accounting for Unallowable Costs	2004–006	Olson.
X	Reimbursement of Relocation Costs on a Lump-Sum Basis	2003–002	Olson.
XI	Training and Education Cost Principle	2001–021	Olson.

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–06 amends the FAR as specified below:

Item I—Information Technology Security (FAR Case 2004–018)

This interim rule amends the FAR to implement the Information Technology (IT) Security provisions of the Federal Information Security Management Act of 2002 (FISMA) (Title III of the E-Government Act of 2002 (E-Gov Act)).

This interim rule focuses on the importance of system and data security by contracting officials and other members of the acquisition team. The intent of adding specific guidance in the FAR is to provide clear, consistent guidance to acquisition officials and program managers; and to encourage and strengthen communication with IT security officials, chief information officers, and other affected parties.

Item II—Improvements in Contracting for Architect-Engineer Services (FAR Case 2004–001)

This final rule implements Section 1427(b) of the Services Acquisition Reform Act of 2003, which prohibits architect-engineering services from being offered under GSA multiple-award schedule contracts or under Governmentwide task and delivery order contracts unless they are awarded using the procedures of the Brooks Architect-Engineer Act and the services are performed under the direct supervision of a professional architect or engineer licensed, registered, or certified in the State, Federal district or outlying area, in which the services are to be performed. This rule is of interest to agencies and contracting officers that use GSA schedules and Governmentwide task and delivery order contracts.

Item III—Title 40 of United States Code Reference Corrections (FAR Case 2005–010)

This final rule amends the FAR to reflect the most recent codification of Title 40 of the United States Code. No substantive changes are being made to the FAR.

Item IV—Implementation of the Anti-Lobbying Statute (FAR Case 1989–093)

This final rule converts the interim rule published in the **Federal Register** at 55 FR 3190, January 30, 1990 to a final rule with minor changes amends the FAR to implement section 319 of the Department of the Interior and Related Agencies Appropriations Act, Public Law 101–121, which added a new section 1352 to Title 31 of the United States Code, entitled ''Limitations on the use of funds to influence certain Federal contracting and financial transactions.'' Section 319 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant or loan. It also requires that each person who requests or receives a contract, grant or cooperative agreement in excess of $100,000 or a Federal commitment to insure or guarantee a loan in excess of $150,000 must disclose lobbying with other than appropriated funds. The rule requires contracting officers, in accordance with FAR 3.808, to insert in all solicitations and contracts expected to exceed $100,000 the provision at FAR 52.203–11, ''Certification and Disclosure Regarding Payments to Influence Certain Federal Transaction,'' and the clause at FAR 52.203–12, ''Limitations on Payments to Influence Certain Federal Transactions.''

Item V—Increased Justification and Approval Threshold for DOD, NASA, and Coast Guard (FAR Case 2004–037)

This final rule converts the interim rule published in the **Federal Register** at 70 FR 11739, March 9, 2005, to a final rule with minor changes. The rule

amended the FAR by increasing the justification and approval thresholds for DoD, NASA, and the U.S. Coast Guard from $50 million to $75 million. This change implemented section 815 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, which amends 10 U.S.C. 2304(f)(1)(B). In addition, corresponding changes have been made to FAR 13.501. The rule will reduce administrative burden for ordering activities.

Item VI—Addition of Landscaping and Pest Control Services to the Small Business Competitiveness Demonstration Program (FAR Case 2004–036)

This final rule finalizes, without change, the interim rule published in the **Federal Register** at 70 FR 11740, March 9, 2005. The rule implements Section 821 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005. Section 821 amended Section 717 of the Small Business Competitiveness Demonstration Program Act of 1988 by adding landscaping and pest control services to the program. As a result, agencies are precluded from considering acquisitions for landscaping and pest control services over the emerging small business reserve amount, currently $25,000, for small business set-asides unless the set-asides are needed to meet their assigned goals. The change may impact small businesses because these awards were previously set-aside for small businesses.

Item VII—Powers of Attorney for Bid Bonds (FAR Case 2003–029)

This final rule is of particular interest to contracting officers and offerors in acquisitions of construction that require a bid bond. This rule was initiated at the request of the Office of Federal Procurement Policy to resolve the controversy surrounding contracting officers' decisions regarding the evaluation of bid bonds and accompanying powers of attorney. This rule amends the FAR to revise the policy relating to acceptance of copies of powers of attorney accompanying bid bonds. This revision to FAR parts 19 and 28 removes the matter of authenticity and enforceability of powers of attorney from a contracting officer's responsiveness determination, which is based solely on documents available at the time of bid opening. Instead, the rule instructs contracting officers to address these issues after bid opening.

Item VIII—Expiration of the Price Evaluation Adjustment (FAR Case 2005–002)

This interim rule cancels the authority for civilian agencies, other than NASA and the U.S. Coast Guard, to apply the price evaluation adjustment to certain small disadvantaged business concerns in competitive acquisitions. The change is required because the statutory authority for the adjustments has expired. As a result, certain small disadvantaged business concerns will no longer benefit from the adjustments. DoD, NASA, and the U.S. Coast Guard are authorized to continue applying the price evaluation adjustment.

Item IX—Accounting for Unallowable Costs (FAR Case 2004–006)

This final rule amends FAR 31.201–6, Accounting for unallowable costs, by adding paragraphs (c)(2) through (c)(5) to provide specific criteria on the use of statistical sampling as an acceptable practice to identify unallowable costs, including the applicability of penalties for failure to exclude certain projected unallowable costs. The final rule also amends FAR 31.109, Advance agreements, by adding ''statistical sampling methods'' as an example of the type of item for which an advance agreement may be appropriate. The case was initiated by the Director, Defense Procurement and Acquisition Policy, who established an interagency ad hoc committee to perform a comprehensive review of FAR Part 31, Contract Cost Principles and Procedures. The rule is of particular importance to contracting officers and contractors who negotiate contracts and modifications, and determine costs in accordance with FAR Part 31.

Item X—Reimbursement of Relocation Costs on a Lump-Sum Basis (FAR Case 2003–002)

This final rule amends FAR 31.205–35 to permit contractors the option of being reimbursed on a lump-sum basis for three types of employee relocation costs: (1) costs of finding a new home, (2) costs of travel to the new location, and (3) costs of temporary lodging. These three types of costs are in addition to the miscellaneous relocation costs for which lump-sum reimbursements are already permitted.

Item XI—Training and Education Cost Principle (FAR Case 2001–021)

This final rule amends the FAR by revising the contract cost principle at FAR 31.205–44, Training and education costs. The amendment streamlines the cost principle and increases clarity by eliminating restrictive and confusing language, and by restructuring the rule to list only specifically unallowable costs.

Dated: September 22, 2005.

Julia B. Wise,

Director,Contract Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005-06 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-06 is effective October 31, 2005, except for Items I, II, III, IV, V, VI, VII, and VIII, which are effective September 30, 2005.

Dated: September 15, 2005.

Vincent J. Feck, Lt Col, USAF

Acting Director, Defense Procurement and Acquisition Policy.

Dated: September 22, 2005.

David A. Drabkin,

Senior Procurement Executive, Office of the Chief Acquisition Officer, General Services Administration.

Dated: September 14, 2005.

Anne Guenther,

Acting Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 05–19467 Filed 9–29–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 7, 11, and 39

[FAC 2005–06; FAR Case 2004–018; Item I]

RIN 9000–AK29

Federal Acquisition Regulation; Information Technology Security

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

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition

Regulation (FAR) to implement the Information Technology (IT) Security provisions of the Federal Information Security Management Act of 2002 (FISMA) (Title III of the E-Government Act of 2002 (E-Gov Act)).

DATES: *Effective Date*: September 30, 2005.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before November 29, 2005 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–06, FAR case 2004–018, by any of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

• Agency Web Site: *http://www.acqnet.gov/far/ProposedRules/proposed.htm*. Click on the FAR case number to submit comments.

• E-mail: farcase.2004–018@gsa.gov. Include FAC 2005–06, FAR case 2004–018 in the subject line of the message.

• Fax: 202–501–4067.

• Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW; Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–06, FAR case 2004–018, in all correspondence related to this case. All comments received will be posted without change to *http://www.acqnet.gov/far/ProposedRules/proposed.htm*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia L. Davis, Procurement Analyst, at (202) 219–0202. The TTY Federal Relay Number for further information is1–800–877–8973. Please cite FAC 2005–06, FAR case 2004–018.

SUPPLEMENTARY INFORMATION:

A. Background

American society relies on the Federal Government for essential information and services provided through interconnected computer systems. Both Government and industry face increasing security threats to essential services and must work in close partnership to address those risks. Increasingly, contractors are supplying, operating, and accessing critical IT systems, performing critical functions throughout the life of IT systems. At the same time, it is apparent that information technology and the IT marketplace have become truly global. The security risks are shared globally as well.

Unauthorized disclosure, corruption, theft, or denial of IT resources have the potential to disrupt agency operations and could have financial, legal, human safety, personal privacy, and public confidence impacts. The Federal community has not focused on unclassified activities with regard to information technology resources involved in the acquisition and use of information on behalf of the Government. In particular, there is need to focus on the role of contractors in security as more and more Federal agencies outsource various information technology functions. Until now, regulations have generally been silent regarding security requirements for contractors who provide goods and services with IT security implications.

This rule amends FAR parts 1, 2, 7, 11, and 39 to implement the information technology security provisions of the Federal Information Security Management Act of 2002 (FISMA) (Title III of the E-Government Act of 2002 (E-Gov Act)). The rule recognizes security as an important part of all phases of the IT acquisition life cycle. The rule focuses much needed attention on the importance of system and data security by contracting officials and other members of the acquisition team.

The intent of adding specific guidance in the FAR is to provide clear, consistent guidance to acquisition officials and program managers; and to encourage and strengthen communication with IT security officials, chief information officers, and other affected parties.

The Councils recognize that IT security standards will continue to evolve and that agency-specific policy and implementation will evolve differently across the spectrum of Federal agencies, depending on their missions. Agencies will customize IT security policies and implementations to meet mission needs as they adapt to a dynamic IT security environment.

The rule is proposing to amend the FAR by—

• Adding the stipulation that when buying goods and services contracting officers shall seek advice from specialists in information security;

• Adding a definition for the term ''Information Security'';

• Incorporating security requirements in acquisition planning and when describing agency needs;

• Requiring adherence to Federal Information Processing Standards; and

• Revising the policy in FAR 39.101 to require including the appropriate agency security policy and requirements in information technology acquisitions.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may 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.* Although the FAR rule will itself have no direct impact on small business concerns, the subsequent supplemental policy-making at the agency level may have some impact on these entities. Since FISMA requires that agencies establish IT security policies that are commensurate with agency risk and potential for harm and that meet certain minimum requirements, the real implementation of this will occur at the agency level. The impact on small entities will, therefore, be variable depending on the agency implementation. The bulk of the policy requirements for information security are expected to be issued as either changes to agency supplements to the FAR or as internal IT policies promulgated by the agency Chief Information Officer (CIO), or equivalent, to assure compliance with agency security policies. These agency supplements and IT policies may affect small business concerns in terms of their ability to compete and win Federal IT contracts. The extent of the effect and impact on small business concerns is unknown and will vary from agency to agency due to the wide variances among agency missions and functions.

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared. The analysis is summarized as follows:

Initial Regulatory Flexibility Analysis FAC 2005–06, FAR Case 2004–018, Information Technology Security

This Initial Regulatory Flexibility Analysis has been prepared consistent with 5 U.S.C. 603.

1. Description of the reasons why the action is being taken.

This interim rule amends the Federal Acquisition Regulation to implement the information technology (IT) security provisions of the Federal Information Security Management Act of 2002 (FISMA), (Title III of the E-Government Act of 2002 (E-Gov Act)). FISMA requires agencies to identify and provide information security protections

commensurate with security risks to Federal information collected or maintained for the agency and information systems used or operated on behalf of an agency by a contractor.

2. Succinct statement of the objectives of, and legal basis for, the rule.

The rule implements the IT security provisions of the FISMA. Section 301 of FISMA (44 U.S.C. 3544) requires that contractors be held accountable to the same security standards as Government employees when collecting or maintaining information or using or operating information systems on behalf of an agency. Security is to be considered during all phases of the acquisition life cycle. FISMA requires that agencies establish IT security policies that are commensurate with agency risk and potential for harm and that meet certain minimum requirements. Agencies are further required, through the Chief Information Officer (CIO) or equivalent, to assure compliance with agency security policies. The law requires that contractors and Federal employees be subjected to the same requirements in accessing Federal IT systems and data.

3. Description of and, where feasible, estimate of the number of small entities to which the rule will apply.

The FAR rule will itself have no direct impact on small business concerns. As stated in #2 above, FISMA requires that agencies establish IT security policies that are commensurate with agency risk and potential for harm and that meet certain minimum requirements. The real implementation of this will occur at the agency level. The impact on small entities will, therefore, be variable depending on the agency implementation. The bulk of the policy requirements for information security are expected to be issued as either changes to agency supplements to the FAR or as internal IT policies promulgated by the agency Chief Information Officer (CIO), or equivalent, to assure compliance with agency security policies. These agency supplements and IT policies may affect small business concerns in terms of their ability to compete and win Federal IT contracts. The extent of the effect and impact on small business concerns is unknown and will vary from agency to agency due to the wide variances among agency missions and functions.

4. Description of projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

The rule does not impose any new reporting, recordkeeping, or compliance requirements.

5. Identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the rule.

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

6. Description of any significant alternatives to the rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the rule on small entities.

There are no practical alternatives that will accomplish the objectives of the applicable statutes.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR Parts 1, 2, 7, 11, and 39 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 2005–06, FAR case 2004–018), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to implement the requirements of the Federal Information Security Management Act (FISMA) of 2002, which went into effect December 17, 2002 and associated implementing guidance from the Office of Management and Budget (OMB) and National Institute of Standards and Technology, particularly FISMA's requirement for agencies to ensure contractor compliance with all current IT security laws and policies. The FAR does not currently provide adequate security for, or sufficient oversight of, the operations of Government contractors (including service providers), and this interim rule is necessary to ensure the Federal Government is not exposed to inappropriate and unknown risk.

However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 1, 2, 7, 11, and 39

Government procurement.

Dated: September 22, 2005.

Julia B. Wise,

Director,Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 2, 7, 11, and 39 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 2, 7, 11, and 39 continues to read as follows:

Authority: : 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.602–2 [Amended]

■ 2. Amend section 1.602–2 by removing from paragraph (c) ''engineering,'' and adding ''engineering, information security,'' in its place.

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 3. Amend section 2.101 in paragraph (b) by adding, in alphabetical order, the definitions ''Information security'' and ''Sensitive But Unclassified (SBU) information'' to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

Information security means protecting information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction in order to provide—

(1) Integrity, which means guarding against improper information modification or destruction, and includes ensuring information nonrepudiation and authenticity;

(2) Confidentiality, which means preserving authorized restrictions on access and disclosure, including means for protecting personal privacy and proprietary information; and

(3) Availability, which means ensuring timely and reliable access to, and use of, information.

* * * * *

Sensitive But Unclassified (SBU) information means unclassified information, which, if lost, misused, accessed or modified in an

unauthorized way, could adversely affect the national interest, the conduct of Federal programs, or the privacy of individuals. Examples include information which if modified, destroyed or disclosed in an unauthorized manner could cause: loss of life; loss of property or funds by unlawful means; violation of personal privacy or civil rights; gaining of an unfair commercial advantage; loss of advanced technology, useful to competitor; or disclosure of proprietary information entrusted to the Government.

* * * * *

PART 7—ACQUISITION PLANNING

■ 4. Amend section 7.103 by adding paragraph (u) to read as follows:

7.103 Agency-head responsibilities.

* * * * *

(u) Ensuring that agency planners on information technology acquisitions comply with the information technology security requirements in the Federal Information Security Management Act (44 U.S.C. 3544), OMB's implementing policies including Appendix III of OMB Circular A–130, and guidance and standards from the Department of Commerce's National Institute of Standards and Technology.

■ 5. Amend section 7.105 by adding a sentence to the end of paragraph (b)(17) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) * * *

(17) * * * For Information Technology acquisitions, discuss how agency information security requirements will be met.

* * * * *

PART 11—DESCRIBING AGENCY NEEDS

■ 6. Revise section 11.102 to read as follows:

11.102 Standardization program.

Agencies shall select existing requirements documents or develop new requirements documents that meet the needs of the agency in accordance with the guidance contained in the Federal Standardization Manual, FSPM–0001; for DoD components, DoD 4120.24–M, Defense Standardization Program Policies and Procedures; and for IT standards and guidance, the Federal Information Processing Standards Publications (FIPS PUBS). The Federal Standardization Manual may be obtained from the General Services Administration (see address in 11.201(d)(1)). DoD 4120.24–M may be obtained from DoD (see address in 11.201(d)(2)). FIPS PUBS may be obtained from the Government Printing Office (GPO), or the Department of Commerce's National Technical Information Service (NTIS) (see address in 11.201(d)(3)).

■ 7. Amend section 11.201 by adding paragraph (d)(3) to read as follows:

11.201 Identification and availability of specifications.

* * * * *

(d) * * *

(3) The FIPS PUBS may be obtained from *http://www.itl.nist.gov/fipspubs/*, or purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Telephone (202) 512–1800, Facsimile (202) 512–2250; or National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, Telephone (703) 605–6000, Facsimile (703) 605–6900, Email: *orders@ntis.gov*.

* * * * *

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

■ 8. Amend section 39.101 by adding paragraph (d) to read as follows:

39.101 Policy.

* * * * *

(d) In acquiring information technology, agencies shall include the appropriate information technology security policies and requirements.

[FR Doc. 05–19468 Filed 9–29–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 8, 16, and 36

[FAC 2005–06; FAR Case 2004–001; Item II]

RIN 9000–AK15

Federal Acquisition Regulation; Improvements in Contracting for Architect-Engineer Services

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have adopted as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 1427(b) of the Services Acquisition Reform Act of 2003 (Title XIV of Public Law 108–136). This final rule emphasizes the requirement to place orders for architect-engineer services consistent with the FAR and reiterates that such orders shall not be placed under General Services Administration (GSA) multiple award schedule (MAS) contracts and Governmentwide task and delivery order contracts unless the contracts were awarded using the procedures as stated in the FAR.

DATES: *Effective Date:* September 30, 2005.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia Davis, Procurement Analyst, at (202) 219–0202. Please cite FAC 2005–06, FAR case 2004–001.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule constitutes the implementation in the FAR of Section 1427 of the Services Acquisition Reform Act of 2003 (Title XIV of Public Law 108–136) to ensure that the requirements of the Brooks Architect-Engineers Act (40 U.S.C. 1102 *et seq.*) are not circumvented through the placement of orders under GSA MAS contracts and Governmentwide task and delivery order contracts that were not awarded using FAR Subpart 36.6 procedures. An order cannot be issued consistent with FAR Subpart 36.6, as currently required by FAR 16.500(d), unless the basic underlying contract was awarded using the Brooks Architect-Engineers Act procedures. This final rule amends FAR parts 2, 8, 16, and 36 to ensure appropriate procedures are followed when ordering architect-engineer services. The interim rule was published in the **Federal Register** at 70 FR 11737, March 9, 2005. The Councils received comments in response to the interim rule from seven (7) respondents.

Summary of the Public Comments

The comments were organized into three groups as follows:

1. *Clarification on the Brooks Act Citation (40 U.S.C. 1102).*

Comment: Two commenters indicated that they were unable to find any relation of 40 U.S.C. 1102 with Architect-Engineer Services and requested clarification.

Response: The Councils clarify that the Brooks Act was recently re-codified by Congress and is now identified under 40 U.S.C. 1101 *et seq.* and the definition of architect-engineer services is defined under 40 U.S.C. 1102.

2. *Support interim rule but it does not go far enough. Recommend changes in the definition.*

Comment: One commenter requested that in each place where the term ''architect-engineer'' is used in the rule, it be replaced with the term ''architectural and engineering (including surveying and mapping) services.'' Another commenter requested that all mapping and surveying be subjected to qualification based selection in conformance with the Brooks Act.

Response: The Councils considered these recommendations to be beyond the scope of the rule. In addition, the Councils have already addressed the issue of the procurement of mapping services in FAR case 2004–023, published in the **Federal Register** at 70 FR 20329, April 19, 2005.

3. *Address how GSA plans to prevent violation when Agencies use the GSA Multiple Award Schedule (MAS) program.*

Comment: Four commenters indicated that they have concerns with the proper use of the MAS program and asked that GSA indicate how it plans to eliminate the violations.

Response: GSA has indicated to the Councils that it supports the use of the qualifications based selection (QBS) process for the procurement of A/E services for public projects as mandated by the Brooks Architect-Engineer Act of 1972 (Public Law 92–582, 40 U.S.C. 1102 *et seq.*), and it does not condone any violation of the Brooks Act. To ensure that the ordering agencies are fully aware of the statutory requirement, GSA has indicated that it has taken various steps to state that the GSA MAS Program may *not* be used to acquire services that are subject to the procedures of FAR Subpart 36.6. These steps include adding information to the online and classroom training, refining the scope of MAS contracts, adding a notice to GSA portal and MAS brochures, adding new FAQ's on the website, and conducting a customer compliance survey. GSA also plans on conducting reviews of task orders for scope compliance and A/E services will be part of the reviews.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not 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 this rule only clarifies an already existing requirement that architectural and engineering services be procured using the procedures at FAR Subpart 36.6.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Parts 2, 8, 16, and 36

Government procurement.

Dated: September 22, 2005.

Julia B. Wise,

Director, Contract Policy Division.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 2, 8, 16, and 36, which was published at 70 FR 11737, March 9, 2005, is adopted as a final rule without change.

[FR Doc. 05–19469 Filed 9–29–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 6, 7, 8, 12, 13, 22, 28, 36, 37, 39, 41, 47, and 52

[FAC 2005–06; FAR Case 2005–010; Item III]

RIN 9000–AK27

Federal Acquisition Regulation; Title 40 of United States Code Reference Corrections

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to reflect the most recent codification of Title 40 of the United States Code.

DATES: *Effective Date:* September 30, 2005.

FOR FURTHER INFORMATION CONTACT The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Gerald Zaffos, Procurement Analyst, at (202) 208–6091. Please cite FAC 2005–06, FAR case 2005–010.

SUPPLEMENTARY INFORMATION:

A. Background

Congress recently codified Title 40 of the United States Code. As a result, all sections of Title 40 were renumbered. This rule corrects the references to Title 40 in the FAR.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Parts 2, 4, 6, 7, 8, 12, 13, 22, 28, 36, 37, 39, 41, 47, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2005–06, FAR case 2005–010), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 4, 6, 7, 8, 12, 13, 22, 28, 36, 37, 39, 41, 47, and 52

Government procurement.

Dated: September 22, 2005.

Julia B. Wise,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 4, 6, 7, 8, 12, 13, 22, 28, 36, 37, 39, 41, 47, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 4, 6, 7, 8, 12, 13, 22, 28, 36, 37, 39, 41, 47, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 in paragraph (b) by revising paragraph (1) and the first sentence of paragraph (2) of the definition ''Governmentwide acquisition contract (GWAC)'', and the second sentence of the definition ''Multi-agency contract (MAC)'' to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

Governmentwide acquisition contract (GWAC) * * *

(1) By an executive agent designated by the Office of Management and Budget pursuant to 40 U.S.C. 11302(e); or

(2) Under a delegation of procurement authority issued by the General Services Administration (GSA) prior to August 7, 1996, under authority granted GSA by former section 40 U.S.C. 759, repealed by Pub. L. 104–106. * * *

* * * * *

Multi-agency contract (MAC) * * * Multi-agency contracts include contracts for information technology established pursuant to 40 U.S.C. 11314(a)(2).

* * * * *

PART 4—ADMINISTRATIVE MATTERS

■ 3. Amend section 4.702 by revising the second sentence in paragraph (b) to read as follows:

4.702 Applicability.

* * * * *

(b) * * * Apart from this exception, this subpart applies to record retention periods under contracts that are subject to Chapter 137, Title 10, U.S.C., or 40 U.S.C. 101, *et seq.*

PART 6—COMPETITION REQUIREMENTS

6.102 [Amended]

■ 4. Amend section 6.102 in paragraph (d)(1) by removing ''Pub. L. 92–582 (40 U.S.C. 541 *et seq.*)'' and adding ''40 U.S.C. 1102 *et seq.*'' in its place.

PART 7—ACQUISITION PLANNING

7.103 [Amended]

■ 5. Amend section 7.103 in paragraph (t) by removing ''40 U.S.C. 1422'' and adding ''40 U.S.C. 11312'' in its place.

7.105 [Amended]

■ 6. Amend section 7.105 in paragraph (b)(4)(ii)(A) by removing ''40 U.S.C. 1422'' and adding ''40 U.S.C. 11312'' in its place.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.001 [Amended]

■ 7. Amend section 8.001 by removing ''40 U.S.C. 1422'' and adding ''40 U.S.C. 11312'' in its place.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.503 [Amended]

■ 8. Amend section 12.503 in paragraph (b)(1) by removing ''40 U.S.C. 327'' and adding ''40 U.S.C. 3701'' in its place.

12.504 [Amended]

■ 9. Amend section 12.504 in paragraph (b) by removing ''40 U.S.C. 327, *et seq.*,'' and adding ''40 U.S.C. 3701 *et seq.*,'' in its place.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.005 [Amended]

■ 10. Amend section 13.005 by—

a. Removing from paragraph (a)(2) ''40 U.S.C. 270a'' and adding ''40 U.S.C. 3131'' in its place; and

b. Removing from paragraph (a)(3) ''40 U.S.C. 327–333'' and adding ''40 U.S.C. 3701 *et seq.*'' in its place.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.300 [Amended]

■ 11. Amend section 22.300 by removing ''(40 U.S.C. 327–333)'' and adding ''(40 U.S.C. 3701 *et seq.*)'' in its place.

22.304 [Amended]

■ 12. Amend section 22.304 in paragraph (a) by removing ''40 U.S.C. 331'' and adding ''40 U.S.C. 3706'' in its place.

22.403–1 [Amended]

■ 13. Amend section 22.403–1 by removing ''(40 U.S.C. 276a–276a–7)'' and adding ''(40 U.S.C. 3141 *et seq.*)'' in its place.

22.403—2 [Amended]

■ 14. Amend section 22.403–2 by removing from the first sentence ''40 U.S.C. 276c'' and adding ''40 U.S.C. 3145'' in its place.

22.403—3 [Amended]

■ 15. Amend section 22.403–3 by removing ''(40 U.S.C. 327–333)'' and adding ''(40 U.S.C. 3701 *et seq.*)'' in its place.

PART 28—BONDS AND INSURANCE

28.102—1 [Amended]

■ 16. Amend section 28.102–1 by—

a. Removing from the introductory text of paragraph (a) ''(40 U.S.C. 270a–270f)'' and adding ''(40 U.S.C. 3131 *et seq.*)'' in its place; and

b. Removing from the introductory text of paragraph (b)(1) ''Section 4104(b)(2) of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355),'' and adding ''40 U.S.C. 3132,'' in its place.

28.106—6 [Amended]

■ 17. Amend section 28.106–6 at the end of paragraph (c) by removing ''(see 40 U.S.C. 270(c))'' and adding ''(see 40 U.S.C. 3133)'' in its place.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.104 [Amended]

■ 18. Amend section 36.104 by removing from the first sentence ''(40 U.S.C. 541, *et seq.*)'' and adding ''(40 U.S.C. 1101 *et seq.*)'' in its place.

■ 19. Amend section 36.601–1 by revising the parenthetical sentence at the end of the paragraph to read as follows:

36.601–1 Public announcement.

* * * (See 40 U.S.C. 1101 *et seq.*

PART 37—SERVICE CONTRACTING

37.102 [Amended]

■ 20. Amend section 37.102 in paragraph (a)(1)(i) by removing ''40 U.S.C. 541–544'' and adding ''40 U.S.C. 1101 *et seq.*'' in its place.

37.202 [Amended]

■ 21. Amend section 37.202 in paragraph (b) by removing ''(Section 901 of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 541).'' and adding ''(40 U.S.C. 1102).'' in its place.

37.301 [Amended]

■ 22. Amend section 37.301 in the first sentence by removing ''(40 U.S.C. 276a–276a–7)'' and adding ''(40 U.S.C. 3141 *et seq.*)'' in its place.

37.302 [Amended]

■ 23. Amend section 37.302 in the introductory text by removing ''(40 U.S.C. 270a–270f)'' and adding ''(40 U.S.C. 3131 *et seq.*)'' in its place.

PART 39—ACQUISTION OF INFORMATION TECHNOLOGY

39.001 [Amended]

■ 24. Amend section 39.001 in the second sentence by removing ''40 U.S.C. 1412'' and adding ''40 U.S.C. 11302'' in its place.

PART 41—ACQUISTION OF UTILITY SERVICES

41.103 [Amended]

■ 25. Amend section 41.103 by—

a. Removing from paragraph (a)(1) in the first sentence ''section 201 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481),'' and from the third sentence ''section 201 of the Act'' and adding ''40 U.S.C. 501'' in both places; and

b. Removing from paragraph (a)(2) ''40 U.S.C. 474(d)(3)'' and adding ''40 U.S.C. 113(e)(3)'' in its place.

PART 47—TRANSPORTATION

47.102 [Amended]

■ 26. Amend section 47.102 in paragraph (a)(2) by removing ''(40 U.S.C. 726)'' and adding ''(40 U.S.C. 17307)'' in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.212–4 [Amended]

■ 27. Amend section 52.212–4 by—

a. Revising the date of the clause to read ''(SEP 2005)''; and

b. Removing from paragraph (r) of the clause ''40 U.S.C. 327'' and adding ''40 U.S.C. 3701'' in its place.

52.228–15 [Amended]

■ 28. Amend section 52.228–15 by—

a. Revising the date of the clause to read ''(SEP 2005)''; and

b. Removing from the heading of paragraph (e) of the clause ''(40 U.S.C. 270b(c)''; and adding ''(40 U.S.C. 3133(c))'' in its place.

52.232–27 [Amended]

■ 29. Amend section 52.232–27 by—

a. Revising the date of the clause to read ''(SEP 2005)''; and

b. Removing from the introductory text of paragraph (f)(1) of the clause ''section 2 of the Act of August 24, 1935 (40 U.S.C. 270b, Miller Act),'' and adding ''the Miller Act (40 U.S.C. 3133),'' in its place.

[FR Doc. 05–19470 Filed 9–29–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 3 and 52

[FAC 2005–06; FAR Case 1989–093; Item IV]

RIN 9000–AD76

Federal Acquisition Regulation; Implementation of the Anti-Lobbying Statute

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

ACTION: Final rule.

SUMMARY: The Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA) have agreed to convert the interim rule published in the **Federal Register** at 55 FR 3190, January 30, 1990, to a final rule with several minor changes. The interim rule amended the Federal Acquisition Regulation (FAR) to implement section 319 of the Department of the Interior and Related Agencies Appropriations Act, Public Law 101–121, which added a new section 1352 to title 31 U.S.C. entitled ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions.'' Section 319 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. Section 319 also requires that each person who requests or receives a Federal contract, grant, or cooperative agreement in excess of $100,000, or a loan, or Federal commitment to insure or guarantee a loan, in excess of $150,000 must disclose lobbying with other than appropriated funds.

DATES: *Effective Date*: September 30, 2005.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775. Please cite FAC 2005–06, FAR case 1989–093.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 55 FR 3190, January 30, 1990. The interim rule amended the Federal Acquisition Regulation to implement Section 319 of the Department of the Interior and Related Agencies Appropriations Act, Public Law 101–121, which added a new section 1352 to title 31 U.S.C. entitled ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions.'' Section 319 prohibits the recipients of Federal contracts, grants, loans and cooperative agreements from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, loan or cooperative agreement. It also requires that each person who requests or receives a Federal contract, grant, or cooperative agreement, in excess of $100,000, or a loan, or Federal commitment to insure or guarantee a loan, in excess of $150,000, must disclose lobbying with other than appropriated funds.

Section 1352 required the Office of Management and Budget (OMB) to issue guidance for agency implementation of, and compliance with, its requirements, which OMB published on December 20, 1989 (54 FR 52306). After the interim FAR rule was published in the **Federal Register** at 55 FR 3190, January 30, 1990, OMB published a clarification notice to their earlier guidance on June 15, 1990 (55 FR 24540).

After consideration of the public comments that were received, DoD, GSA, and NASA have agreed to convert the interim rule to a final rule with minor changes as discussed in Section B.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Public Comments

Ninety-four respondents submitted comments. Twenty of the respondents agreed or disagreed with the interim rule without offering suggested changes. The remaining respondents recommended revisions to clarify definitions and revise terminology; clarify or add to the list of exceptions to

the rule; clarify the cost principles; revise the civil penalty coverage; and revise the OMB guidance (outside the scope of the case). DoD, GSA, and NASA considered all comments and concluded that the interim rule should be converted to final with the minor changes described below. For the other recommended revisions in the public comments, DoD, GSA, and NASA have not experienced the issues during the rule's 15–year effective period that the recommended clarifications and revisions were intended to address. However, in taking the administrative action of converting the interim rule to final, DoD, GSA, and NASA recognize the need for additional analysis to determine if further FAR changes are required on the subject of Lobbying restrictions based on activities in this area subsequent to publication of the interim rule. DoD, GSA, and NASA believe that this end is best served by converting to final the 1990 interim rule to provide a stable regulatory baseline against which the new analysis will be conducted. Accordingly, the following changes are made to the interim rule:

1. FAR 3.802(c)(2)(v) is redesignated as FAR 3.802(d), and paragraph (b)(3)(ii)(E) of FAR clause 52.203–12 is redesignated as paragraph (b)(4) of the clause. These paragraphs specify when the reporting requirements of FAR 3.803 do not apply and were incorrectly numbered within the FAR section and clause.

2. In accordance with the OMB clarification of June 15, 1990, paragraph (b)(1) of FAR clause 52.203–11 is revised to indicate that the certification requirement applies only to the award of the instant contract and not ''any'' contract, grant, loan, or cooperative agreement (and any extensions, continuations, renewals, amendments or modifications thereof).

3. Paragraphs (b)(3)(i)(E) and (b)(3)(ii)(D) of FAR clause 52.203–12 are revised to clarify the activities that are permitted under the clause. The interim rule language did not correctly cite all the applicable cross references and was unintentionally restrictive and contradictory.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule. The Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA) prepared a Final Regulatory Flexibility Analysis (FRFA), and it is summarized as follows:

This rule finalizes the interim rule with minor corrections in order to implement 31 U.S.C. 1352 entitled ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' also known as the Byrd Amendment. Section 1352 prohibits recipients of Federal contracts from using appropriated funds for lobbying the Executive or Legislative branches of the Federal Government in connection with that contract, and requires a bidder or offeror for a Federal contract to disclose certain lobbying activities. Section 1352 required the Office of Management and Budget (OMB) to issue guidance for agency implementation of, and compliance with, its requirements. OMB published guidance on December 20, 1989 (54 FR 52306), and a clarification notice on June 15, 1990 (55 FR 24540). This final rule implements the requirements of 31 U.S.C. 1352 and the OMB guidance.

No comments were received in response to the Initial Regulatory Flexibility Analysis.

The certification requirements of the final rule will apply to all small entities which seek contracts over $100,000 with the Federal Government. The Federal Government awards approximately 90,000 contracts per year to approximately 18,000 small entities. The disclosure requirements of the rule will only apply to small entities on whose behalf a registered lobbyist has made lobbying contacts with respect to a particular Federal contract. Based on OMB Control No. 0348–0046, Disclosure of Lobbying Activities for SF LLL, which is the standard disclosure form for lobbying paid for with non-Federal funds as required by the Byrd Amendment, 300 responses were received annually from states, local governments, non-profit organizations, individuals, and businesses. The number of such small entities is estimated to be near zero, based on the small number of lobbyists reported to have registered under the Byrd Amendment and the improbability that such lobbyist represent small entities.

To the extent that the statute required that OMB issue guidance regarding compliance with the Byrd Amendment, the reporting and recordkeeping requirements implemented in this rule are considered requirements of the OMB guidance. In this light, there are not additional reporting, recordkeeping, or other compliance requirements imposed by this final rule.

Some alternatives were suggested in public comments on this rule which, the commenters thought would mitigate the economic impact of the rule on small entities. These alternatives are: To exempt procurements of commercial items from the reporting requirements of the rule; to exempt subcontractors from the reporting requirements of the rule; or to permit use of appropriated funds for lobbying contacts by bona fide agents and marketing representatives of an entity. These three alternatives were rejected as inconsistent with the statute. Thus, the final rule, as written, minimizes the economic impact on small entities consistent with the stated objectives of applicable statutes and OMB guidance.

Interested parties may obtain a copy of the FRFA from the FAR Secretariat. The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

D. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 0348–0046. The requirements of this Act were addressed by the Office of Management and Budget (OMB) in the development of its interim final guidance, published in the **Federal Register** on December 20, 1989 (54 FR 52306), implementing Section 319 of the Department of the Interior and Related Agencies Appropriations Act, Public Law 101–121, which added a new section 1352 to title 31 U.S.C. entitled ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions.''

List of Subjects in 48 CFR Parts 3 and 52

Government procurement.

Dated: September 22, 2005.

Julia B. Wise,

Director,Contract Policy Division.

Interim Rule Adopted as Final with Changes

■ Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR parts 3 and 52, which was published at 55 FR 3190, January 30, 1990 (as amended by other final FAR rules subsequent to its publication), as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 3 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3.802 [Amended]

■ 2. Amend section 3.802 by redesignating paragraph (c)(2)(v) as paragraph (d).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.203–11 by revising the date of the clause and paragraph (b)(1) of the clause to read as follows:

52.203–11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.

* * * * *

CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEP 2005)

* * * * *

(b) * * *

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of this contract;

* * * * *

■ 4. Amend section 52.203–12 by revising the date of the clause and paragraphs (b)(3)(i)(E) and (b)(3)(ii)(D) of the clause, and redesignating paragraph (b)(3)(ii)(E) as paragraph (b)(4). The revised text reads as follows:

52.203–12 Limitation on Payments to Influence Certain Federal Transactions.

* * * * *

LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEP 2005)

* * * * *

(b) * * *

(3) * * *

(i) * * *

(E) Only those agency and legislative liaison activities expressly authorized by paragraph (b)(3)(i) of this clause are permitted under this clause.

(ii) * * *

(D) Only those professional and technical services expressly authorized by paragraph (b)(3)(ii) of this clause are permitted under this clause.

* * * * *

[FR Doc. 05–19471 Filed 9–29–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 6 and 13

[FAC 2005–06; FAR Case 2004–037; Item V]

RIN 9000–AK12

Federal Acquisition Regulation; Increased Justification and Approval Threshold for DOD, NASA, and Coast Guard

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed to convert the interim rule published in the **Federal Register** at 70 FR 11739, March 9, 2005, to a final rule with minor changes. The rule amended the Federal Acquisition Regulation (FAR) to increase the justification and approval thresholds for DoD, NASA, and the U.S. Coast Guard. The FAR revision implemented Section 815 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 which amended 10 U.S.C. 2304(f)(1)(B) by striking $50,000,000 both places it appears and inserting $75,000,000. In addition, corresponding language in the FAR is also changed to reflect these higher thresholds for DoD, NASA, and the Coast Guard.

DATES: Effective Date: September 30, 2005.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Michael Jackson, Procurement Analyst, at (202) 208–4949. Please cite FAC 2005–06, FAR case 2004–037.

SUPPLEMENTARY INFORMATION:

A. Background

This rule implemented Section 815 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108–375, which amended 10 U.S.C. 2304(f)(1)(B) by striking $50,000,000 and inserting $75,000,000.

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 70 FR 11739, March 9, 2005, with a request for comments by May 9, 2005. No comments were received. This final rule converts the interim rule with a minor change, making corresponding changes to FAR 13.501.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not 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 rule does not impose any costs on either small or large businesses.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 6 and 13

Government procurement.

Dated: September 22, 2005.

Julia B. Wise,

Director, Contract Policy Division.

Interim Rule Adopted as Final with Changes

■ Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR part 6, which was published in the **Federal Register** at 70 FR 11739, March 9, 2005, as a final rule with the following changes:

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 1. The authority citation for 48 CFR part 13 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 13.501 by revising the first sentences of paragraphs (a)(2)(iii) and (a)(2)(iv) to read as follows:

13.501 Special documentation requirements.

(a) * * *

(2) * * *

(iii) For a proposed contract exceeding $10,000,000 but not exceeding $50,000,000 or, for DoD, NASA, and the Coast Guard, not exceeding $75,000,000, the head of the procuring activity or the official described in 6.304(a)(3) or (a)(4) must approve the justification and approval. * * *

(iv) For a proposed contract exceeding $50,000,000 or, for DoD, NASA, and the Coast Guard, $75,000,000, the official described in 6.304(a)(4) must approve the justification and approval. * * *

* * * * *

[FR Doc. 05–19472 Filed 9–29–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 19 and 52

[FAC 2005–06; FAR Case 2004–036; Item VI]

RIN 9000–AK11

Federal Acquisition Regulation; Addition of Landscaping and Pest Control Services to the Small Business Competitiveness Demonstration Program

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed to finalize, without change, the interim rule published in the **Federal Register** at 70 FR 11740, March 9, 2005. This rule implements Section 821 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005. Section 821 added landscaping and pest control services to the Small Business Competitiveness Demonstration Program.

DATES: *Effective Date:* September 30, 2005.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Kimberly Marshall, Procurement Analyst, at (202) 219–0986. Please cite FAC 2005–06, FAR case 2004–036.

SUPPLEMENTARY INFORMATION:

A. Background

This rule finalizes, without change, the interim rule published in the **Federal Register** at 70 FR 11740, March 9, 2005. The rule implements Section 821 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375). Section 821 amended Section 717 of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note) by adding landscaping and pest control services to the program. As a result, agencies are precluded from considering acquisitions for landscaping and pest control services over the emerging small business reserve, currently $25,000, for small business set-asides unless the set-asides are needed to meet their assigned goals.

The Councils published the interim rule in the **Federal Register** at 70 FR 11740, March 9, 2005, with a request for comments by May 9, 2005. One respondent submitted a comment in response to the interim rule. The comment is addressed below.

Comment: The rule should be changed to provide small businesses, including ''mom and pop'' businesses, the first opportunity to compete for awards under NAICS codes 561730 and 561710.

Councils' response: The rule implements a statute which added landscaping and pest control services to the Small Business Competitiveness Demonstration Program. The Councils have no authority to change the statute or implementing regulation to make the suggested change. The Councils note, however, that the rule applies only to acquisitions over the emerging small business reserve amount which is currently $25,000. Agencies will continue to set-aside, for emerging small businesses, acquisitions at or below the emerging small business reserve amount consistent with the requirements in FAR subparts 19.1007(c). In addition, agencies are allowed to reinstate the small business set-asides if needed to meet their assigned goals.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, pertains to this final rule and a Final Regulatory Flexibility Analysis (FRFA) has been performed. The analysis is summarized as follows:

Final Regulatory Flexibility Analysis

This final rule amends FAR Parts 19 and 52 to implement Section 821 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108–375, which amends Section 717 of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note). Section 821 provides for the addition of two North American Industry Classification System (NAICS) codes, landscaping (561730) and pest control services (561710) to the Small Business Competitiveness Demonstration Program under the designated industry groups.

The changes inform the agencies of the new additions to the Small Business Competitiveness Demonstration Program and also gives the Contracting Officer the specific ''Emerging small business reserve amount'' of $25,000 for the designated groups.

The objective of the final rule is to further assess the ability of small business concerns to compete successfully in certain industry categories without competition being restricted by the use of small business set-asides. The implementation of section 821 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108–375 will change the FAR as follows: (1) revises the designated industry groups to include Exterminating and Pest Control Services and Landscaping Services in FAR 19.1002(1) and 19.1005; (2) deletes the word ''four'' before designated industry groups in the FAR.

There was one comment that addressed the IRFA. The comment is addressed below:

Comment: The rule should be changed to provide small businesses, including ''mom and pop'' businesses, the first opportunity to compete for awards under NAICS codes 561730 and 561710.

Agency's Response: The rule implements a statute which added landscaping and pest control services to the Small Business Competitiveness Demonstration Program. The Councils have no authority to change the statute or implementing regulation to make the suggested change. The Councils note, however, that the rule applies only to acquisitions over the emerging small business reserve amount which is currently $25,000. Agencies will continue to set-aside, for emerging small businesses, acquisitions at or below the emerging small business reserve amount consistent with the requirements in FAR subparts 19.1007(c). In addition, agencies are allowed to reinstate the small business set-asides if needed to meet their assigned goals.

The final rule will apply to all small business concerns that compete on Federal procurements falling under NAICS codes 561730 and 561710. Based on Governmentwide data retrieved from the Federal Procurement Data System (FPDS) for the specified NAICS codes, approximately 141 small business concerns were awarded contracts of $25,000 or more on an unrestricted basis in fiscal year 2002 for NAICS code 561730. This represents about 88 percent of all contracts awarded with unrestricted competition for that NAICS code. In fiscal year 2003 there were 116 contracts awarded to small business concerns on an unrestricted basis, which represents approximately 81 percent of all contracts awarded with unrestricted competition for that NAICS codes. FPDS data also show that 25 small business concerns were awarded contracts of $25,000 or more on an unrestricted basis in fiscal year 2002 for NAICS code 561710. This represents about 56 percent of all contracts awarded with unrestricted competition for that NAICS code. In fiscal year 2003 there were 17 contracts awarded to small business concerns on an unrestricted basis, which represents approximately 77 percent of all contracts awarded with unrestricted competition for that NAICS codes. It is estimated that small business concerns will continue to be successful in winning at least one-half to three-fourths of awards on an unrestricted

basis when these designated industry groups are added to the Small Business Competitiveness Demonstration Programs given the history of their success in recent unrestricted competitive Government acquisitions falling under NAICS codes 561730 and 561710. Additional data retrieved from FPDS show that the number of small business set-asides for NAICS code 561730 in fiscal years 2002 and 2003 combined was approximately 952 and the number of small business set-asides for NAICS code 561710 in fiscal years 2002 and 2003 combined was approximately 96. The changes may 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 previously set-aside acquisitions for services falling within NAICS codes 561730 and 561710 will now be included in the designated industry groups of the Small Business Competitiveness Demonstration Program. FAR 19.1007(b) states that ''Solicitations for acquisitions in any of the designated industry groups that have an anticipated dollar value greater than the emerging small business reserve amount must not be considered for small business set-asides under FAR 19.5. However, agencies may reinstate the use of small business set-asides as necessary to meet their assigned goals, but only within organizational units that failed to meet the small business participation goal. Acquisitions in the designated industry groups must continue to be considered for placement under the 8(a) Program (see Subpart 19.8), the HUBZone Program (see Subpart 19.13), and the Service-Disabled Veteran-Owned Small Business Procurement Program (see Subpart 19.14).'' Given the large number of awards made under these NAICS codes, it is anticipated that the addition of the two NAICS codes to the Small Business Competitiveness Demonstration Program will promote an increased number of opportunities for small business concerns to develop teaming arrangements and joint ventures.

The purpose of the Competitiveness Demonstration Program is to assess the ability of small businesses to compete successfully in certain industry categories without competition being restricted by the use of small business set-asides. This portion of the program is limited to the four designated industry groups listed in FAR 19.1005 and will include the addition of landscaping and pest control services to the designated industry groups. The final rule imposes no reporting, recordkeeping, or other compliance requirements.

The final rule does not duplicate, overlap, or conflict with any other Federal rules. There are no practical alternatives that will accomplish the objectives of this final rule.

Interested parties may obtain a copy of the FRFA from the FAR Secretariat. The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 19 and 52

Government procurement.

Dated: September 22, 2005.

Julia B. Wise,

Director, Contract Policy Division.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 19 and 52, which was published at 70 FR 11740, March 9, 2005, is adopted as a final rule without change.

[FR Doc. 05–19473 Filed 9–29–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 19 and 28

[FAC 2005–06; FAR Case 2003–029; Item VII]

RIN 9000–AK01

Federal Acquisition Regulation; Powers of Attorney for Bid Bonds

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to establish that a copy of an original power of attorney, including a photocopy or facsimile copy, when submitted in support of a bid bond, is sufficient evidence of the authority to bind the surety. The authenticity and enforceability of the power of attorney at the time of the bid opening will be treated as a matter of responsibility.

DATES: *Effective Date:* September 30, 2005.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia L. Davis, Procurement Analyst, at (202) 219–0202. Please cite FAC 2005–06, FAR case 2003–029.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the Federal Acquisition Regulation to revise the policy relating to acceptance of copies of powers of attorney accompanying bid bonds. There has been a significant level of controversy surrounding contracting officers' decisions regarding the evaluation of bid bonds and accompanying powers of attorney.

Since 1999, a series of GAO decisions has rejected telefaxed as well as photocopied powers of attorney. The latest decision from GAO (*All Seasons Construction, Inc.*, B–291166.2, Dec. 6, 2002) has been interpreted by industry and procuring agencies to require a contracting officer to inspect the power of attorney at bid opening to ascertain that the signatures are original and applied after generation of the documents. This case law has created a costly and unworkable requirement for the surety industry and left contracting officers with an almost impossible standard to enforce. More recently, on January 9, 2004, the U.S. Court of Federal Claims, in *Hawaiian Dredging Construction, Co. v. U.S.*, 59 Fed. Cl.205 (2004), issued a ruling highlighting that the FAR does not require an original signature on the document serving as evidence of authority to bind the surety. The court was critical of GAO's reasoning in the *All Seasons* case. In response to the split between the two bid protest fora and the quandary shared by industry and government in implementing a workable standard to be applied at bid opening, the Councils agreed to a revision to FAR part 28 that would remove the matter of authenticity and enforceability of powers of attorney from a contracting officer's responsiveness determination, which is based solely on documents available at the time of bid opening. Instead, the rule instructs contracting officers to address these issues after bid opening as a matter of responsibility.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 69 FR 51936, August 23, 2004, and 46 public comments were received. A resolution of the public comments follows:

Summary of the Public Comments/ Disposition

Some commenters agree with the proposed rule and expressed appreciation for the clarification the proposed rule would bring to a presently unworkable situation.

Comment: By making authenticity of the power of attorney a matter of responsibility, where small businesses are concerned, a contracting officer's decision becomes subject to referral to the Small Business Administration (SBA) for a certificate of competency. To resolve this issue, the commenter suggested the following language for the FAR: ''Subpart 19.6 does not apply to determinations of responsibility of sureties or on the acceptability of powers of attorney.'' This language is based on GAO case law holding that acceptability of individual bid bond sureties need not be referred to the SBA because such determinations are based solely on the qualifications of the surety and not the small business offeror.

Response: The Councils concur with the interpretation of GAO case law cited. Referral to SBA of a contracting officer's non-responsibility finding, pursuant to FAR subpart 19.6, is a matter arising entirely out of the small business' qualifications, not that of the surety. However, in the interest of being entirely clear on this issue, the Councils adopted language in paragraph 28.101–3(f), that a non-responsibility determination is not subject to the Certificate of Competency process if the surety has disavowed the validity of the power of attorney.

Comment: One commenter requests clarification regarding the extent to which the review of a power of attorney is a matter of responsiveness. As written, the issue is only one of responsiveness if a signed and dated power of attorney is not submitted. The commenter requests a revision to state a power of attorney should be rejected if it is obvious that the document is invalid. The commenter has received powers of attorney that indicate on their face that they have expired or do not name the individual who signed the bid bond.

Response: The Councils disagree and feel the proposed rule makes clear the responsiveness determination is very narrow. To insert language requiring the contracting officer to determine whether a document is facially valid is not helpful unless we define facial validity.

The proposed language intends to establish a simple dichotomy—

• Where an attorney-in-fact has signed the bid bond, the bidder must provide a signed and dated power of attorney to evidence the attorney-in-fact's authority to bind the surety; failure to provide a power of attorney renders the bid non-responsive;

• Any and all questions regarding the authenticity and enforceability of the power of attorney are not matters of responsiveness and, as such, shall be handled by the contracting officer after bid opening when he/she can seek clarification from the surety.

Finally, the bidder cannot be said to have an unfair opportunity to improve its bid when it is only the surety, not the bidder, that can vouch for the authenticity of a power of attorney. Paragraph (e) has been added to FAR 28.101–3 clarifying that in those circumstances where a surety rejects a power of attorney as invalid, the bidder may not substitute a new surety.

Comment: Several comments asked for clarification that modern forms of signatures and dates (*i.e.* digital, mechanically applied, or printed), in addition to facsimiles, be accepted as valid.

Response: The Councils have determined it appropriate to adopt language listing, with greater specificity than was provided in the original proposal, ''electronic, mechanically-applied and printed signatures, seals, and dates'' as acceptable evidence of authority to bind the surety. The Councils believe these terms are broad enough to encompass present practices within the surety industry, particularly because a broad consortium of surety associations suggested the language. As such, we find it would be redundant to include ''digital'' within the list.

Comment: There should be a revision to require powers of attorney to include notarized signatures and the contact information for the signers and the notary in order to authenticate the power of attorney.

Response: The Councils do not agree. First, it detracts from the two-part rule established by the proposed language to identify specific requirements for powers of attorney. Second, while the comment is well taken and a requirement for contact information would prove helpful to the contracting officer, such detailed directions are not appropriate for a FAR provision.

Comment: Representatives from the surety industry submitted a three-part comment as follows:

1. The sureties recommend certain additions and deletions of commas in paragraph (b), which would clarify that ''original'' modifies ''power of attorney'' and that original powers of attorney, photocopied original powers of attorney, and facsimile copied original powers of attorney are all acceptable means of establishing an attorney in fact's authority.

2. The sureties recommend removing the signature and date of the power of attorney as matters of responsiveness in paragraph (c)(1), alleging that this would undercut the goal of avoiding situations where a low bid must be rejected simply based on formatting errors. The sureties note that FAR 28.101–4(c)(7) and (8) require an agency to waive the fact that a bid bond itself was not signed, dated, or erroneously dated.

3. The sureties recommend a new paragraph (d) to clarify that a ''printed'' power of attorney is an ''original'' and that a photocopied or facsimile copied copy of a ''printed'' power of attorney is also acceptable. The sureties suggest this clarification is necessary because FAR part 2 does not define ''original'' and the *All Seasons* decision called into question the reliability of a printed power of attorney because the contracting officer could not be certain whether the signature had been applied before or after printing. FAR part 2 should be revised to include a broader definition of ''facsimile'' and a definition of ''original.'' Because the proposed revision is intended to remove the confusion created by the *All Seasons* reasoning, the sureties suggest further clarifying that printed or mechanically-applied signatures, dates, and seals are acceptable without regard to the order in which they are affixed. The sureties also note that printed documents with printed signatures and seals are widely accepted as originals in commercial practice.

Response: 1. The Councils agree that the suggested comma placement clarifies that original powers of attorney, as well as photocopies of originals and facsimiles of originals, are all acceptable as evidence of authority to bind the surety. It also clarifies that a photocopy of a non-original is *not* acceptable.

2. The Councils are concerned that removing the text ''signed and dated'' would harm the integrity of the procurement process. Making the lack of a signature and date an issue of responsibility would mean they could be added after bid opening and a document that was not otherwise legally sufficient could be made so. The Councils feel a signature and date are so fundamental to the document that they must be present at bid opening. However, the rule does state that any questions regarding the authenticity of signature(s) and date(s) on the power of

attorney are treated as matters of responsibility and, therefore, can be addressed after bid opening.

The Councils note the sureties cite FAR 28.101–4(c)(7) and (8) in support of their position; however, we distinguish that the FAR also makes clear that in order for the contracting officer to waive the lack of an offeror's signature and date on the bid bond, the bond must otherwise be acceptable. It is our reading that this would mean the bond must bear the signature of the surety or its representative and that all related documents, including any power of attorney, must be acceptable. It is not incongruous to require a signature and date on the power of attorney and we, therefore, retain the stated language in the proposed rule.

3. The Councils concur with the suggestion to add a paragraph detailing those means of applying signatures and dates that are commonly acceptable as ''original'' in commercial practice. We accept the clarification in the interest of partnering with the surety industry to achieve a rule that works well for both sureties and contracting officers. It is the intent of the proposed rule to come to a resolution that is consistent with sureties' commercial practices and protections, while ensuring the Government can accept the lowest bid, confident that the bid bond binds the surety. The revision clarifies the undoing of the GAO-made rule requiring signatures and dates to be applied *after* the power of attorney is printed. This ''wet signature'' requirement is the most onerous and unworkable aspect of the *All Seasons* holding. As revised, a power of attorney with signatures and dates applied electronically and printed at the time the hard copy document is generated is clearly acceptable, as was intended by the original proposal.

The Councils considered all comments before agreeing to convert this FAR case from a proposed rule to a final rule with changes.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* applies to this final rule. The Councils prepared a Final Regulatory Flexibility Analysis (FRFA), and it reads as follows:

Final Regulatory Flexibility Analysis

FAR Case 2003–029

Powers of Attorney for Bid Bonds

This Final Regulatory Flexibility Analysis has been prepared consistent with 5 U.S.C. 604.

1. Reasons for the action.

This FAR case was initiated at the request of the Office of Federal Procurement Policy to resolve controversy relating to the standards for powers of attorney accompanying bid bonds.

2. Objectives of, and legal basis for, the action.

The objective of this final rule is to establish clear and uniform standards for powers of attorney accompanying bid bonds which will allow the contracting officer to make more informed decisions that are in the best interest of the Government.

3. Summary of significant issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis (IRFA), a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comment.

There were no specific public comments that addressed the IRFA.

4. Description of, and, where feasible, estimate of the number of small entities to which the final rule will apply.

This final rule applies to all small entity bidders involved in Federal acquisitions that require bid bonds. It also applies to small entities who are sureties and attorneys-in-fact.

5. Description of projected reporting, recordkeeping, and other compliance requirements of the final rule.

This rule will have a beneficial impact on small entities, including small businesses within the surety industry, because the rule will amend the Federal Acquisition Regulation to change from the current structured process to a process that is used by the surety industry. These commercial practices are used by the surety industry when doing non-Government work and small businesses are familiar with these practices. By allowing commercial practices, the current costly and unworkable requirements are eliminated, which removes the burden from small businesses when doing business with the Government.

The intent of this rule is to establish clear and uniform standards for powers of attorney accompanying bid bonds that are in the best interest of both the Government and industry. This rule removes the matter of authenticity and enforceability of powers of attorney from a contracting officer's responsiveness determination, which is based solely on documents available at the time of bid opening. Instead, the rule instructs contracting officers to address these issues after bid opening. From the public comments received, this rule is deemed valuable because the changes being made to the process will guarantee that bidders will no longer be thrown out of the acquisition process prematurely when there is a question of validity. The rule changes are beneficial for all involved in the acquisition process.

The final rule does not impose any new reporting, recordkeeping, or other information collection requirements. It will reduce the information collection requirement by simplifying the standards for an acceptable evidence of power of attorney in support of a bid bond.

6. Relevant Federal rules which may duplicate, overlap, or conflict with the rule.

This final rule does not duplicate, overlap, or conflict with other relevant Federal rules.

7. Significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

There were no significant alternatives to the proposed rule, which accomplish the stated objectives. This rule will have a beneficial impact on small entities, which are bidders in Federal acquisitions that require bid bonds, as well as the associated sureties and attorneys-in-fact.

Interested parties may obtain a copy of the FRFA from the FAR Secretariat. The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Parts 19 and 28

Government procurement.

Dated: September 22, 2005.

Julia B. Wise,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 19 and 28 as set forth below:

■ 1. The authority citation for 48 CFR parts 19 and 28 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 19—SMALL BUSINESS PROGRAMS

19.602–1 [Amended]

■ 2. Amend section 19.602–1 in the parenthetical in the introductory text of paragraph (a) by adding '', but for sureties see 28.101–3(f) and 28.203(c)'' after the word ''subcontracting''.

PART 28—BONDS AND INSURANCE

■ 3. Revise section 28.101–3 to read as follows:

28.101–3 Authority of an attorney-in-fact for a bid bond.

(a) Any person signing a bid bond as an attorney-in-fact shall include with the bid bond evidence of authority to bind the surety.

(b) An original, or a photocopy or facsimile of an original, power of attorney is sufficient evidence of such authority.

(c) For purposes of this section, electronic, mechanically-applied and printed signatures, seals and dates on the power of attorney shall be considered original signatures, seals and dates, without regard to the order in which they were affixed.

(d) The contracting officer shall—

(1) Treat the failure to provide a signed and dated power of attorney at the time of bid opening as a matter of responsiveness; and

(2) Treat questions regarding the authenticity and enforceability of the power of attorney at the time of bid opening as a matter of responsibility. These questions are handled after bid opening.

(e)(1) If the contracting officer contacts the surety to validate the power of attorney, the contracting officer shall document the file providing, at a minimum, the following information:

(i) Name of person contacted.

(ii) Date and time of contact.

(iii) Response of the surety.

(2) If, upon investigation, the surety declares the power of attorney to have been valid at the time of bid opening, the contracting officer may require correction of any technical error.

(3) If the surety declares the power of attorney to have been invalid, the contracting officer shall not allow the bidder to substitute a replacement power of attorney or a replacement surety.

(f) Determinations of non-responsibility based on the unacceptability of a power of attorney are not subject to the Certificate of Competency process of subpart 19.6 if the surety has disavowed the validity of the power of attorney.

[FR Doc. 05–19474 Filed 9–29–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 19 and 52

[FAC 2005–06; FAR Case 2005–002; Item VIII]

RIN 9000–AK28

Federal Acquisition Regulation; Expiration of the Price Evaluation Adjustment

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

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to cancel for civilian agencies (except National Aeronautics and Space Administration (NASA) and Coast Guard) the Small Disadvantaged Business (SDB) price evaluation adjustment which was originally authorized under the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355, Sec. 7102). Civilian agencies (except NASA and Coast Guard) are not authorized to apply the price evaluation adjustment to their acquisitions.

DATES: *Effective Date:* September 30, 2005.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before November 29, 2005, to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–06, FAR case 2005–002, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web Site: *http://www.acqnet.gov/far/ProposedRules/proposed.htm*. Click on the FAR case number to submit comments.
- E-mail: *farcase.2005–002@gsa.gov*. Include FAC 2005–06, FAR case 2005–002 in the subject line of the message.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–06, FAR case 2005–002, in all correspondence related to this case. All comments received will be posted without change to *http://www.acqnet.gov/far/ProposedRules/proposed.htm*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501–0044. Please cite FAC 2005–06, FAR case 2005–002.

SUPPLEMENTARY INFORMATION:

A. Background

The small disadvantaged business price evaluation adjustment for civilian agencies, originally authorized under the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355, Sec. 7102) expired. This provision, as implemented in FAR subpart 19.11, authorized agencies to apply the price evaluation adjustment to benefit certain small disadvantaged business concerns in competitive acquisitions. As a result of its expiration for civilian agencies (except NASA and Coast Guard), civilian agencies (except NASA and Coast Guard) have no statutory authority to apply the small disadvantaged business price evaluation adjustment to their acquisitions.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may 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 certain small disadvantaged business concerns for specific North American Industry Classification System (NAICS) codes will no longer benefit from the price evaluation adjustment in competitive acquisitions. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared. The analysis is summarized as follows:

This interim rule amends Federal Acquisition Regulation (FAR) Subpart 19.11, Price Evaluation Adjustment for Small Disadvantaged Business Concerns. The small disadvantaged business price evaluation adjustment for civilian agencies other than National Aeronautics and Space Administration (NASA) and Coast Guard,

originally authorized under the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355, Sec. 7102) expired. This provision, as implemented in Federal Acquisition Regulation subpart 19.11 authorized agencies to apply the price evaluation adjustment to benefit certain small disadvantaged business concerns in competitive acquisitions. This change may 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 civilian agencies (excluding NASA and Coast Guard) will no longer have the authority to apply the price evaluation adjustment to benefit certain small disadvantaged business concerns in competitive acquisitions. However, the price evaluation adjustment is still authorized for the Department of Defense, U.S. Coast Guard, and NASA.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR Part 19 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601 *et seq.* (FAC 2005–06, FAR case 2005–002), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the small disadvantaged business price evaluation adjustment for civilian agencies other than NASA and Coast Guard, originally authorized under the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355, Sec. 7102) expired. This revision to the FAR is necessary to ensure that civilian agencies (except Coast Guard and NASA) are aware that the price evaluation adjustment should not be applied to their acquisitions. However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 19 and 52

Government procurement.

Dated: September 22, 2005.

Julia B. Wise,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 19 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 19 and 52 continues to read as follows:

Authority: Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 19—SMALL BUSINESS PROGRAMS

■ 2. Amend section 19.1102 by redesignating paragraphs (a) and (b) as (b) and (c), respectively, and adding a new paragraph (a) to read as follows:

19.1102 Applicability.

(a) This subpart applies to the Department of Defense, National Aeronautics and Space Administration, and the U.S. Coast Guard. Civilian agencies do not have the statutory authority (originally authorized in the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355, Sec. 7102)) for use of the Small Disadvantaged Business (SDB) price evaluation adjustment.

* * * * *

■ 2. Amend section 19.1103 by revising paragraph (a)(2) to read as follows:

19.1103 Procedures.

(a)* * *

(2) An otherwise successful offer from a historically black college or university or minority institution.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.212–5 by revising the date of the clause and paragraph (b)(10)(i) of the clause to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (SEP 2005)

* * * * *

(b)* * *

(10)(i) 52.219–23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (SEP 2005) (10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).

* * * * *

■ 4. Amend section 52.219–23 by revising the date of the clause and paragraph (b)(1)(ii) of the clause to read as follows:

52.219–23 Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.

* * * * *

NOTICE OF PRICE EVALUATION ADJUSTMENT FOR SMALL DISADVANTAGED BUSINESS CONCERNS (SEP 2005)

* * * * *

(b) Evaluation adjustment. (1)* * *

(ii) An otherwise successful offer from a historically black college or university or minority institution.

* * * * *

[FR Doc. 05–19475 Filed 9–29–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 2005–06; FAR Case 2004–006; Item IX]

RIN 9000–AK06

Federal Acquisition Regulation; Accounting for Unallowable Costs

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) by revising language regarding accounting for unallowable costs. The final rule adds language which provides specific criteria on the use of statistical sampling as a method to identify unallowable costs, including the applicability of penalties for failure to exclude certain projected unallowable costs. The final rule also revises the language regarding advance agreements by adding statistical sampling methods as an example for which advance agreements between the

contracting officers and contractors may be appropriate.

DATES: *Effective Date:* October 31, 2005.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson at (202) 501–3221. Please cite FAC 2005–06, FAR case 2004–006.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed FAR rule for public comment in the **Federal Register** at 68 FR 28108, May 22, 2003, under FAR case 2002–006. The proposed rule related to FAR 31.201–6, Accounting for unallowable costs, and to FAR 31.204, Application of principles and procedures. No public comments were received on the proposed rule relating to FAR 31.204, and the Councils decided that the FAR 31.204 proposed rule should be converted to a final rule with no changes to the proposed rule. Public comments were received on the proposed rule relating to FAR 31.201–6, and the Councils decided to make substantive changes to the proposed rule and published a second proposed rule under separate FAR case 2004–006 in the **Federal Register** at 69 FR 58014, September 28, 2004, with a request for comments by November 29, 2004.

Five respondents submitted public comments in response to the second proposed FAR rule. A discussion of these public comments is provided below. The Councils considered all comments and concluded that the proposed rule should be converted to a final rule, with changes to the proposed rule to address the concerns raised in the public comments. Differences between the second proposed rule and the final rule are discussed in Comments 1, 2, and 3, below.

Public Comments

Application of statistical sampling, FAR 31.201–6(c)(2).

Comment 1: One respondent recommends clarifying paragraph (c)(2) to make it clear that this paragraph refers to contractors, not the Government. The respondent therefore recommends revising the first sentence to read as follows:

''Statistical sampling is an acceptable practice for contractors to follow in accounting for and presenting unallowable costs provided the following criteria are met.''

Councils' response: Concur. The Councils believe that the proposed change will enhance the clarity of the rule and emphasize that it is the contractor's ultimate responsibility for complying with the accounting and presentation of unallowable costs as prescribed in paragraph (c)(1). Therefore, the respondent's proposed language is added to FAR 31.201–6(c)(2). While it is the intent of the Councils to specifically state that statistical sampling is an acceptable method for contractors to comply with the identification and segregation requirements of this rule, this language in no way binds or limits the Government from performing their responsibilities in fulfilling the requirements for establishing indirect cost rates in accordance with FAR Subpart 42.7, Indirect Cost Rates.

Application of penalties, FAR 31.201–6(c)(3).

*Comment 2:*Three respondents recommend that the proposed paragraph (c)(3) be revised. One respondent believes that the proposed paragraph (c)(3) will cause more confusion than it is intended to preclude. This respondent states that the penalty provisions of FAR 42.709 can be invoked in statistical sampling by using a simpler paragraph that reads as follows:

''For any cost in the selected sample that is subject to the penalty provisions at FAR 42.709, the amount projected to the sampling universe from that sampled cost is also subject to the same penalty provisions.''

The second respondent believes that the proposed paragraph (c)(3) should be simplified to improve clarity and eliminate redundant text from FAR 42.709. This respondent believes that the penalty provisions in FAR 42.709 can be applied when sampling is used with a simpler, more concise paragraph that reads as follows:

''Any unallowable indirect costs that are not excluded from the universe, either as part of the projection of sample results or separate review of transactions, are subject to the penalty provisions at FAR 42.709.''

The third respondent believes that the proposed paragraph (c)(3) is rather confusing and subject to misinterpretation. This respondent therefore recommends that the paragraph be revised to read as follows:

''For any cost in the selected sample that is subject to the penalty provisions at FAR 42.709, the associated projected amount to the sampling universe derived from that sampled item is also subject to the same penalty provisions.''

This respondent states that if the proposed language is retained, the Councils need to address the following:

(a) The wording in (c)(3)(i) ''excluded from any final indirect rate proposal'' is technically incorrect. The amounts are not ''excluded'' from the ''proposal'', as the proposal would include gross, withdrawn, and claimed/recoverable costs. The respondent therefore recommends that this would need to be revised to read ''The following amounts must be excluded from any proposed final indirect rates or....''

(b) Proposed paragraph (c)(3)(i)(B) is not clear as to what is meant by ''determined to be unallowable.'' This could relate to paragraph (b) of this cost principle or it could relate to FAR 42.709–3(b) or something else.

(c) Proposed paragraph (c)(3)(iii) appears redundant and unnecessary. Paragraph (c)(3)(iii) provides ''...are subject to the penalties provisions at FAR 42.709.'' By virtue of this reference that includes contract applicability language at 42.709–6, it does not appear necessary to provide another paragraph with the same type of contract applicability language.

Councils' response: Concur. The Councils agree that the proposed language was potentially confusing. The Councils therefore recommend simplifying the language at FAR 31.201–6(c)(3) to read as follows:

''For any indirect cost in the selected sample that is subject to the penalty provisions at FAR 42.709, the amount projected to the sampling universe from that sampled cost is also subject to the same penalty provisions.''

The Councils note that the intent of the subject language in both the proposed rule and the final rule is the same.

Advance agreements, FAR 31.201–6(c)(4) and FAR 31.109.

Comment 3: Two respondents assert that paragraph (c)(4) is written in such a way as to suggest there is a requirement for an advance agreement. One respondent does not believe the potentially prescriptive language at paragraph (c)(4) is consistent with the examples of costs at FAR 31.109(h). Therefore, this respondent recommends eliminating this paragraph. The respondent further notes that if it is determined that the advance agreement reference must remain, the following text would be more acceptable to the contracting parties:

''An advance agreement (see 31.109) with respect to compliance with subparagraph (c)(3) of this subsection may be useful and desirable.''

The second respondent believes it would be more appropriate and consistent with the verbiage used in other cost principles to simply reference FAR 31.109, such as is done in FAR 31.205–37. This respondent therefore recommends that the language at FAR 31.109(h) include sampling for

unallowable costs as another example of items that may require an advance agreement, and that paragraph (c)(4) be revised to read as follows:

''See 31.109 regarding advance agreements.''

Councils' response: Partially concur. The Councils do not believe the proposed language requires an advance agreement. The proposed language states that use of statistical sampling should be the subject of an advance agreement. While the Councils believe that the advance agreement language should remain in FAR 31.201–6, the Councils do agree that it would be helpful to add sampling to FAR 31.109 as an example of the type of item for which an advance agreement may be appropriate, and therefore have added ''statistical sampling methods'' to FAR 31.109(a) and 31.109(h)(17).

Comment 4: One respondent asserts that if the proposed rule is enacted, the rule should require an advance agreement that specifies what an adequate sampling plan entails. As such, this respondent recommends that paragraph (c)(4) require an advance agreement that documents the objective of the sample, the population, the measures, the sampling parameters, the confidence level, the precision, the sampling design, and the decision rule.

Councils' response: Nonconcur. The Councils believe the comments submitted in response to the proposed rule and the second proposed rule demonstrate that it is preferable to provide general criteria rather than specific requirements. The use of specific requirements reduce the flexibility of the contracting parties to apply sampling in a manner that maximizes its efficient use while continuing to protect the Government interests. The Councils believe that the requirements for the sample to be a reasonable representation of the sampling universe, to permit audit verification, and to apply penalties to any projected amounts provides adequate protection for the Government without unduly restricting the effective use of proper statistical sampling techniques.

In addition, the Councils do not believe an advance agreement should be required. However, the Councils believe it is important that the rule clearly state that it is the contractor's responsibility to prove compliance with the sampling criteria in FAR 31.201–6(c) when no advance agreement exists. When a contractor elects to use statistical sampling without entering into an advance agreement, the contractor is at risk that the Government will find the sampling plan in noncompliance with FAR 31.201–6(c), and the Government will perform their own sampling or even possibly a 100 percent review of the costs at issue. In those cases where the contracting officer or contracting officer's representative challenges the contractor's sampling methods, and no advance agreement exists, the burden of proof should be on the contractor to establish that the sampling methods comply with the FAR requirements. The final rule at paragraph (c)(5) has been revised to include this provision. To mitigate the potential for disputes regarding the acceptability of sampling methods, it is generally advisable for the contractor and the Government to enter into an advance agreement. Since the advance agreement has a significant impact on the accounting for unallowable costs, the final rule at paragraph (c)(4) requires that the contracting officer request auditor input prior to entering into such agreements.

Directly associated costs, FAR 31.201–6(e).

Comment 5: One respondent believes that FAR 31.201–6(e) violates CAS 405 (Accounting for Unallowable Costs) and is subject to legal challenge by any Government contractor to which a procuring or administering agency might seek to apply it. This respondent believes that the proposed rule sends a message to the contracting community that contracting agencies follow CAS only where it suits them to do so, and may disregard CAS where it does not suit their interests. This respondent asserts that paragraph (e) ''...departs from the CAS 405 definition and substitutes a 'materiality' test for the 'but for' test and further extends the materiality test to encompass even more factors that are unrelated to the CAS definition. While a suitable materiality test could itself be reconcilable with the CAS 'but for' test, the FAR has gone well beyond this point to encompass additional factors that directly contradict the CAS 405 definition.'' The respondent states that the FAR could be revised to comply with CAS 405. The respondent asserts that ''a point clearly comes at which a particular cost becomes so significant that common sense tells us the 'but for' test is satisfied. Thus, a test seeking to establish that point using the term 'materiality' would be a valid implementation of CAS 405.'' The respondent therefore recommends that the FAR specify ''a sensible materiality test and delete the other two current criteria of FAR 31.201–6(e).'' The respondent further noted that it has submitted copies of its comments to the CAS Board and suggested that the Board ''review the conflict between CAS and FAR in the identification and allocation of directly associated cost and take what steps it may consider appropriate to defend its exclusive jurisdiction in this area.''

Councils' response: Nonconcur. The Councils do not believe the language at paragraph (e) conflicts with CAS 405. The current language at FAR 31.201–6(e)(2), which has been in the FAR for over twenty years, has not been ruled to conflict with CAS 405 by any Court or by the CAS Board. The Councils believe this is important language, because it provides contracting personnel and contractors with specific information on when to treat salaries and expenses as directly associated costs. As such, the Councils believe this language should be retained.

Sampling for large dollar transactions, FAR 31.201(c)(2)(ii).

Comment 6: One respondent believes that the proposed requirement at FAR 31.201–6(c)(2)(ii) that ''all large dollar and high risk transactions are separately reviewed for unallowable costs and excluded from the sampling process'' is overly restrictive. This respondent notes that its past experience has shown that sampling for unallowable costs is most efficient and effective for high volume accounts with low dollar, low risk transactions. Therefore, the respondent believes that for a given universe, there is often no need or benefit to set aside transactions for 100 percent review. The respondent notes that identification of any transactions requiring 100 percent review and the establishment of sampling strata or clusters as necessary are all inherent requirements of developing a sampling plan that provides a ''reasonable representation of the sampling universe,'' as required by FAR 31.201–6(c)(2)(i). The respondent therefore recommends that the language in paragraph (c)(2)(ii) be deleted.

Councils' response: Nonconcur. The Councils agree with the respondent that a reasonable representation of the sampling universe would require elimination of items that due to their nature and/or dollar amount are not reasonably similar to the other items in the universe. However, the Councils also believe this is an important area that requires clear language to assure that all parties understand that large dollar and high risk items must be removed from the sampling universe. Therefore, paragraph (c)(2)(ii) has been retained.

Use of statistical sampling, General.

Comment 7: A respondent believes that the use of statistical sampling will

result in confusion, inconsistencies, and disputes. The respondent believes that statistical sampling should not replace accounting policies and procedures for properly identifying and segregating unallowable costs. The respondent states that unallowable costs should be appropriately identified and excluded when they are initially incurred and recorded. The respondent asserts that this internal control assures that unallowable costs are accounted for and excluded from a contractor's submission. The respondent states that allowing statistical sampling for identifying unallowable costs weakens this key internal control. The respondent further notes that if sampling is to be permitted, the Government and the contractor must develop the expertise in statistical sampling to ensure sampling plans are adequate and executed properly.

Councils' response: Nonconcur. The Councils note that CAS 405 (Accounting for Unallowable Costs) already permits sampling. As such, it would be a conflict with the CAS to state that sampling is not permitted for CAS-covered contracts. While the FAR could add a specific provision stating that statistical sampling is not permitted for non-CAS covered contracts, the Councils do not believe this would be a prudent business action. The Councils believe that the use of statistical sampling should apply to all contracts covered by FAR Part 31, Contract Cost Principles and Procedures. The purpose of the proposed rule is to provide some general structure to the process. Statistical sampling, when properly applied, is acceptable for both segregating unallowable costs and verifying that such costs have been properly segregated (either by specific identification or using appropriate sampling techniques). A properly executed sampling plan should approximate the total unallowable costs from the sample universe. Internal controls and procedures established to meet the sampling objectives and evaluation of the sample selections should still be a key component of this process. The Councils are also concerned that it would be oxymoronic to argue that statistical sampling is not acceptable for segregating unallowable costs but is acceptable for verifying the validity of that segregation. As to the expertise that needs to be developed, the Councils again note that statistical sampling is already permitted by CAS, and is often used in both industry and the Government for many different types of applications. Thus, the Councils believe the necessary expertise for applying statistical sampling already exists within both the Government and the contractor community.

Comment 8: One respondent believes that the FAR should include guidance similar to that issued by the IRS in Revenue Procedure 2004–29. This respondent states that this Revenue Procedure establishes guidelines for using statistical sampling methods for meals and entertainment expenses. The respondent notes that this Revenue Procedure covered the sampling plan standards, the methods and attributes to be used with a sampling plan, the sampling documentation standards, and the technical formulas. In addition, the procedure specified a 95 percent one-sided confidence level.

Councils' response: Nonconcur. The Councils believe that such prescriptive language is not necessary. The Councils believe that it is preferable to provide for more general requirements regarding acceptable statistical methods than to provide a detailed listing of what must be present for each and every situation.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not 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 most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis and do not require application of the cost principle discussed in this rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: September 22, 2005.

Julia B. Wise,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 31 as set forth below:

PART 31–CONTRACT COST PRINCIPLES AND PROCEDURES

■ 1. The authority citation for 48 CFR part 31 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 31.109 by—

■ a. Removing the period from the end of the third sentence of paragraph (a) and adding ''and on statistical sampling methodologies at 31.201–6(c).'' in its place; and

■ b. Removing from the introductory text of paragraph (h) the words ''of costs''; removing from paragraph (h)(15) the last word ''and''; removing the period from the end of paragraph (h)(16) and adding ''; and'' in its place; and adding paragraph (h)(17) to read as follows:

31.109 Advance agreements.

* * * * *

(h) * * *

(17) Statistical sampling methods (see 31.201–6(c)(4).

■ 3. Amend section 31.201–6 by—

■ a. Removing from the second sentence of paragraph (a) and the first sentence of paragraph (b) the word ''which'' each time it appears (3 times) and adding the word ''that'' in its place;

■ b. Revising paragraph (c);

■ c. Removing from the first sentence of paragraph (d) the word ''which'' the first time it appears and adding ''that'' in its place; and

■ d. Removing from the end of paragraph (e)(1)(ii) the word ''or'' and adding the word ''and'' in its place; and revising paragraph (e)(3) to read as follows:

31.201–6 Accounting for unallowable costs.

* * * * *

(c)(1) The practices for accounting for and presentation of unallowable costs must be those described in 48 CFR 9904.405, Accounting for Unallowable Costs.

(2) Statistical sampling is an acceptable practice for contractors to follow in accounting for and presenting unallowable costs provided the criteria in paragraphs (c)(1)(i), (c)(1)(ii), and (c)(1)(iii) of this subsection are met:

(i) The statistical sampling results in an unbiased sample that is a reasonable representation of the sampling universe.

(ii) Any large dollar value or high risk transaction is separately reviewed for unallowable costs and excluded from the sampling process.

(iii) The statistical sampling permits audit verification.

(3) For any indirect cost in the selected sample that is subject to the

penalty provisions at 42.709, the amount projected to the sampling universe from that sampled cost is also subject to the same penalty provisions.

(4) Use of statistical sampling methods for identifying and segregating unallowable costs should be the subject of an advance agreement under the provisions of 31.109 between the contractor and the cognizant administrative contracting officer or Federal official. The advance agreement should specify the basic characteristics of the sampling process. The cognizant administrative contracting officer or Federal official shall request input from the cognizant auditor before entering into any such agreements.

(5) In the absence of an advance agreement, if an initial review of the facts results in a challenge of the statistical sampling methods by the contracting officer or the contracting officer's representative, the burden of proof shall be on the contractor to establish that such a method meets the criteria in paragraph (c)(2) of this subsection.

* * * * *

(e)(1) * * *

(3) When a selected item of cost under 31.205 provides that directly associated costs be unallowable, such directly associated costs are unallowable only if determined to be material in amount in accordance with the criteria provided in paragraphs (e)(1) and (e)(2) of this subsection, except in those situations where allowance of any of the directly associated costs involved would be considered to be contrary to public policy.

[FR Doc. 05–19476 Filed 9–29–05; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 2005–06; FAR Case 2003–002; Item X]

RIN 9000–AJ81

Federal Acquisition Regulation; Reimbursement of Relocation Costs on a Lump-Sum Basis

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) by revising the relocation cost principle to permit contractors the option of being reimbursed on a lump-sum basis for three types of employee relocation costs: costs of finding a new home; costs of travel to the new location; and costs of temporary lodging. These three types of costs are in addition to the miscellaneous relocation costs for which lump-sum reimbursements are already permitted.

DATES: *Effective Date:* October 31, 2005.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson, Procurement Analyst, at (202) 501–3221. Please cite FAC 2005–06, FAR case 2003–002.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils originally considered expanding the reimbursement of relocation costs on a lump-sum basis under FAR case 1997–032, Relocation Costs. However, the Councils decided to study this issue further under a separate case and published a final rule on the remainder of FAR case 1997–032 in the **Federal Register** at 67 FR 43516, June 27, 2002. On October 24, 2002, the Councils published a Notice of Request for Comments in the **Federal Register** (67 FR 65468) with a list of questions regarding the use of a lump-sum approach for reimbursing employee relocation expenses. After reviewing the public comments that were submitted in response to that **Federal Register** notice, the Councils held a public meeting on February 6, 2003, to further explore the views of interested parties on this issue.

Public comments and the discussions at the public meeting revealed that, in addition to the miscellaneous relocation costs for which lump-sum reimbursements are already permitted by FAR 31.205–35(b)(4), it is common commercial practice to reimburse relocating employees on a lump-sum basis for their house-hunting, final move, and temporary lodging expenses. A FAR case was opened to expand the relocation cost principle to permit lump-sum reimbursements for these three types of costs.

The Councils published a proposed FAR rule in the **Federal Register** at 68 FR 69264, December 11, 2003, with a request for comments by February 9, 2004. Seven respondents submitted comments on the proposed FAR rule. Two respondents supported the proposed rule, four respondents opposed it, and one respondent requested clarification. A discussion of the comments is provided below. The Councils considered all comments and concluded that the proposed rule should be converted to a final rule, with changes to the proposed rule. Differences between the proposed rule and final rule are discussed in Section B, Comment 1, and Section C below.

B. Public Comments

No standard for measuring reasonableness

1. *Comment:* Four respondents opposed the proposed rule and expressed the concern that with contractors spending significant amounts on employee relocations, the Government would have no objective standard for evaluating the reasonableness of the new lump-sum amounts being claimed.

After conducting surveys that suggest ''contractors are incurring hundreds of millions of dollars of relocation costs annually,'' the first respondent expressed ''significant concern as to where an auditor, contracting officer, or contractor could turn to gather adequate data to make a determination as to the appropriateness and reasonableness of the lump-sum method or resulting amount.'' The respondent concluded its letter by stating it ''believes that paying a lump-sum for such significant amounts places an unacceptable risk on the Government and creates an excessive audit task to establish allowability of relocation costs.''

Also citing the above mentioned survey of the large amounts of relocation costs allocated to cost reimbursement contracts each year, the second respondent stated that ''allowing lump-sum reimbursement of these costs without supporting documentation is not in the best interests of the Government'' because ''the proposed revision would subject millions of dollars to a subjective test of reasonableness requiring Government auditors, contracting officials, attorneys, and others to expend significantly more resources to determine the reasonableness of the claimed costs, review the determination, and resolve disputes between the Government and the contractor involving disallowed costs.'' The respondent went on to suggest ''contractors will also incur additional expenses in excess of any administrative costs saved supporting the reasonableness of the relocation costs.''

The third respondent based its opposition to the proposed rule on ''the millions of taxpayer dollars that will be wasted on this special interest giveaway'' and suggested that the Government's motivation in pursuing it was ''not wanting to disappoint contractors.'' The respondent argued further that ''contractors favor this approach, not because of any administrative burden reduction, but rather because it leads to higher levels of reimbursement without any need to justify costs.'' Finally, the respondent expressed its opinion that ''with few exceptions, these (relocation) costs should only be reimbursed on an 'actual cost' basis.''

The fourth respondent did not submit any original comments, but simply forwarded the third respondent's comments with an accompanying statement that it ''fully concurs in the substantive objections expressed'' therein.

Councils' response: The Councils believe that a provision permitting the expanded use of lump-sum reimbursements should be added to the relocation cost principle. Such a provision is expected to reduce the accounting and administrative burden of that cost principle on contractors and lead to faster relocations.

The Councils are very receptive to the important concerns expressed by the respondents. The Councils believe that the words ''on an appropriate lump-sum basis to the individual employee'' in the proposed rule were intended to condition the allowability of the new lump-sum reimbursements on contractors by providing sufficient visibility into the component cost projections used in developing the lump-sum amounts to permit an audit determination of their reasonableness. However, the comments make it abundantly clear that such a requirement needs to be more explicit. The Councils certainly want to eliminate any possible public perception of this proposed rule change as a ''blank check'' for contractors and to ensure that the Government only reimburses *reasonable* costs. Accordingly, the Councils have added language at FAR 31.205–35(b)(6)(i) that makes the costs of lump-sum payments to relocating employees for house-hunting, final move, and temporary lodging expenses allowable only when ''adequately supported by data on the individual elements (*e.g.*, transportation, lodging, and meals) comprising the build-up of the lump-sum amount to be paid based on the circumstances of the particular employee's relocation.'' This requirement should provide essentially the same audit visibility into the reasonableness of lump-sum payments as currently exists for actual relocation costs.

Relocation lump-sums as a common commercial practice

2. *Comment:* In opposing the proposed rule, one respondent also asserted that the use of lump-sum payments for travel and temporary lodging related relocation costs ''is not a predominant industry practice at this time.'' The respondent explained that it recently reviewed the current relocation policies in place at four large contractor locations and found that three of these four contractors use a single corporate-wide policy for their employee relocation reimbursement programs. Even though one of these three companies claims it is a predominantly commercial company and the other two companies also have a substantial commercial business base, the respondent pointed out that none of the three has established a lump-sum option for its commercial business segments.

In addition, the respondent cited an August 2003 news release from a relocation management firm which stated that only 30 percent of the companies it had recently surveyed said they were using lump-sums to cover travel and temporary lodging expenses. Finally, the respondent pointed out that it had recently been advised by a relocation management firm that, shortly before Dr. John Hamre left the Department of Defense, he ''shut down'' an effort by the relocation management firm and the Defense Integrated Travel and Relocation Solutions (DITRS) office to put together a plan for using lump-sums for DoD civilian relocations.

After reviewing the responses to the October 24, 2002, **Federal Register** Notice of Request for Comments (67 FR 65468), a respondent questioned ''whether the FAR Council has obtained sufficient information to support its assertion that it is now common commercial practice to reimburse relocating employees on a lump-sum basis for their house-hunting, final move, and temporary lodging expenses.'' The respondent observed that of the eight respondents who responded to that notice, one respondent's letter gave no specifics on the number of companies using lump-sum reimbursements, and another respondent stated that its 2001 survey showed that 55 companies out of 109 contacted were using lump-sum reimbursements.

In supporting the proposed rule, one respondent agreed ''with the Councils' statement that the use of lump-sum payments is a common commercial practice'' and expressed the belief ''that the proposed rule will help align relocation cost reimbursement policies with commercial best practices.'' Another respondent also agreed that the proposed changes ''are in keeping with current commercial business practice'' and explained that ''beginning in 1993 with the Revenue Reconciliation Act, many companies moved to lump-sum allowances for what became taxable reimbursements to the home-finding, temporary living, and final move portions of relocation policy.'' The respondent concluded with its opinion that ''the recommended revision will enable Government contractors to implement this best practice and take advantage of a tested and proven process efficiency that has been an accepted part of the commercial sector's relocation programs for over a decade.''

Councils' response: While the use of lump-sum reimbursements for selected relocation expenses may not be the predominant commercial practice at this time, the Councils believe there is ample evidence that the use of such payments is a common and growing commercial practice. The survey data cited by the respondents support this assessment. In addition, a relocation management firm that has been in business for more than 70 years stated at the February 6, 2003, public meeting and in its subsequent public comments that lump-sum reimbursement is now a common commercial practice for house-hunting, final move, and temporary lodging costs.

The Councils do not find it surprising that contractors who wish to maintain a single, corporate-wide policy for reimbursing relocation costs continue to apply a policy which parallels the current cost principle, even though they may have significant commercial business. The revised relocation cost principle will give such firms an additional option for the first time on Government contracts that could well become their corporate-wide standard in the future.

Finally, it is the Councils' understanding that DoD terminated its two-year initiative to reengineer relocation policies and procedures and disbanded the DITRS office which oversaw that effort due to a lack of funds and interest from the military departments. And while the relocation management firm stated during its presentation at the February 6, 2003, public meeting that the Federal Deposit Insurance Corporation is currently using lump-sum reimbursements for its employees' relocation costs, this appears to be an exception within the

Federal Government. However, even if lump-sum reimbursements for Federal employee relocation expenses are relatively rare, the purpose of this case is to recognize a common and growing commercial best practice in the relocation cost principle that should benefit both contractors and the Government.

Allowability of lump-sum payments

3. *Comment:* While supporting the effort to expand the use of lump-sum reimbursements for contractor employee relocation costs, one respondent suggested that the revised paragraph (b)(4) needs to include ''a clear affirmative statement that the lump-sum payments are allowable costs'' to avoid any possible confusion. In addition, the respondent recommended that the words ''to the individual employee'' be deleted from the revised paragraph (b)(4) because ''contractors should not have to demonstrate on an individual basis that the lump-sum payments are reasonable and appropriate for each relocating employee.'' Finally, the respondent recommended that the Councils eliminate the current ceilings on allowable home sale and purchase costs of 14 percent and 5 percent, respectively.

Councils' response: Nonconcur. The Councils do not agree that any additional language is necessary to avoid confusion regarding the allowability of the specified lump-sum payments. The Councils believe it is very clear from the language at FAR 31.205–35(b)(6)(i) that lump-sum payments to employees for any of these three types of relocation costs will be allowable if the requisite criteria are met. The Councils also believe that the data provided by the contractor on the component cost projections used in developing its lump-sum amounts must be ''based on the circumstances of the particular employee's relocation,'' such as family size, city, and number of vehicles. Otherwise, the lump-sum amount paid could be excessive, and therefore unreasonable, for a given relocation. Finally, the current ceilings on allowable home sale and purchase costs are outside the scope of this case. (Incidentally, the relocation management firm indicated at the February 6, 2003, public meeting that such costs are seldom included in lump-sum relocation payments.)

Add the three types of employee relocation costs to current lump-sum cap for miscellaneous expenses

4. *Comment:* One respondent suggested that if the proposed rule is not withdrawn, it ''does not object to adding the three additional types of employee relocation costs, *i.e.*, (1) the costs of finding a new home, (2) costs of travel to the new location, and (3) costs of temporary lodging, in addition to the existing 'miscellaneous expenses' that would be subject to a $5,000 lump-sum reimbursement, per employee move.'' The respondent offered this alternative ''in the interest of promoting greater flexibility within the existing relocation cost principle, but without increasing overall costs to taxpayers.''

Councils' response: Nonconcur. Under its cost-type contracts, the Government is obligated to pay the contractor's allocable and reasonable costs of contract performance. Not only would the respondent's proposal be fundamentally unfair to contractors, but it would also severely undermine the basic rationale for this proposed rule change. The current cap on miscellaneous relocation costs at FAR 31.205–35(b)(4) was increased to $5,000 in June 2002 based on survey data published by the Employee Relocation Council regarding the median amount of such payments in the commercial sector. There is no logical reason to arbitrarily add house-hunting, final travel, and temporary lodging costs to this separate lump-sum cap. The cost principles should ensure that contractors are treated fairly, consistent with sound public policy.

Proposed rule would make Federal employees second class citizens

5. *Comment:* One respondent expressed concern ''that this proposal would make Federal employees second class citizens vis-á-vis their contractor counterparts with respect to relocation expenses.'' The respondent concluded by stating that ''in no case should increases in lump-sum payments beyond $5,000 per contractor employee be considered until ... Federal employees are afforded the same advantages as their contractor counterparts.''

Councils' response: Nonconcur. While the Councils understand that the respondent is particularly sensitive to what it perceives to be preferential treatment of contractor employees, the Councils do not believe the allowability of contractor relocation costs must parallel exactly the treatment afforded Federal employees. It is now a common commercial practice to reimburse relocating employees on a lump-sum basis for their house-hunting, final move, and temporary lodging expenses, and the Councils believe the relocation cost principle should be revised to permit contractors the option of using this methodology. The language added at FAR 31.205–35(b)(6)(i) will ensure that, just as when reimbursement is based on actual expenses, only *reasonable* amounts are allowed for lump-sum reimbursements of these three types of relocation costs. This additional flexibility should help promote increased entry into the Federal marketplace by firms that have previously been hesitant to do so, resulting in increased competition on future purchases.

Clarification of current lump-sum cap for miscellaneous expenses

6. *Comment:* A respondent asked: ''Is the proposed lump-sum amount of $5K applicable to both the continental United States (CONUS) and outside CONUS relocations?''

Councils' response: The $5,000 cap on allowable lump-sum reimbursements for miscellaneous relocation expenses is a current, not proposed, limitation at FAR 31.205–35(b)(4). It applies to all contractor employee relocations, regardless of location.

C. Additional Change—No adjustments

The Councils are concerned that contractors who reimburse employee relocation costs on a lump-sum basis could make additional after-the-fact payments to employees whose actual costs exceeded the lump-sum amount. To address this concern, the Councils added the following limitation at FAR 31.205–35(b)(6)(ii): ''When reimbursement on a lump-sum basis is used, any adjustments to reflect actual costs are unallowable.''

D. Regulatory Planning and Review

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

E. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not 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 most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle discussed in this rule. For Fiscal Year 2003, only 2.4 percent of all contract actions were cost contracts awarded to small businesses.

F. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) does not apply because the

changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: September 22, 2005.

Julia B. Wise,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 31 as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 1. The authority citation for 48 CFR part 31 continues to read as follows:

Authority: Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 31.205–35 by revising paragraph (b)(4); and adding paragraphs (b)(5) and (b)(6) to read as follows:

31.205–35 Relocation costs.

* * * * *

(b)* * *

(4) Amounts to be reimbursed shall not exceed the employee's actual expenses, except as provided for in paragraphs (b)(5) and (b)(6) of this subsection.

(5) For miscellaneous costs of the type discussed in paragraph (a)(5) of this subsection, a lump-sum amount, not to exceed $5,000, may be allowed in lieu of actual costs.

(6)(i) Reimbursement on a lump-sum basis may be allowed for any of the following relocation costs when adequately supported by data on the individual elements (e.g., transportation, lodging, and meals) comprising the build-up of the lump-sum amount to be paid based on the circumstances of the particular employee's relocation:

(A) Costs of finding a new home, as discussed in paragraph (a)(2) of this subsection.

(B) Costs of travel to the new location, as discussed in paragraph (a)(1) of this subsection (but not costs for the transportation of household goods).

(C) Costs of temporary lodging, as discussed in paragraph (a)(2) of this subsection.

(ii) When reimbursement on a lump-sum basis is used, any adjustments to reflect actual costs are unallowable.

* * * * *

[FR Doc. 05–19477 Filed 9–29–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 2005–06; FAR Case 2001–021; Item XI]

RIN 9000–AJ38

Federal Acquisition Regulation; Training and Education Cost Principle

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) by revising the ''training and education costs'' contract cost principle. The amendment streamlines the cost principle and increases clarity by eliminating restrictive and confusing language, and by restructuring the rule to list only specifically unallowable costs. The final rule eliminates several specific limitations on the allowability of costs associated with the various categories of education, eliminates the disparate treatment of full-time and part-time undergraduate education costs, and limits allowable costs to training and education related to the field in which the employee is working or may reasonably be expected to work. The rule makes job-related training and education costs generally allowable, except for six public policy exceptions that are retained from the current cost principle. Except for the six expressly unallowable cost exceptions, the reasonableness of specific contractor training and education costs is assessed by reference to the FAR section entitled ''Determining reasonableness.''

DATES: *Effective Date:* October 31, 2005.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jerry Olson at (202) 501–3221. Please cite FAC 2005–06, FAR case 2001–021.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils published a proposed FAR rule in the **Federal Register** (67 FR 34810) on May 15, 2002, with a request for comments by July 15, 2002. On June 11, 2002, an amendment was published in the **Federal Register** (67 FR 40136) to correct an error in the Supplementary Information section accompanying the proposed rule. Six respondents submitted public comments. As a result of the comments received, the Councils made significant changes to the proposed FAR rule and published a second proposed FAR rule in the **Federal Register** (69 FR 4436) on January 29, 2004, with a request for comments by March 29, 2004.

Nine respondents submitted comments in response to the second proposed FAR rule. A discussion of these public comments is provided below. The Councils considered all comments and concluded that the proposed rule should be converted to a final rule, with changes to the proposed rule. Differences between the second proposed rule and final rule are discussed in Section B, Comments 1, 2, 4, and 6, below.

B. Public Comments

Proposed paragraph (a): Education for sole purpose to obtain academic degree or qualify for job.

Comment 1: Seven respondents generally supported the proposed rule; however, they strongly recommended that proposed paragraph (a) be deleted before issuing a final rule. Several of the respondents pointed out that paragraph (a) is inconsistent with the Councils' own **Federal Register** comments that they ''support upward mobility, job retraining, and educational advancement.'' In this regard, one respondent stated its concern that paragraph (a) would prevent it from providing ''the educational opportunities that we have provided for decades.'' Some respondents complained that it had ''no idea how one is to discern whether the training and education relates 'solely' to obtaining an academic degree or to a particular position'' and that ''implementation of this provision will be burdensome and lead to contested costs; hardly a simplification that increases the clarity of the cost principle.''

Several respondents challenged the fundamental notion that the allowability of contractor employee training and education costs must parallel exactly the treatment afforded Federal employees. One respondent wrote—

''We believe that utilization of the test of whether the Federal Government is willing to reimburse education costs for Federal employees is an inappropriate basis for determining cost allowability. The

benchmark for measuring the cost reasonableness of payments for education and training should be based on commercial practices that encourage the continued training and education of our workforce. Accordingly, we recommend that paragraph 31.205–44(a) of the proposed rule ... be deleted prior to issuing the final rule.''

To further support this position, another respondent pointed out that Congress has long advocated increased use of commercial practices in the Federal acquisition process:

''Congress has consistently endorsed and supported the adoption of commercial practices—not Government practices—in the Government procurement arena. The most recent example is the 2004 DoD Authorization Legislation (P.L. 108–136), Section 1423. This section prescribes the establishment of a panel to propagate the use of commercial practices by, among other things, reviewing all regulations.''

One respondent stated that the proposed paragraph (a) ''will decrease industry's ability to assist the U.S. Government in ensuring future economic strength'' through private sector training and education which often involves employees ''in Government–authorized, socioeconomic/disadvantaged programs that encourage upward mobility.'' In support of this assessment, the respondent provided a detailed description of the benefits that accrue to the company, the Government, and society in general from its Employee Scholar Program (ESP):

''There are over 9,000 U.S. employees (approximately 25% of whom are hourly workers) currently participating in respondent's ESP. These people are pursuing degrees from colleges and universities that many undoubtedly could not have afforded to fund on their own. ESP is encouraging educational pursuits that support social, political, and business needs, for example:

- Approximately 40% of the respondent's employees participating from the aerospace and defense business units in the ESP are obtaining first degrees;
- Over 80% of the degrees awarded to the respondent's employees from the aerospace and defense business units over the last 3 years are in the business/management or technical/engineering areas (less than 3% of degrees awarded were not in current or possible future job-related areas);
- Female and Hispanic employees participate in the ESP at about 11/2 times their proportion in the respondent's workforce;
- ESP participants have increased loyalty and motivation to remain with the respondent. They leave their jobs at a lower rate than the general population, thereby enhancing retention and reducing allowable recruiting, relocation, and job training costs;
- ESP graduates are promoted at a higher rate than the general population;
- The average age of a ESP participant is 39 years old (suggesting that most participants are of an age where they are able to use their education on the job, and seek further education in the future to keep their skills current).''

Finally, one respondent summarized the confusion expressed by several respondents over the purpose and effect of the proposed paragraph (a):

''However, we are troubled by the statement in the comment section that the Councils' intent is also to ''... make it (the rule) consistent with recent statutory changes that cover the payment of costs for Federal employee academic degree training.'' This statement and the resulting proposed paragraph 31.205–44(a) nullify the benefits of simplification and adopting commercial practices. We are perplexed as to how the costs for allowing and encouraging employees to obtain degrees and take classes to provide for future opportunities is against public policy and how these costs potentially could be classified as unallowable.''

Councils' response: The Councils agree that the allowability of contractor employee training and education costs, to the extent that it is job related, should be rooted in sound commercial practices that encourage upward mobility in the private sector workforce. The Councils also are acutely sensitive to the concern about the appearance of disparate treatment of contractor and Federal employees' full-time undergraduate level educational expenses. Therefore, the Councils carefully examined the comments of the largest Federal employee union, the American Federation of Government Employees (AFGE), and noted that the inclusion of the statutory limitations on agency payment of Federal employee educational costs in paragraph (a) apparently did little to temper the union's strong opposition to the proposed rule. Instead, AFGE focused its criticism primarily on the lack therein of a job-relatedness requirement for allowable contractor employee full-time undergraduate educational costs, while it asserted that a demonstration of job-relatedness would be essential before the Government would pay these expenses for a Federal employee (see Comment 6, below). Accordingly, the Councils have deleted the proposed paragraph (a) and added the following allowability requirement for all training and education costs in the introductory sentence of the final rule: ''Costs of training and education that are related to the field in which the employee is working or may reasonably be expected to work are allowable, except as follows:'' The Councils believe that this broad accommodation of AFGE's principal criticism of the proposed rule constitutes sound public policy.

Proposed paragraph (d): Full-time graduate level education.

Comment 2: Three respondents expressed concern that the proposed paragraph (d) would make currently allowable full-time graduate level educational costs unallowable. They pointed out that under the current coverage for such education, only the costs in excess of two years or the length of the graduate degree program, whichever is less, are unallowable. They argued that, in contrast, the proposed paragraph (d) would make the entire cost (not just the excess) of the graduate program unallowable if it exceeded two years or the length of the degree program.

Councils' response: Concur. There was never any intent to change this aspect of the current allowability criteria for full-time graduate level educational costs. Accordingly, the Councils have revised this coverage (now paragraph (c) of the final rule) to clarify that only the costs in excess of two school years or the length of the degree program, whichever is less, are unallowable.

Proposed paragraph (e): Grants.

Comment 3: Two respondents recommended that the proposed paragraph (e) on grants to educational or training institutions be deleted ''because this subject matter is adequately covered by FAR 31.205–8, Contributions or donations.''

Councils' response: Nonconcur. The Councils believe that the proposed paragraph (e) (which is essentially the same as the current paragraph (g), Grants) provides very helpful guidance regarding specific types of unallowable grants to educational or training institutions which should be retained. To avoid confusion, the Councils have also added back the explanatory words ''are considered contributions and'' from the current paragraph (g) to this provision (now paragraph (d) of the final rule).

Proposed paragraph (g): Employee dependents college savings plans.

Comment 4: Three respondents expressed concern that the proposed paragraph (g), which makes costs of university and college plans for employee dependents unallowable, could be misinterpreted to make the administrative costs of such plans unallowable. One of the respondents suggested changing the words ''Costs of'' to ''Contractor contributions to'' to clarify the intent of this provision.

Councils' response: Concur. The **Federal Register** notice accompanying

the January 29, 2004, proposed rule provided the following response to essentially this same industry concern:

''The cost principle does not address the administrative costs of such plans; therefore, the administrative costs are allowable, subject to the reasonableness criteria at FAR 31.201–3. However, any contributions to the plan by the company for employee dependents would be unallowable under the redesignated paragraph (g) in this second proposed rule.''

Even though the Councils are unaware of any problems involving the misapplication of this provision to the administrative costs of college savings plans, they see no problem in making the suggested clarifying change. As stated above, the intent of the proposed paragraph (g) (which is the same as that of the current paragraph (j), *Employee dependent education plans*) is to make contractor contributions to college savings plans for employee dependents unallowable. Reasonable administrative costs for college savings plans funded by employee contributions should continue to be allowable. In revising this provision (now paragraph (f) of the final rule), the Councils have also used the appropriate financial planning term, ''college savings plans.''

Current paragraph (h): Advance agreements.

Comment 5: Two respondents argued that in view of the potential changes in the allowability of full-time graduate level educational costs in the proposed paragraph (d), it is necessary to retain the current paragraph (h), Advance agreements, in order to keep currently allowable costs from becoming unallowable. This is because the current paragraph (h) permits advance agreements that would make costs allowable ''in excess of those otherwise allowable under paragraphs (c) and (d)'' of the current cost principle.

Councils' response: Nonconcur. Since the Councils have revised the coverage for full-time graduate level educational costs in the final rule to prevent a possible ''all or nothing'' interpretation (see Comment 2, above), this should no longer be a concern for industry.

Job-relatedness.

Comment 6: In opposing the proposed rule, one respondent categorized it as ''another attempt on the part of the Director of Procurement and Acquisition Policy at DoD to accord contractors and contractor employees further benefits not granted to Federal employees in similar circumstances.'' Continuing that theme, the respondent expressed its principal criticism of the proposed rule as follows:

''The proposed rule makes at least one extremely offensive change to the contract cost allowability rules that is not accorded to Federal employees, despite the misleading statement contained in the proposal's preamble. Permitting contractors to claim as an allowable cost, the costs of providing employees with full-time undergraduate education, amounts to nothing more than a contractor scholarship program, at taxpayer expense. While the respondent, as a matter of public policy, encourages Federal employees to further their education and training, it is well understood, that when taxpayers pick up these costs, such education and training must reasonably relate to the employee's actual or anticipated duties.''

Councils' response: Partially concur. The Councils see significant benefits to both the Government and industry in publishing the final rule in this case. However, the Councils agree with the respondent that job-relatedness should be a requirement for allowable contractor employee full-time undergraduate level educational costs. In fact, the Councils have added such an allowability requirement for all training and education costs in the introductory sentence of the recommended final rule (see Comment 1, above). The Councils believe this change constitutes sound public policy.

Applicability to Federal employees.

Comment 7: One respondent stated ''The combination of training and education for the 1102 series is critical, without the Government paying for the required courses and training, most employees could not afford to get the degree required.'' The respondent concluded with the request to ''Please reconsider and completely fund the education and training of current employees.''

Councils' response: The respondent apparently confused the proposed rule as applying to Federal employees. The proposed rule does not apply to Federal employees.

C. Regulatory Planning and Review

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

D. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not 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 most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis and do not require application of the cost principle discussed in this rule.

E. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: September 22, 2005.

Julia B. Wise,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 31 as set forth below:

PART 31–CONTRACT COST PRINCIPLES AND PROCEDURES

■ 1. The authority citation for 48 CFR part 31 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Revise section 31.205–44 to read as follows:

31.205–44 Training and education costs.

Costs of training and education that are related to the field in which the employee is working or may reasonably be expected to work are allowable, except as follows:

(a) Overtime compensation for training and education is unallowable.

(b) The cost of salaries for attending undergraduate level classes or part-time graduate level classes during working hours is unallowable, except when unusual circumstances do not permit attendance at such classes outside of regular working hours.

(c) Costs of tuition, fees, training materials and textbooks, subsistence, salary, and any other payments in connection with full-time graduate level education are unallowable for any portion of the program that exceeds two school years or the length of the degree program, whichever is less.

(d) Grants to educational or training institutions, including the donation of facilities or other properties, scholarships, and fellowships are considered contributions and are unallowable.

(e) Training or education costs for other than bona fide employees are unallowable, except that the costs incurred for educating employee dependents (primary and secondary

level studies) when the employee is working in a foreign country where suitable public education is not available may be included in overseas differential pay.

(f) Contractor contributions to college savings plans for employee dependents are unallowable.

[FR Doc. 05–19478 Filed 9–29–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

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

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This Small Entity Compliance Guide has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2005–06 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2005–06 which precedes this document. These documents are also available via the Internet at *http://www.acqnet.gov/far*.

FOR FURTHER INFORMATION CONTACT: Laurieann Duarte, FAR Secretariat, (202) 501–4755. For clarification of content, contact the analyst whose name appears in the table below.

List of Rules in FAC 2005–06

Item	Subject	FAR case	Analyst
*I	Information Technology Security (Interim)	2004–018	Davis.
II	Improvements in Contracting for Architect-EngineerServices	2004–001	Davis.
III	Title 40 of United States Code Reference Corrections	2005–010	Zaffos.
*IV	Implementation of the Anti-Lobbying Statute	1989–093	Woodson.
V	Increased Justification and Approval Threshold forDOD, NASA, and Coast Guard	2004–037	Jackson.
*VI	Addition of Landscaping and Pest Control Services to theSmall Business Competitiveness Demonstration Program.	2004–036	Marshall.
*VII	Powers of Attorney for Bid Bonds	2003–029	Davis.
*VIII	Expiration of the Price Evaluation Adjustment(Interim)	2005–002	Cundiff.
IX	Accounting for Unallowable Costs	2004–006	Olson.
X	Reimbursement of Relocation Costs on a Lump-Sum Basis	2003–002	Olson.
XI	Training and Education Cost Principle	2001–021	Olson.

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–06 amends the FAR as specified below:

*Item I—Information Technology Security (FAR Case 2004–018)

This interim rule amends the FAR to implement the Information Technology (IT) Security provisions of the Federal Information Security Management Act of 2002 (FISMA) (Title III of the E-Government Act of 2002 (E-Gov Act)).

This interim rule focuses on the importance of system and data security by contracting officials and other members of the acquisition team. The intent of adding specific guidance in the FAR is to provide clear, consistent guidance to acquisition officials and program managers; and to encourage and strengthen communication with IT security officials, chief information officers, and other affected parties.

Item II—Improvements in Contracting for Architect-Engineer Services (FAR Case 2004–001)

This final rule implements Section 1427(b) of the Services Acquisition Reform Act of 2003, which prohibits architect-engineering services from being offered under GSA multiple-award schedule contracts or under Governmentwide task and delivery order contracts unless they are awarded using the procedures of the Brooks Architect-Engineer Act and the services are performed under the direct supervision of a professional architect or engineer licensed, registered, or certified in the State, Federal district or outlying area, in which the services are to be performed. This rule is of interest to agencies and contracting officers that use GSA schedules and Governmentwide task and delivery order contracts.

Item III—Title 40 of United States Code Reference Corrections (FAR Case 2005–010)

This final rule amends the FAR to reflect the most recent codification of Title 40 of the United States Code. No substantive changes are being made to the FAR.

*Item IV—Implementation of the Anti-Lobbying Statute (FAR Case 1989–093)

This final rule converts the interim rule published in the **Federal Register** at 55 FR 3190, January 30, 1990 to a final rule with minor changes amends the FAR to implement section 319 of the Department of the Interior and Related Agencies Appropriations Act, Public Law 101–121, which added a new section 1352 to Title 31 of the United States Code, entitled ''Limitations on the use of funds to influence certain Federal contracting and financial transactions.'' Section 319 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the executive or legislative branches of the

Federal Government in connection with a specific contract, grant or loan. It also requires that each person who requests or receives a contract, grant or cooperative agreement in excess of $100,000 or a Federal commitment to insure or guarantee a loan in excess of $150,000 must disclose lobbying with other than appropriated funds. The rule requires contracting officers, in accordance with FAR 3.808, to insert in all solicitations and contracts expected to exceed $100,000 the provision at FAR 52.203–11, ''Certification and Disclosure Regarding Payments to Influence Certain Federal Transaction,'' and the clause at FAR 52.203–12, ''Limitations on Payments to Influence Certain Federal Transactions.''

Item V—Increased Justification and Approval Threshold for DOD, NASA, and Coast Guard (FAR Case 2004–037)

This final rule converts the interim rule published in the **Federal Register** at 70 FR 11739, March 9, 2005, to a final rule with minor changes. The rule amended the FAR by increasing the justification and approval thresholds for DoD, NASA, and the U.S. Coast Guard from $50 million to $75 million. This change implemented section 815 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, which amends 10 U.S.C. 2304(f)(1)(B). In addition, corresponding changes have been made to FAR 13.501. The rule will reduce administrative burden for ordering activities.

***Item VI—Addition of Landscaping and Pest Control Services to the Small Business Competitiveness Demonstration Program (FAR Case 2004–036)**

This final rule finalizes, without change, the interim rule published in the **Federal Register** at 70 FR 11740, March 9, 2005. The rule implements Section 821 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005. Section 821 amended Section 717 of the Small Business Competitiveness Demonstration Program Act of 1988 by adding landscaping and pest control services to the program. As a result, agencies are precluded from considering acquisitions for landscaping and pest control services over the emerging small business reserve amount, currently $25,000, for small business set-asides unless the set-asides are needed to meet their assigned goals. The change may impact small businesses because these awards were previously set-aside for small businesses.

***Item VII—Powers of Attorney for Bid Bonds (FAR Case 2003–029)**

This final rule is of particular interest to contracting officers and offerors in acquisitions of construction that require a bid bond. This rule was initiated at the request of the Office of Federal Procurement Policy to resolve the controversy surrounding contracting officers' decisions regarding the evaluation of bid bonds and accompanying powers of attorney. This rule amends the FAR to revise the policy relating to acceptance of copies of powers of attorney accompanying bid bonds. This revision to FAR parts 19 and 28 removes the matter of authenticity and enforceability of powers of attorney from a contracting officer's responsiveness determination, which is based solely on documents available at the time of bid opening. Instead, the rule instructs contracting officers to address these issues after bid opening.

***Item VIII—Expiration of the Price Evaluation Adjustment (FAR Case 2005–002)**

This interim rule cancels the authority for civilian agencies, other than NASA and the U.S. Coast Guard, to apply the price evaluation adjustment to certain small disadvantaged business concerns in competitive acquisitions. The change is required because the statutory authority for the adjustments has expired. As a result, certain small disadvantaged business concerns will no longer benefit from the adjustments. DoD, NASA, and the U.S. Coast Guard are authorized to continue applying the price evaluation adjustment.

Item IX—Accounting for Unallowable Costs (FAR Case 2004–006)

This final rule amends FAR 31.201–6, Accounting for unallowable costs, by adding paragraphs (c)(2) through (c)(5) to provide specific criteria on the use of statistical sampling as an acceptable practice to identify unallowable costs, including the applicability of penalties for failure to exclude certain projected unallowable costs. The final rule also amends FAR 31.109, Advance agreements, by adding ''statistical sampling methods'' as an example of the type of item for which an advance agreement may be appropriate. The case was initiated by the Director, Defense Procurement and Acquisition Policy, who established an interagency ad hoc committee to perform a comprehensive review of FAR Part 31, Contract Cost Principles and Procedures. The rule is of particular importance to contracting officers and contractors who negotiate contracts and modifications, and determine costs in accordance with FAR Part 31.

Item X—Reimbursement of Relocation Costs on a Lump-Sum Basis (FAR Case 2003–002)

This final rule amends FAR 31.205–35 to permit contractors the option of being reimbursed on a lump-sum basis for three types of employee relocation costs: (1) costs of finding a new home, (2) costs of travel to the new location, and (3) costs of temporary lodging. These three types of costs are in addition to the miscellaneous relocation costs for which lump-sum reimbursements are already permitted.

Item XI—Training and Education Cost Principle (FAR Case 2001–021)

This final rule amends the FAR by revising the contract cost principle at FAR 31.205–44, Training and education costs. The amendment streamlines the cost principle and increases clarity by eliminating restrictive and confusing language, and by restructuring the rule to list only specifically unallowable costs.

Dated: September 22, 2005.

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[FR Doc. 05–19479 Filed 9–29–05; 8:45 am]

BILLING CODE 6820–EP–S