

__ (ii) Alternate I (DEC 2007) of 52.223–16.

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52.223–10 [Amended]

■ 9. Amend section 52.223–10 by removing from the introductory text “23.705” and adding “23.706(a)” in its place.

■ 10. Add section 52.223–16 to read as follows:

52.223–16 IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products.

As prescribed in 23.706(b)(1), insert the following clause:

IEEE 1680 STANDARD FOR THE ENVIRONMENTAL ASSESSMENT OF PERSONAL COMPUTER PRODUCTS (DEC 2007)

(a) *Definitions.* As used in this clause—
Computer monitor means a video display unit used with a computer.

Desktop computer means a computer designed for use on a desk or table.

Notebook computer means a portable-style or laptop-style computer system.

Personal computer product means a notebook computer, a desktop computer, or a computer monitor, and any peripheral equipment that is integral to the operation of such items. For example, the desktop computer together with the keyboard, the mouse, and the power cord would be a personal computer product. Printers, copiers, and fax machines are not included in peripheral equipment, as used in this definition.

(b) Under this contract, the Contractor shall deliver, furnish for Government use, or furnish for contractor use at a Government-owned facility, only personal computer products that at the time of submission of proposals were EPEAT Bronze registered or higher. Bronze is the first level discussed in clause 1.4 of the IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products.

(c) For information about the standard, see <http://www.epeat.net>.
(End of clause)

Alternate I (DEC 2007)

As prescribed in 23.706(b)(2), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) Under this contract, the Contractor shall deliver, furnish for Government use, or furnish for contractor use at a Government-owned facility, only personal computer products that at the time of submission of proposals were EPEAT Silver registered or higher. Silver is the second level discussed in clause 1.4 of the IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22 and 52

[FAC 2005–23; FAR Case 2006–019; Item II; Docket 2007–0001; Sequence 12]

RIN 9000–AK66

Federal Acquisition Regulation; FAR Case 2006–019, Contracts With Religious Entities

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 Executive Order (E.O.) 11246, as amended, Equal Employment Opportunity, to incorporate the exemption for religious entities prescribed in E.O. 13279.

DATES: *Effective Date:* December 26, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAC 2005–23, FAR case 2006–019.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the FAR to incorporate the exemption for religious entities prescribed in E.O. 13279. Executive Order 11246, as amended, prohibits Government contractors and subcontractors, and federally assisted construction contractors and subcontractors from discriminating in employment, and requires these contractors to take affirmative action to ensure that employees and applicants are treated without regard to race, color, religion, sex, or national origin. Section 4 of E.O. 13279 amended Section 204 of E.O. 11246 to exempt religious corporations, associations, educational institutions and societies from certain nondiscrimination requirements. Executive Order 11246, as amended, permits religious entities to consider

employment of individuals of a particular religion to perform work connected with carrying on the entity's activities. Religious entities are not exempt from other requirements of the E.O. 11246.

DoD, GSA, and NASA published an interim rule with request for comments in the **Federal Register** at 72 FR 13586, March 22, 2007. No public comments were received on the rule. The Councils have determined to adopt the interim rule as final, without change.

This 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 only aligns the FAR with the Department of Labor implementation of the exemption for consistency and clarity. The Department of Labor stated in its **Federal Register** notice of September 30, 2003, that the rule will not have a significant economic impact on a substantial number of small business entities. The rule is expected to have a small positive impact on small business entities, as the rule eases hiring restrictions for religious entities. The rule does not impose new requirements that impose a burden on contractors. No comments were received with regard to an impact on small business.

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 22 and 52

Government procurement.

Dated: December 19, 2007.

Al Matera,

Director, Office of Acquisition Policy.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 22 and 52,

which was published in the **Federal Register** at 72 FR 13586 on March 22, 2007, is adopted as a final rule without change.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 32 and 52

[FAC 2005-23; FAR Case 2005-016; Item III; Docket 2007-0001; Sequence 13]

RIN 9000-AK64

Federal Acquisition Regulation; FAR Case 2005-016, Performance-Based Payments

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 implement recommendations to change the regulations related to performance-based payments.

DATES: *Effective Date:* January 25, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, Procurement Analyst, at (202) 208-6925 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755. Please cite FAC 2005-23, FAR case 2005-016.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the Federal Acquisition Regulation to increase the use of performance-based payments as the method of contract financing on Federal Government contracts and improve the efficiency of performance-based payments when used on these contracts. These changes originated from recommendations submitted by the Department of Defense Performance-Based Payments Working Group in their March 8, 2005, report.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 71 FR 75186 on December 14, 2006. Comments were received from three

respondents in response to the proposed rule. The Councils considered all of the comments and recommendations in developing the final rule. A discussion of the comments is provided below.

1. *Comment:* Two commenters addressed the issue of establishing performance-based payments at other than 90 percent of the contract price. One commenter recommended revising the rule to require contracting officers to document the rationale for soliciting or awarding contracts that limit performance-based payments to less than 90 percent of the contract price instead of when the performance-based payments effectively result in financing payments that are less than the payments that would be made with progress payments. The ability to receive contract financing payments at 90 percent of the contract price balances the risk associated with performance-based payments. If the performance-based payments are less than 90 percent of the contract costs, contractors will not agree to their use, which is problematic since performance-based payments are the preferred financing method. Another commenter said the requirement to document the rationale for establishing performance-based payments when the performance-based payments are less than 90 percent of the contract price, or delivered-item price, will likely result in contracting officers artificially inflating the value of the events to avoid having to document the rationale.

Response: Providing performance-based payments at or below the effective rate for progress payments does not facilitate the use of performance-based payments. However, performance-based payments must reflect prudent contract financing and are authorized only to the extent needed for contract performance. In addition, performance-based payment amounts must be commensurate with the value of the performance event or performance criterion. Therefore, the Councils see no reason to require contracting officers to document the rationale for establishing performance-based payments that are less than 90 percent of the contract price. In addition, the Councils believe the FAR requirements are sufficient to ensure performance-based payments are not artificially inflated simply to avoid having to document the rationale for establishing performance-based payments that are less than 90 percent of the contract price or delivered-item price.

2. *Comment:* Two commenters recommended eliminating the provision in the proposed rule that precluded limiting performance-based payments to

the contractor's actual incurred costs because there can never be a need for contract financing payments in excess of the incurred costs.

Response: Such a prohibition could inhibit the contracting officer's flexibility in structuring and administering performance-based payments. Therefore, this provision has been omitted from the final rule.

3. *Comment:* One commenter recommended making performance-based payments the mandatory type of financing payments whenever a contractor requests this type of financing because some buying commands never authorize performance-based payments.

Response: Performance-based payments are the preferred Government financing method when the contracting officer finds them practical and the contractor agrees to their use. However, performance-based payments are not always practical. Therefore, the Government must retain the right to determine the proper financing method.

4. *Comment:* One commenter recommended revising the rule to permit contractors to submit contract financing payment requests on either a fiscal or calendar month basis as long as no more than 12 payment requests are made annually. The commenter said the lack of clear definition in the FAR clause at 52.232-32(b) as to what constitutes "monthly" payment requests has resulted in inconsistencies and confusion in enforcement. Contractors that use fiscal months accounting to bill contract financing payments should be allowed to submit two payment requests in the same calendar month to avoid negative fluctuations in working capital.

Response: Nothing in the FAR precludes payment on a fiscal month basis. The Councils are not aware of any payment issues relating to the use of the term "monthly" and note that the provision is unchanged by this rule. Therefore, the Councils believe the existing terminology is sufficient.

5. *Comment:* One commenter recommended deleting all reference to "milestones" from the FAR coverage on performance-based payments to eliminate confusion between performance-based financing and commercial financing. Instead of using the term "milestones," the commenter recommended using the terms "event" or "performance-based event."

Response: The Councils are not aware of any issues related to the meaning of "milestones" and note that the terminology is unchanged by this rule. Therefore, the Councils believe the existing terminology is sufficient.