

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 5, 6, 12, 18, 26, and 52**

[FAC 2005–21; FAR Case 2006–014; Item VI; Docket 2007–0001, Sequence 7]

RIN 9000–AK54

**Federal Acquisition Regulation; FAR
Case 2006–014, Local Community
Recovery Act of 2006****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 a second interim rule amending the Federal Acquisition Regulation (FAR) to implement amendments to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). The Local Community Recovery Act of 2006 amended the Stafford Act to authorize set-asides for major disaster or emergency assistance acquisitions to businesses that reside or primarily do business in the geographic area affected by the disaster or emergency. Section 694 of the Department of Homeland Security (DHS) Appropriations Act of 2007, Pub. L. 109–295, enacted requirements for transitioning work under existing contracts.

DATES: *Effective Date:* November 7, 2007.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before January 7, 2008 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–21, FAR case 2006–014, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. To search for any document, first select under “Step 1,” “Documents with an Open Comment Period” and select under “Optional Step 2,” “Federal Acquisition Regulation” as the agency of choice. Under “Optional Step 3,” select “Rules”. Under “Optional Step 4,” from the drop down list, select “Document Title” and type the FAR case number “2006–014”. Click the “Submit” button. Please include

your name and company name (if any) inside the document. You may also search for any document by clicking on the “Search for Documents” tab at the top of the screen. Select from the agency field “Federal Acquisition Regulation”, and type “2006–014” in the “Document Title” field. Select the “Submit” button.

- 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 2005–21, FAR case 2006–014, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>. Please include your name and company name (if any) inside the document.

FOR FURTHER INFORMATION CONTACT Mr. William Clark, Procurement Analyst, at (202) 219–1813, for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAC 2005–21, FAR case 2006–014.

SUPPLEMENTARY INFORMATION:**A. Background**

An interim rule was published August 4, 2006 (71 FR 44546), implementing an amendment to the Stafford Act at 42 U.S.C. 5150. This second interim rule is necessary because of a later statutory amendment to this section. This second rule also addresses the public comments received on the first rule. The Councils request comments on the new language added for this second interim rule, and on whether branch offices should qualify for the set-aside.

Local area set-aside. The first interim rule implemented the 42 U.S.C. 5150 authorization of set-asides for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance acquisitions to businesses that reside or primarily do business in the geographic area affected by the disaster or emergency. The set-aside may be used together with other authorized set-asides, for example, those in FAR Part 19 for small businesses. The contracting officer determines the geographic area for a specific local area set-aside. The local area set-aside may be the whole of, or some subpart of, the affected area (e.g., one or more counties, including across state lines). However, it may not be outside of the declared major disaster or emergency area.

Residing or doing business primarily in the area. Congress directed that preference be given to “organizations,

firms, and individuals residing or doing business primarily in the area affected by such major disaster or emergency,” without defining the terms. The Councils consider that an offeror who in the last twelve months had its main operating office in the area, which generated at least half of the offeror’s gross revenues and employed at least half of the offeror’s permanent employees is, therefore, residing or primarily doing business in the set-aside area.

Branch offices. A public comment questioned the exclusion of branch offices. The Councils believe the intent of Congress was to favor firms in the local area who hire local people. A local branch office is local and hires local people, but the contract would not be restricted to the branch office, because the branch office is not the contracting entity. The Councils invite further comment on this issue.

Transition of work; justification. The recent amendment to 42 U.S.C. 5150 provided: (1) that any expenditure of funds on contracts not awarded to local area organizations, firms or individuals must be justified in writing in the contract file; and (2) that work performed under contracts already in effect be transitioned to local area organizations, firms or individuals, unless the head of the agency determines it is not feasible or practicable.

This second interim rule implements these requirements. The rule emphasizes the wisdom of awarding contracts in advance of an emergency, but not awarding orders so lengthy that they make transition to a local firm awkward.

The rule also gives factors for the agencies to consider prior to determining that a transition is not feasible or practicable. The determination not to transition may be done within a reasonable time. Class determinations and class justifications are allowed.

Competition justification. The first interim rule established a new FAR Subpart 6.6 to clarify the competition justification requirements for Stafford Act acquisitions, but that was to be revisited in the final (now second interim) rule. This second interim rule moves to section 6.207 the section declaring that no competition justification is needed for the local area set-aside. The rest of the subpart has been deleted as unnecessary. No justification for other than full and open competition is needed for the use of an evaluation factor if preference is afforded local firms through such a mechanism. The revised statute

establishes a new justification, but this is not a full and open competition justification, so it is being placed in Part 26, not Part 6.

Definitions. The Councils established a new definition for "Major disaster or emergency area" to clarify the role of the Presidential declaration and DHS. DHS has a website where the public and contracting officers can easily find information on recently declared major disasters and recently declared emergencies. This website is added to the definition.

New definitions are also added for "emergency response contract" and "local firm" to clarify how these concepts are used in the rule.

The term "designated area" was not defined in the first interim rule. To avoid confusion, the second interim rule changes it everywhere to more precisely read "set-aside area."

A reference to the Small Business Administration (SBA) regulatory definitions of terms used in the "Restrictions on Subcontracting Outside Disaster or Emergency Area" clause is added to that clause.

Public comments. No public comments were received in response to the Councils' request in the first rule for views on whether the "Restrictions on Subcontracting Outside Disaster or Emergency Area" and the "Disaster or Emergency Area Representation" should apply to preferences other than local area set asides; or whether the percentages for general or specialty construction should be raised.

The Councils received nine public comments from four respondents regarding the first interim rule. A summary of the comments and the Councils' responses follows.

1. *Comment:* One respondent recommended that it would be more appropriate to create a new section within FAR Subpart 6.2 (*i.e.*, section 6.207) for consistency with the content of sections 6.205 and 6.206 which describes set-asides as a type of full and open competition after the exclusion of sources rather than to maintain the interim rule FAR Subpart 6.6, Stafford Act Preference for Local Area Contractor. The recommendation also suggested removal of FAR section 6.603 entirely since it implies that implementing the local area preference by using an evaluation factor would qualify as other than full and open competition.

Response: The recommendation was accepted and this second interim rule moves to FAR 6.207 the section declaring that no competition justification is needed for the local area

set-aside. The rest of the previous FAR Subpart 6.6 has been removed.

2. *Comment:* One respondent expressed an opinion that the instructions in FAR 12.301(e)(4) for FAR 52.226-4 and 52.226-5 were unnecessary because they are already included in the list of clauses contained in FAR 52.212-5, which is a mandatory clause in commercial item contracts. The respondent also suggested replacing the phrase, "when setting aside under the Stafford Act" due to its inconsistency with the language used in the FAR 26.203 prescription. A new FAR subparagraph 12.301(e)(4) was suggested as follows: "The contracting officer shall insert the provision at 52.226-3, Disaster or Emergency Area Representation, in solicitations for acquisitions that are set-aside for a Disaster or Emergency Area under 26.203(a). This representation is not in the Online Representations and Certifications Application (ORCA) Database."

Response: The recommendation was partially accepted in that only the provision, not the clauses, is mentioned at FAR subparagraph 12.301(e)(4). Regarding the suggested rewording of FAR subparagraph 12.301(e)(4), the Councils believe the reference to the Stafford Act should be kept, rather than adding a second reference to the "Disaster or Emergency Area" in the same sentence.

3. *Comment:* The rule should revise the text at FAR 26.202(a)(2) to state, "A major disaster or emergency may result in numerous Presidential declarations spanning counties in several contiguous States" for consistency with 6.602(a) and (b), which refer to both "disasters" and "emergencies."

Response: The respondent's comment was accepted. The second interim rule contains the correction as recommended.

4. *Comment:* A comment was submitted indicating that 26.203(a) content is inconsistent with FAR 26.203(b). The respondent suggested replacing paragraph (a) with the following, "The contracting officer shall insert the provision at 52.226-3, Disaster or Emergency Area Representation, in solicitations for acquisitions that are set-aside for a Disaster or Emergency Area under 26.203(a). For commercial items see 12.301(e)(4)."

Response: Partially accepted. The prescription content was revised for consistency with the FAR conventions on prescription format.

5. *Comment:* FAR 52.212-5(b)(27) and (28) did not contain clause dates and

"Aug 2006" should be inserted into parentheses after the title of each clause.

Response: Accepted, however the dates for both clauses have been revised due to amendment of the clauses.

6. *Comment:* The rule does not discuss whether the phrase, "offerors residing or doing business primarily in the area affected * * *," excludes branch offices of corporations headquartered elsewhere. The comment described a scenario where a branch office could meet all of the tests imposed at FAR 52.226-3(c) and still not have the corporate business meet the adjective test of "primarily" doing business within the affected region. The respondent suggested adding the term "* * * to include branches, divisions, or other sub units of corporation headquartered outside of the affected area * * *" after "* * * offerors residing or doing business primarily in the area affected" in FAR 26.202, 52.226-3, 52.226-4, and 52.226-5.

Response: The recommendation was not adopted for the second interim rule. However, the Councils are seeking further public views on this comment as indicated in the Preamble to this rule.

7. *Comment:* Several respondents commented on the designation of FAR 52.226-4, Notice of Disaster or Emergency, as a "provision" vice a "clause". Another comment on the prescription for FAR 52.226-4 suggested clarifying the prescription by replacing the phrase, "* * * that are set-aside for a Disaster or Emergency Area under 26.203(a)" with "* * * that contain the provision at 52.226-3."

Response: The second interim rule changes FAR 52.226-4 to a "clause." The prescription for FAR 52.226-4 and 52.226-5 are revised for consistency with the FAR conventions on prescription format.

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 interim rule is not expected to have a significant Economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This second interim rule continues the set-aside for local businesses in an area affected by a major disaster or emergency to promote economic recovery. The set-aside does not replace the small business set-aside. Both set-asides can apply to an acquisition. The local set-aside will encourage use of

local small businesses. The rule also implements a new requirement that work performed under contracts already in effect be transitioned to local area organizations, firms, or individuals, unless the agency head determines it is not feasible or practicable. The Councils expect that more work will be transitioned to small businesses than away from them. The Government Accountability Office (GAO) report on Hurricane Katrina Small Business Contracts (GAO-07-205) found that businesses in the three states primarily affected by the hurricane received \$1.9 billion, which was 18% of the \$11.6 billion spent by DHS, GSA, DoD and the Army Corps of Engineers between August 1, 2005, and June 30, 2006. Small businesses received 66% of the \$1.9 billion awarded to those local businesses. The Councils believe this shows that small businesses would not be hurt by a local area set-aside.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 5, 6, 12, 18, 26, 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 2005-21, FAR case 2006-014), 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 DoD, GSA, and NASA that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because this interim rule implements the Local Community Recovery Act of 2006 (Pub. L. 109-218), and section 694 of the DHS Appropriations Act of 2007 (DHS Appropriations Act) (Pub. L. 109-295). These statutes amended the Stafford Act at 42 U.S.C. 5150, to authorize set-asides for major disaster or emergency assistance acquisitions to businesses that reside or primarily do business in the geographic area affected by the disaster or emergency. Section 694 of the DHS Appropriations Act enacted requirements for transitioning work under existing contracts to local area organizations, firms, or individuals.

This action is necessary to improve the Government's ability to target local businesses and promote local economic recovery in an affected area. The statutes went into effect April 20, 2006, and October 4, 2006, respectively. However, pursuant to Pub. L. 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 5, 6, 12, 18, 26, and 52

Government procurement.

Dated: October 31, 2007.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 5, 6, 12, 18, 26, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 5, 6, 12, 18, 26, 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 5—PUBLICIZING CONTRACT ACTIONS

■ 2. Amend section 5.207 by revising paragraph (d) to read as follows:

5.207 Preparation and transmittal of synopses.

* * * * *

(d) *Set-asides.* When the proposed acquisition provides for a total or partial small business set-aside, HUBZone small business set-aside, or a service-disabled veteran-owned small business set-aside, the appropriate Numbered Note will be cited. When the proposed acquisition provides for a local area set-aside (see Subpart 26.2) the contracting officer shall identify his set-aside in the synopsis.

* * * * *

PART 6—COMPETITION REQUIREMENTS

■ 3. Add section 6.207 to read as follows:

6.207 Set-asides for local firms during a major disaster or emergency.

(a) To fulfill the statutory requirements relating to 42 U.S.C. 5150, contracting officers may set aside solicitations to allow only offerors residing or doing business primarily in the area affected by such major disaster or emergency to compete (see Subpart 26.2).

(b) No separate justification or determination and findings is required under this part to set aside a contract action. The set-aside area specified by

the contracting officer shall be a geographic area within the area identified in a Presidential declaration(s) of major disaster or emergency and any additional geographic areas identified by the Department of Homeland Security.

Subpart 6.6 [Removed]

■ 4. Remove subpart 6.6.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 5. Amend section 12.301 by revising paragraphs (b)(4) and (e)(4) to read as follows:

12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(b) * * *

(4) *The clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.* This clause incorporates by reference only those clauses required to implement provisions of law or executive orders applicable to the acquisition of commercial items. The contracting officer shall attach this clause to the solicitation and contract and, using the appropriate clause prescriptions, indicate which, if any, of the additional clauses cited in 52.212-5(b) or (c) are applicable to the specific acquisition. Some of the clauses require fill-in; the fill-in language should be inserted as directed by 52.104(d). When cost information is obtained pursuant to Part 15 to establish the reasonableness of prices for commercial items, the contracting officer shall insert the clauses prescribed for this purpose in an addendum to the solicitation and contract. This clause may not be tailored. Use the clause with its Alternate I when the head of the agency has waived the examination of records by the Comptroller General in accordance with 25.1001.

* * * * *

(e) * * *

(4) When setting aside under the Stafford Act (Subpart 26.2), include the provision at 52.226-3, Disaster or Emergency Area Representation, in the solicitation. The representation in this provision is not in the Online Representations and Certifications Application (ORCA) Database.

* * * * *

PART 18—EMERGENCY ACQUISITIONS

■ 6. Amend section 18.203 by:

- a. Removing paragraph (a);
- b. Redesignating paragraphs (b) and (c) as (a) and (b) respectively; and
- c. Revising redesignated paragraph (a) to read as follows:

18.203 Incidents of national significance, emergency declaration, or major disaster declaration.

(a) *Disaster or emergency assistance activities.* Preference will be given to local organizations, firms, and individuals when contracting for major disaster or emergency assistance activities when the President has made a declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Preference may take the form of local area set-asides or an evaluation preference. (See 6.207 and Subpart 26.2.)

* * * * *

PART 26—OTHER SOCIOECONOMIC PROGRAMS

- 7. Revise subpart 26.2 to read as follows:

Subpart 26.2—Disaster or Emergency Assistance Activities

Sec.

- 26.200 Scope of subpart.
- 26.201 Definitions.
- 26.202 Local area preference.
- 26.202-1 Local area set-aside.
- 26.202-2 Evaluation preference.
- 26.203 Transition of work.
- 26.204 Justification for expenditures to other than local firms.
- 26.205 Solicitation provision and contract clauses.

26.200 Scope of subpart.

This subpart implements the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5150), which provides a preference for local organizations, firms, and individuals when contracting for major disaster or emergency assistance activities.

26.201 Definitions.

Emergency response contract means a contract with private entities that supports assistance activities in a major disaster or emergency area, such as debris clearance, distribution of supplies, or reconstruction.

Local firm means a private organization, firm, or individual residing or doing business primarily in a major disaster or emergency area.

Major disaster or emergency area means the area included in the official Presidential declaration(s) and any additional areas identified by the Department of Homeland Security. Major disaster declarations and

emergency declarations are published in the **Federal Register** and are available at <http://www.fema.gov/news/disasters.fema>.

26.202 Local area preference.

When awarding emergency response contracts during the term of a major disaster or emergency declaration by the President of the United States under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C.5121, et seq.), preference shall be given, to the extent feasible and practicable, to local firms. Preference may be given through a local area set-aside or an evaluation preference.

26.202-1 Local area set-aside.

The contracting officer may set aside solicitations to allow only local firms within a specific geographic area to compete (see 6.207).

(a) The contracting officer, in consultation with the requirements office, shall define the specific geographic area for the local set-aside.

(b) A major disaster or emergency area may span counties in several contiguous States. The set-aside area need not include all the counties in the declared disaster/emergency area(s), but cannot go outside it.

(c) The contracting officer shall also determine whether a local area set-aside should be further restricted to small business concerns in the set-aside area (see Part 19).

26.202-2 Evaluation preference.

The contracting officer may use an evaluation preference, when authorized in agency regulations.

26.203 Transition of work.

(a) In anticipation of potential emergency response requirements, agencies involved in response planning should consider awarding emergency response contracts before a major disaster or emergency occurs to ensure immediate response and relief. These contracts should be structured to respond to immediate emergency response needs, and should not be structured in any way that may inhibit the transition of emergency response work to local firms (e.g., unnecessarily broad scopes of work or long periods of performance).

(b) 42 U.S.C. 5150(b)(2) requires that agencies performing response, relief, and reconstruction activities transition to local firms any work performed under contracts in effect on the date on which the President declares a major disaster or emergency, unless the head of such agency determines in writing that it is

not feasible or practicable. This determination may be made on an individual contract or class basis. The written determination shall be prepared within a reasonable time given the circumstances of the emergency.

(c) In effecting the transition, agencies are not required to terminate or renegotiate existing contracts. Agencies should transition the work at the earliest practical opportunity after consideration of the following:

(1) The potential duration of the disaster or emergency.

(2) The severity of the disaster or emergency.

(3) The scope and structure of the existing contract, including its period of performance and the milestone(s) at which a transition is reasonable (e.g., before exercising an option).

(4) The potential impact of a transition, including safety, national defense, and mobilization.

(5) The expected availability of qualified local offerors who can provide the products or services at a reasonable price.

(d) The agency shall transition the work to local firms using the local area set-aside identified in 26.202-1.

26.204 Justification for expenditures to other than local firms.

(a) 42 U.S.C. 5150(b)(1) requires that, subsequent to any Presidential declaration of a major disaster or emergency, any expenditure of Federal funds, under an emergency response contract not awarded to a local firm, must be justified in writing in the contract file. The justification should include consideration for the scope of the major disaster or emergency and the immediate requirements or needs of supplies and services to ensure life is protected, victims are cared for, and property is protected.

(b) The justification may be made on an individual or class basis. The contracting officer approves the justification.

26.205 Solicitation provision and contract clauses.

(a) The contracting officer shall insert the provision at 52.226-3, Disaster or Emergency Area Representation, in solicitations involving the local area set-aside. For commercial items, see 12.301(e)(4).

(b) The contracting officer shall insert the clause at 52.226-4, Notice of Disaster or Emergency Area Set-aside in solicitations and contracts involving local area set-asides.

(c) The contracting officer shall insert the clause at 52.226-5, Restrictions on Subcontracting Outside Disaster or

Emergency Area, in all solicitations and contracts that involve local area set-asides.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. Revise section 52.212–5 in clause heading and paragraphs (b)(30) and (b)(31) 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 (Nov 2007)

* * * * *

(b) * * *

____ (30) 52.226–4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 U.S.C. 5150).

____ (31) 52.226–5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) (42 U.S.C. 5150).

* * * * *

■ 9. Revise section 52.226–3 to read as follows:

52.226–3 Disaster or Emergency Area Representation.

As prescribed in 26.205(a), insert the following provision:

DISASTER OR EMERGENCY AREA REPRESENTATION (Nov 2007)

(a) *Set-aside area.* The area covered in this contract is:

[Contracting Officer to fill in with definite geographic boundaries.]

(b) *Representations.* The offeror represents that it _____ does _____ does not reside or primarily do business in the set-aside area.

(c) An offeror is considered to be residing or primarily doing business in the set-aside area if, during the last twelve months—

(1) The offeror had its main operating office in the area; and

(2) That office generated at least half of the offeror’s gross revenues and employed at least half of the offeror’s permanent employees.

(d) If the offeror does not meet the criteria in paragraph (c) of this provision, factors to be considered in determining whether an offeror resides or primarily does business in the set-aside area include—

(1) Physical location(s) of the offeror’s permanent office(s) and date any office in the set-aside area(s) was established;

(2) Current state licenses;

(3) Record of past work in the set-aside area(s) (e.g., how much and for how long);

(4) Contractual history the offeror has had with subcontractors and/or suppliers in the set-aside area;

(5) Percentage of the offeror’s gross revenues attributable to work performed in the set-aside area;

(6) Number of permanent employees the offeror employs in the set-aside area;

(7) Membership in local and state organizations in the set-aside area; and

(8) Other evidence that establishes the offeror resides or primarily does business in the set-aside area. For example, sole proprietorships may submit utility bills and bank statements.

(e) If the offeror represents it resides or primarily does business in the set-aside area, the offeror shall furnish documentation to support its representation if requested by the Contracting Officer. The solicitation may require the offeror to submit with its offer documentation to support the representation.

(End of provision)

■ 10. Revise section 52.226–4 to read as follows:

52.226–4 Notice of Disaster or Emergency Area Set-Aside.

As prescribed in 26.205(b), insert the following clause:

NOTICE OF DISASTER OR EMERGENCY AREA SET-ASIDE (Nov 2007)

(a) *Set-aside area.* Offers are solicited only from businesses residing or primarily doing business in

 [Contracting Officer to fill in with definite geographic boundaries.] Offers received from other businesses shall not be considered.

(b) This set-aside is in addition to any small business set-aside contained in this contract.

(End of clause)

■ 11. Revise section 52.226–5 to read as follows:

52.226–5 Restrictions on Subcontracting Outside Disaster or Emergency Area.

As prescribed in 26.205(c), insert the following clause:

RESTRICTIONS ON SUBCONTRACTING OUTSIDE DISASTER OR EMERGENCY AREA (Nov 2007)

(a) *Definitions.* The definitions of the following terms used in this clause are found in the Small Business Administration regulations at 13 CFR 125.6(e): cost of the contract, cost of contract performance incurred for personnel, cost of manufacturing, cost of materials, personnel, and subcontracting.

(b) The Contractor agrees that in performance of the contract in the case of a contract for—

(1) *Services (except construction).* At least 50 percent of the cost of contract performance incurred for personnel

shall be expended for employees of the Contractor or employees of other businesses residing or primarily doing business in the clause at FAR 52.226–4, Notice of Disaster or Emergency Area Set-Aside;

(2) *Supplies (other than procurement from a nonmanufacturer of such supplies).* The Contractor or employees of other businesses residing or primarily doing business in the set-aside area shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials;

(3) *General construction.* The Contractor will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees or employees of other businesses residing or primarily doing business in the set-aside area; or

(4) *Construction by special trade Contractors.* The Contractor will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees or employees of other businesses residing or primarily doing business in the set-aside area.

(End of clause)

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 22

[FAC 2005–21; FAR Case 2007–001; Item VII; Docket 2007–0001; Sequence 9]

RIN 9000–AK81

Federal Acquisition Regulation; FAR Case 2007–001, Labor Standards for Contracts Containing Construction Requirements—Contract Pricing Method References

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 revise references to published pricing sources available to the contracting officer. The revision will