

**Item V—Applicability of SDB and HUBZone Price Evaluation Factor (FAR Case 2003–015)**

This final rule removes some of the exceptions to the Small Disadvantaged Business and HUBZone preference programs. The contracting officer will now apply a price evaluation adjustment to offers of eligible products in acquisitions subject to the Trade Agreements Act. This rule will have a beneficial impact on all domestic concerns, especially small entities that are small disadvantaged business concerns or HUBZone small business concerns.

**Item VI—Labor Standards for Contracts Involving Construction (FAR Case 2002–004)**

This final rule implements in the FAR the DoL rule revising the terms “construction, prosecution, completion or repair” (29 CFR 5.2(j)) and “site of the work” (29 CFR 5.2(l)). In addition, the Councils have clarified several definitions relating to labor standards for contracts involving construction and made requirements for flow down of labor clauses more precise.

The most significant impact of this rule is that contractors must pay Davis-Bacon Act wages at a secondary site of the work, if a significant portion of the work is to be constructed at that site and the site meets the other criteria specified in the rule. When transporting portions of the building or work between the secondary site of the work and the primary site of the work, the wages for the primary site of the work are applicable. The contracting officer must coordinate with the Department of Labor when there is any uncertainty as to whether a work site is a secondary site of the work.

**Item VII—Deferred Compensation and Postretirement Benefits Other Than Pensions (FAR Case 2001–031)**

This final rule amends the FAR by revising paragraph (k), Deferred compensation other than pensions, and paragraph (o), Postretirement benefits other than pensions, of FAR 31.205–6, Compensation for personal services, cost principle. Changes to paragraph (k) include: deletion of language that duplicates definitions provided in FAR 31.001, elimination of obsolete coverage, and use of terminology consistent with Cost Accounting Standards. Changes to paragraph (o) include: moving and revising language in (o)(3) through (o)(5) to (o)(2)(iii) because these requirements only apply to accrual costing other than terminal funding. In addition, new coverage is

added to the related contract clause at FAR 52.215–18, Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions, specifying the method of recovery of refunds and credits. The rule revises the cost principle and contract clause by improving clarity and structure, and removing unnecessary and duplicative language.

The case was initiated as a result of comments and recommendations received from industry and Government representatives during a series of public meetings. This rule is of particular interest to contractors and contracting officers who use cost analysis to price contracts and modifications, and who determine or negotiate reasonable costs in accordance with a clause of a contract, e.g., price revision of fixed-price incentive contracts, terminated contracts, or indirect cost rates.

**Item VIII—Gains and Losses (FAR Case 2004–005)**

This final rule amends FAR 31.205–16 to address the timing of the gain or loss recognition of sale and leaseback arrangements of contractor depreciable property or other capital assets. The final rule defines the disposition date for a sale leaseback arrangement as the date the contractor begins to incur an obligation for lease or rental costs. Contracting officers, auditors, and contractors with responsibilities related to allowable cost determinations involving sale and leaseback arrangements of contractor depreciable property or other capital assets will be impacted by new policies governing that area.

Dated: May 27, 2005.

**Julia B. Wise,**  
*Director, Contract Policy Division.*

**Federal Acquisition Circular**

Federal Acquisition Circular (FAC) 2005–04 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 2005–04 is effective July 8, 2005, except for Items I, II, III, and IV, which are effective June 8, 2005.

Dated: May 26, 2005.

**Vincent J. Feck,**  
*Lt Col, Acting Director, Defense Procurement and Acquisition Policy.*

Dated: May 27, 2005.

**David A. Drabkin,**  
*Senior Procurement Executive, Office of the Chief Acquisition Officer, General Services Administration.*

Dated: May 26, 2005.

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

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 2, 22, 52**

[FAC 2005–04; FAR Case 2004–010; Item I]

RIN 9000–AK04

**Federal Acquisition Regulation; Notification of Employee Rights Concerning Payment of Union Dues or Fees**

**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 amending the Federal Acquisition Regulation (FAR) published in the *Federal Register* at 69 FR 76352, December 20, 2004, to a final rule without change. This rule implemented Executive Order (E.O.) 13201, Notification of Employee Rights Concerning Payment of Union Dues or Fees. The rule requires Government contractors and subcontractors to post notices, in all plants and offices, whether or not used in performing work that supports a Federal contract, informing their employees that under Federal law they cannot be required to join a union or maintain membership in a union to retain their jobs. The required notices also advise employees who are not union members that they can object to the use of their union dues for certain purposes.

**DATES:** *Effective Date:* June 8, 2005.

The Department of Labor's final rule implementing E.O. 13201 was published on March 29, 2004, with an effective date of April 28, 2004. This FAR rule is the formal notification to contracting officers to insert the E.O. 13201 clause in covered solicitations issued on or after the effective date of this rule.

**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 A. Marshall, Procurement Analyst, at (202) 219-0986. Please cite FAC 2005-04, FAR case 2004-010.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This final rule amends the Federal Acquisition Regulation. DoD, GSA, and NASA published an interim rule in the **Federal Register** at 69 FR 76352, December 20, 2004. The 60-day comment period for the interim rule ended February 18, 2005. The Councils did not receive any public comments, and, therefore, agree to finalize the interim rule without change.

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 merely requires contractors to post notices and to insert a clause in subcontracts and purchase orders requiring subcontractors and vendors to post the notices also. The notices advise the contractors' and subcontractors' nonunion member employees of their rights under existing law concerning use of their union dues or fees where a union security agreement is in place. The rule provides sanctions for noncompliance, but full compliance with the Executive Order and any related rules, regulations and orders of the Secretary of Labor is expected of all contractors. Further, this rule is only implementing the Department of Labor (DOL) final rule. The Secretary of Labor has certified to the Chief Counsel for Advocacy at the Small Business

Administration that the DOL final rule will not substantially change existing obligations for Federal contractors. The Councils did not receive any comments relating to the Regulatory Flexibility Act. However, the Councils will consider comments from small entities concerning the affected FAR Parts 2, 22, 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 2005-04, FAR case 2004-010), in correspondence.

**C. 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 1215-0203.

**List of Subjects in 48 CFR Parts 2, 22, 52**

Government procurement.

Dated: May 27, 2005.

**Julia B. Wise,**

*Director, Contract Policy Division.*

■ Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 2, 22, and 52, which was published at 69 FR 76352, December 20, 2004, 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 7, 11, 13, and 15**

[2005-04; FAR Case 2003-025; Item II]

**RIN 9000-AK03**

**Federal Acquisition Regulation; Telecommuting for Federal Contractors**

**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 69 FR 59701, October 5,

2004, to a final rule without change. The final rule amends the Federal Acquisition Regulation (FAR) to implement section 1428 of the Services Acquisition Reform Act of 2003, Title XIV of Public Law 108-136, Authorization of Telecommuting for Federal Contractors.

**DATES:** *Effective Date:* June 8, 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 2005-04, FAR case 2003-025.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

An interim rule implementing Section 1428 of the Services Acquisition Reform Act of 2003 (Title XIV of Public Law 108-136) was published in the **Federal Register** on October 5, 2004 (69 FR 59701). Five comments were received from four respondents in response to the interim rule. While all of the commenters were supportive of the rule, the commenters offered the following recommendations to maximize the use of telecommuting for Federal contractors. One commenter suggested that the Councils provide an incentive for "suppliers who take the initiative to hire telecommuting contractors." The Councils did not adopt this suggestion because the statute does not establish incentives, and the Councils believe establishing such an incentive is beyond the scope and authority of the Councils. Another commenter believes that the rule does not go far enough because it allows the contracting officer to determine that allowing telecommuting would be contrary to the agency's requirements. The commenter believes that Government managers who are uncomfortable with the concept of telecommuting will convince contracting officers to disallow telecommuting more often than allow it. To prevent this, the commenter recommended that "telecommuting be established as a 'requirement' for some percentage of government contracts and that telecommuting be defined as working offsite for 25 or more hours a week." This commenter also recommended that contracting officers who award contracts to firms that allow their employees to telecommute receive additional training, funds, "and a leg up on promotion." The Councils did not adopt this recommendation because there is no evidence that contracting officers will not act in good faith when making a determination not to allow