



Federal Register

Wednesday,
April 19, 2006

Part V

**Department of
Defense**

**General Services
Administration**

**National Aeronautics
and Space
Administration**

48 CFR Chapter 1, Parts 2, 5 et al.
Federal Acquisition Regulations; Final
Rules and Interim Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR–2006–0023]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–09; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules, and technical amendments and corrections.

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) 2005–09. 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: 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 2005–09 and specific FAR case number(s). Interested parties may also visit our Web site at <http://www.acqnet.gov/far>. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

Item	Subject	FAR case	FAR Analyst
I	Federal Technical Data Solution (FedTeDS)	2004–007	Zaffos.
II	Definition of Information Technology	2004–030	Davis.
III	OMB Circular A–76	2004–021	Zaffos.
IV	Combating Trafficking in Persons (Interim)	2005–012	Clark.
V	Confirmation of HUBZone Certification	2005–009	Cundiff.
VI	Expiration of the Price Evaluation Adjustment	2005–002	Cundiff.
VII	Removal of Sanctions Against Certain European Union Member States (Interim)	2005–045	Clark.
VIII	Free Trade Agreements Morocco (Interim)	2006–001	Clark.
IX	Fast Payment Procedures	2004–031	Olson.
X	Technical Amendment.		

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 2005–09 amends the FAR as specified below:

Item I—Federal Technical Data Solution (FedTeDS) (FAR Case 2004–007)

This final rule amends the FAR to require contracting officers to make solicitation-related information that requires limited availability or distribution available to offerors electronically via the Federal Technical Data Solution (FedTeDS), unless certain exceptions apply. FedTeDS provides secure, user identification and password protected access to solicitation-related data that should not be made available to the public on the Governmentwide Point of Entry (GPE) Web site.

Item II—Definition of Information Technology (FAR Case 2004–030)

This final rule adopts without change the interim rule which amended FAR 2.101(b) by revising the definition for “information technology” to reflect changes to the definition resulting from the enactment of Public Law 108–199, Consolidated Appropriations Act, 2004.

Section 535(b) of Division F of Public Law 108–199 permanently revises the term “information technology,” which is defined at 40 U.S.C. 11101, to add “analysis” and “evaluation” and to clarify the term “ancillary equipment.”

Item III—OMB Circular A–76 (FAR Case 2004–021)

This final rule amends FAR Subpart 7.3 to provide language that is consistent with OMB Circular A–76 (Revised), *Performance of Commercial Activities*, dated May 29, 2003. In addition, it provides two new provisions that inform potential offerors of the procedures the Government will follow for streamlined and standard competitions, as they are defined in the Circular.

Item IV—Combating Trafficking in Persons (FAR Case 2005–012)

This interim rule amends FAR Parts 12, 22 and 52 to implement the Trafficking Victims Protection Reauthorization Act of 2003, as amended by the Trafficking Victims Protection Reauthorization Act of 2005. The statute (22 U.S.C. 7104(g)) requires that the contract contain a clause allowing the agency to terminate the contract without penalty if the contractor or subcontractor engage in severe forms of trafficking in persons or has procured a commercial sex act, or

used forced labor in the performance of the contract. The interim rule applies to contractors awarded service contracts (other than commercial service contracts under Part 12). Such contractors must develop policies to combat trafficking in persons and notify the contracting officer immediately of any information it received from any source that alleges a contract employee has engaged in conduct that violates this policy, and any actions taken against the employee pursuant to the clause.

Item V—Confirmation of HUBZone Certification (FAR Case 2005–009)

The interim rule published at 70 FR 43581, July 27, 2005 is converted to a final rule without change. The interim rule amended FAR 19.703 and the clause at 52.219–9 to clarify that prime contractors must confirm that a subcontractor representing itself as a Historically Underutilized Business Zone (HUBZone) small business concern is certified, consistent with the requirements of 15 U.S.C. 632 *et seq.*, as amended. This change is expected to increase subcontracting opportunities for certified HUBZone small business concerns and ensure accurate reporting of subcontract awards to HUBZone small business concerns under Government contracts.

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

This final rule adopts, without change, an interim rule that amended the FAR to cancel 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 was required because the statutory authority for the adjustments had 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 VII—Removal of Sanctions Against Certain European Union Member States (FAR Case 2005–045)

This interim rule removes the sanctions in FAR Part 25 against Austria, Belgium, Denmark, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Sweden, and the United Kingdom on acquisitions not covered by the World Trade Organization Government Procurement Agreement (WTO GPA). These sanctions did not apply to small business set-asides, to acquisitions below the simplified acquisition threshold using simplified acquisition procedures, or to acquisitions by the Department of Defense. Contracting officers may now consider offers of end products, services, and construction that were previously prohibited by the sanctions.

Item VIII—Free Trade Agreements - Morocco (FAR Case 2006–001)

This interim rule allows contracting officers to purchase the products of Morocco without application of the Buy American Act if the acquisition is subject to the Morocco Free Trade Agreement. The U.S. Trade Representative negotiated a Free Trade Agreement with Morocco, which went into effect January 1, 2006. This agreement joins the North American Free Trade Agreement (NAFTA) and the Australia, Chile, and Singapore Free Trade Agreements which are already in the FAR. The threshold for applicability of the Morocco Free Trade Agreement is \$193,000 for supplies and services, \$7,407,000 for construction.

Item IX—Fast Payment Procedures (FAR Case 2004–031)

This amendment permits, but does not require, fast payment when invoices and/or outer shipping containers are not marked “Fast Pay”, provided the contract includes the “Fast Payment

Procedure” clause. If the Fast Payment clause is in the contract, such unmarked invoices will no longer be rejected. Instead, they will be paid using either fast payment or normal payment procedures. In addition, the revision deletes the requirement for marking invoices “No Receiving Report Prepared.”

X—Technical Amendment

An editorial change is made at FAR 19.1005(a) in Item 3 of the NAICS Description by removing from the end of NAICS code entry “541310” the word “or”.

Dated: April 12, 2006.

Gerald Zaffos,

Director, Contract Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005–09 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 2005–09 is effective May 19, 2006, except for Items II, IV, V, VI, VII, VIII, and X which are effective April 19, 2006.

Dated: April 8, 2006.

Shay D. Assad,

Director, Defense Procurement and Acquisition Policy.

Dated: April 12, 2006.

Roger D. Waldron,

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

Dated: April 5, 2006.

Tom Luedtke,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 06–3677 Filed 4–18–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 5, and 7

[FAC 2005–09; FAR Case 2004–007; Item I; Docket FAR–2006–0020]

RIN 9000–AK08

Federal Acquisition Regulation; FAR Case 2004–007, Federal Technical Data Solution (FedTeDS)

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 require contracting officers to use the Federal Technical Data Solution (FedTeDS) for electronic posting of solicitation-related materials that require control over availability or distribution unless certain exceptions apply.

DATES: Effective Date: May 19, 2006.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, 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 2005–09, FAR case 2004–007.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 69 FR 63436 on November 1, 2004. The 60-day comment period for the proposed rule ended January 3, 2005. Sixteen comments were received from seven commenters. Some of the comments merely agreed with the concept of FedTeDS, others pointed out areas of concern. The substantive comments are discussed below.

Public Comments

1. *Comment:* FedTeDS will reduce competition on typical large construction projects. By restricting document access to those who are registered in CCR and have an access code, the use of FedTeDS will result in

reduced interest in the project and reduced competition.

Council's response: In keeping with the President's Management Agenda and the eGov initiative, making FedTeDS use mandatory for solicitation-related documents that require limited availability or distribution will better secure that information and eliminate the use of duplicative and less secure document hosting systems. There has been no noticeable reduction in interest or competition where vendors have been required to register and use FedTeDS to access solicitation information. FedTeDS provides tools for vendors to customize their environment, track information, and reduce unnecessary paper handling.

2. *Comment:* The construction industry standard is for plans and specifications to be viewable in plan rooms and on the internet. Others, such as plan rooms and printing companies, are likely to distribute FedTeDS materials publicly without the Government's knowledge.

Council's response: Those who access and download FedTeDS information have an obligation to assure continued control over that information. The FedTeDS program staff is working with plan rooms to explore ways that the security provided by FedTeDS can be applied in a similar manner by plan rooms wishing to distribute the information outside FedTeDS.

3. *Comment:* The use of FedTeDS should be optional, not mandatory. Optional use will allow agencies to maintain and develop similar websites. Agencies should be free to use or develop any mechanism they choose to secure solicitation related information.

Council's response: As part of the Integrated Acquisition Environment, the objective of FedTeDS is to carry out the President's Management Agenda and the eGov initiative to eliminate duplicative and redundant systems. Agencies should not be compelled to choose among multiple mechanisms for securing solicitation-related data. Vendors and other interested parties should not be compelled to understand and adapt to an array of mechanisms and Web site addresses used to secure solicitation-related information. FedTeDS provides a single, secure system and Web site for Governmentwide use in controlling access and distribution of solicitation-related documents.

4. *Comment:* FedTeDS functionality will be included in the Governmentwide Point of Entry (GPE) FedBizOpps system. This will eliminate the need for FedTeDS as a separate system.

Council's response: The inclusion of FedTeDS functionality in FedBizOpps is an optional requirement in the solicitation for replacement of FedBizOpps. Once the contract has been awarded, the expectations, plans and anticipated deliverable dates for inclusion of FedTeDS functionality in FedBizOpps will be known. Until the new FedBizOpps system and its FedTeDS-like functionality become operational, FedTeDS remains a proven and useful system for Governmentwide use.

5. *Comment:* The FAR amendment to mandate the use of FedTeDS will limit the Government's ability to enhance systems and leverage new technologies.

Council's response: The comment is too vague to adequately address the real concern.

6. *Comment:* The language proposed for FAR 5.102 is confusing and redundant. The language should be changed to be more clear and concise.

Council's response: We concur that the proposed language for FAR 5.102 is confusing and contains redundancies. We have revised the applicable language accordingly.

7. *Comment:* The amendment should contain a definition for "sensitive but unclassified information." This term is in wide use among agencies and may be useful in determining what information should be posted on FedTeDS.

Council's response: The industry terminology for "sensitive but unclassified information" is changing to unclassified, sensitive information. This term is consistent with the Computer Security Act of 1987, where "sensitive information" refers to any information, the loss, misuse, or unauthorized access to or modification of which could adversely affect the national interest or the conduct of Federal programs, but which has not been specifically authorized under criteria established by an Executive order or an Act of Congress to be kept secret in the interest of national defense or foreign policy. Furthermore, the Act states that the head of a Federal agency may employ standards for the cost effective security and privacy of sensitive information in a Federal computer system within or under the supervision of that agency. FedTeDS has "Sensitive but Unclassified" compliance requirements as part of accessing any information in the system. The Councils will work with program officials to have the terminology reviewed and updated as appropriate.

8. *Comment:* The Governmentwide Point of Entry (GPE), not FedTeDS, should be used to distribute all solicitation related materials.

Council's response: Currently, the GPE does not contain the functionality needed to control the availability or distribution of solicitation-related documents. Until the GPE is upgraded to provide the required functionality, FedTeDS will be used to provide the required functionality.

9. *Comment:* Use of FedTeDS should be made mandatory, not optional. Mandatory use will reduce the need for agencies to maintain similar websites.

Council's response: We agree. The use of FedTeDS is being made mandatory with a few necessary exceptions. Those exceptions are the same used to advertise and distribute solicitations on the GPE.

10. *Comment:* The proposed amendment does not cover vendors that are exempt from registering in CCR, such as foreign vendors who may be interested in work to be performed outside the U.S.

Council's response: FedTeDS requires all vendors to be registered in CCR and FedTeDS in order to gain access to FedTeDS. Vendors who are unable to register, or who are exempt from registration in CCR, may contact the contracting officer directly to receive the solicitation-related documents.

11. *Comment:* Are the exceptions at FAR 5.102 meant to address all of the exceptions to CCR registration found at FAR 4.1102?

Council's response: No. FAR 4.1102 addresses exceptions to the requirement for prospective vendors to register in CCR. Vendors who are excepted from CCR registration under FAR 4.1102 may contact the contracting officer directly to obtain the solicitation-related documents posted on FedTeDS. The FAR 5.102 exceptions address the requirement to post on FedTeDS solicitation-related documents that require control over access and distribution as opposed to posting those documents on the GPE.

12. *Comment:* The use of the MPIN (unique CCR vendor identification) for FedTeDS access poses a security risk for vendors. A company may not wish to share their MPIN with individual employees because the MPIN is also used to access competitively sensitive past performance information contained in the Past Performance Information Retrieval System (PPIRS) or other Government systems that may require the MPIN for access. While individual employees may be assigned individual FedTeDS accounts, those individuals may then distribute or otherwise handle FedTeDS information in a manner that is inconsistent with company policy.

Council's response: Under both CCR and FedTeDS, only the company point

of contact knows the MPIN. The point of contact uses the MPIN to register one or more employees in FedTeDS. Registration consists of identifying each employee designated to have FedTeDS access and assigning them a unique user identification and password for use in accessing FedTeDS. The employees then use their assigned user identification and password to log into FedTeDS. Thus, only the company point of contact has access to the MPIN.

13. *Comment:* Contracting officers may use FedTeDS registration inappropriately. In at least one case, oral proposal presenters were required to be registered in FedTeDS in order to be assigned an oral appointment time. Some solicitations and materials are posted on FedTeDS that are in no way sensitive.

Council's response: The Government may use its discretion in determining what needs to be included in any procurement and posted on FedBizOpps and in FedTeDS.

FedTeDS has proved to be a useful tool to control access and distribution of solicitation-related documents where control is deemed necessary by the Government. Training materials will be developed for contracting officers to assure proper use of FedTeDS.

14. *Comment:* Granting employees access to FedTeDS using the MPIN may inadvertently violate International Traffic in Arms (ITAR) regulations by weakening central control over access and distribution of export controlled materials.

Council's response: The Councils share the commenter's concern and have revised the proposed rule to address the export control issue. As indicated in our response to Comment 12, the company point of contact does not have to disclose the company MPIN to other employees to register them in FedTeDS. As indicated the company point of contact controls which employees receive a user identification and password.

15. *Comment:* Once an individual is registered in FedTeDS, they start getting notices of other solicitations that are only posted in FedTeDS. These employees may download these solicitations and distribute or otherwise mishandle them without the company knowing.

Council's response: This comment is similar to comment 12 and 14. Anyone who gains access to FedTeDS information may then redistribute that information in an uncontrolled manner. Control of employee behavior and potential liability for employee actions is a matter for internal company management and concern.

Therefore, this final rule amends FAR Parts 2, 5 and 7 to require contracting officers to provide solicitation-related information that requires limited availability or distribution to offerors electronically via the FedTeDS system unless certain exceptions apply.

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; therefore, an Initial Regulatory Flexibility Analysis has not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 2, 5, and 7 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 2005–09, FAR case 2004–007), 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, 5, and 7

Government procurement.

Dated: April 12, 2006.

Gerald Zaffos

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 5, and 7 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 5, and 7 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—DEFINITION OF WORDS AND TERMS

■ 2. Amend section 2.101 in paragraph (b)(2) by adding, in alphabetical order

the definition “Federal Technical Data Solution (FedTeDS)” to read as follows:

2.101 Definitions.

* * * * *
(b) * * *
(2) * * *

Federal Technical Data Solution (FedTeDS) is a web application integrated with the Governmentwide Point of Entry (GPE) and the Central Contractor Registration (CCR) system for distribution of information related to contract opportunities. It is designed to enhance controls on the access and distribution of solicitation requirements or other documents when controls are necessary according to agency procedures. FedTeDS may be found on the Internet at <https://www.fedteds.gov>.

* * * * *

PART 5—PUBLICIZING CONTRACT ACTIONS

■ 3. Amend section 5.102 by revising paragraph (a)(1); redesignating paragraph (a)(4) as (a)(5), and adding new paragraph (a)(4); revising newly redesignated (a)(5); and by removing from paragraph (b) introductory text “(a)(4)” and adding “(a)(5)” in its place. The revised text reads as follows:

5.102 Availability of solicitations.

(a)(1) Except as provided in paragraph (a)(5) of this section, the contracting officer must make available through the GPE solicitations synopsisized through the GPE, including specifications, technical data, and other pertinent information determined necessary by the contracting officer. Transmissions to the GPE must be in accordance with the interface description available via the Internet at <http://www.fedbizopps.gov>.

* * * * *

(4) When an agency determines that a solicitation contains information that requires additional controls to monitor access and distribution (e.g., technical data, specifications, maps, building designs, schedules, etc.), the information shall be made available through the Federal Technical Data Solution (FedTeDS) unless an exception in paragraph (a)(5) of this section applies. When FedTeDS is used, it shall be used in conjunction with the GPE to meet the synopsis and advertising requirements of this part.

(5) The contracting officer need not make a solicitation available through the GPE, or make other information available through FedTeDS as required in paragraph (a)(4) of this section, when—

(i) Disclosure would compromise the national security (e.g., would result in

disclosure of classified information, or information subject to export controls) or create other security risks. The fact that access to classified matter may be necessary to submit a proposal or perform the contract does not, in itself, justify use of this exception;

(ii) The nature of the file (e.g., size, format) does not make it cost-effective or practicable for contracting officers to provide access to the solicitation through the GPE;

(iii) Agency procedures specify that the use of FedTeDS does not provide sufficient controls for the information to be made available and an alternative means of distributing the information is more appropriate; or

(iv) The agency's senior procurement executive makes a written determination that access through the GPE is not in the Government's interest.

* * * * *

■ 4. Amend section 5.207 by revising paragraph (c)(18) to read as follows:

5.207 Preparation and transmittal of synopses.

* * * * *

(c) * * *

(18) If the technical data required to respond to the solicitation will not be furnished as part of such solicitation, identify the source in the Government, such as FedTeDS (<https://www.fedteds.gov>), from which the technical data may be obtained.

* * * * *

PART 7—ACQUISITION PLANNING

■ 5. Amend section 7.105 by revising paragraph (b)(15) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) * * *

(15) *Government-furnished information.* Discuss any Government information, such as manuals, drawings, and test data, to be provided to prospective offerors and contractors. Indicate which information that requires additional controls to monitor access and distribution (e.g., technical specifications, maps, building designs, schedules, etc.), as determined by the agency, is to be posted via the Federal Technical Data Solution (FedTeDS) (see 5.102(a)).

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[FR Doc. 06-3678 Filed 4-18-06; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 2

[FAC 2005-09; FAR Case 2004-030; Item II; Docket FAR-2006-0020]

RIN 9000-AK21

Federal Acquisition Regulation; FAR Case 2004-030, Definition of Information Technology

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 to a final rule without change, an interim rule amending the Federal Acquisition Regulation (FAR) to revise the definition of "Information technology" to reflect the changes to the definition resulting from the enactment of Public Law 108-199, Consolidated Appropriations Act, 2004. Section 535(b) of Division F of Public Law 108-199 permanently revises the term "Information technology", which is defined at 40 U.S.C. 11101, to add "analysis and evaluation" and to clarify the term "ancillary equipment."

DATES: *Effective Date:* April 19, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Cecelia Davis, Procurement Analyst, at (202) 219-0202. Please cite FAC 2005-09, FAR case 2004-030. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 70 FR 43577 on July 27, 2005. The interim rule revised the definition of "Information technology" to reflect the changes to the definition resulting from the enactment of Public Law 108-199, Consolidated Appropriations Act, 2004. The new language at Section 535(b) of Division F of Public Law 108-199 permanently revises the term "Information technology", which is defined at 40 U.S.C. 11101, to add "analysis and evaluation" and to clarify the term "ancillary equipment."

The Councils received one public comment in response to the interim rule. The commenter indicated that the addition of the words "analysis, evaluation" was omitted from the changes to the definition of information technology in FAR 2.101(b) in the **Federal Register** on page 43578. Although not reprinted in full FAR text of the definition of information technology, change instruction 2 of the **Federal Register** notice added "analysis, evaluation" to the two appropriate portions of the definition. The Code of Federal Regulations text was changed in accordance with this instruction, and no further changes are required.

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 only revises and clarifies the definition for information technology resulting from the enactment of Public Law 108-199, Consolidated Appropriations Act, 2004. This is a minor technical change to the definition. We did not receive any comments on this issue from small business concerns or other interested parties.

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 2

Government procurement.

Dated: April 12, 2006.

Gerald Zaffos,

Director, Contract Policy Division.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR part 2, which was published in the **Federal Register** at 70

FR 43577, July 27, 2005, is adopted as a final rule without change.

[FR Doc. 06-3679 Filed 4-18-06; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 5, 7, 14, 37, and 52

[FAC 2005-09; FAR Case 2004-021; Item III; Docket FAR-2006-0020]

RIN 9000-AK25

Federal Acquisition Regulation; FAR Case 2004-021, OMB Circular A-76

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 provide language that is consistent with OMB Circular A-76 (Revised), *Performance of Commercial Activities*, dated May 29, 2003.

DATES: *Effective Date:* May 19, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Gerald Zaffos, Procurement Analyst, at (202) 208-6091. Please cite FAC 2005-09, FAR case 2004-021. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 70 FR 43107, July 26, 2005. One commenter submitted two comments in response. The first comment is that "7.302(a)(4) [sic] and 52.207-1(d) reference 'contest(s)'. Should that be protests?" The word "contest" was meant, not "protest." The A-76 Circular created an additional procedure called a "contest", discussed at Attachment B, paragraph F.

The second comment says that there is a conflict between the language in paragraph (c) of the provision at FAR 52.207-1 which states that, if a performance decision resulting from standard competition favors a private

sector offeror, a contract will be awarded, and paragraph (c) of the provision at FAR 52.207-2 which states that, if a performance decision resulting from a streamlined competition favors private sector performance, the contracting officer will either award a contract or issue a competitive solicitation. The Councils see no conflict and note that the language is consistent with the Circular. In a streamlined competition, an agency may estimate the cost of private sector performance by conducting market research or by soliciting cost proposals in accordance with the FAR (OMB Circ. A-76, Att. B, para. C.1.b.). If the performance decision favors private sector performance, the contracting officer may either award a contract resulting from the solicitation of cost proposals or issue a competitive solicitation to determine a private sector provider (OMB Cir. A-76, Att. B, para. C.3.d.(1).) Therefore, the final rule adopts the proposed rule language 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 does not impose any costs on either small or large businesses.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) 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, 5, 7, 14, 37, and 52

Government procurement.

Dated: April 12, 2006.

Gerald Zaffos,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 5, 7, 14, 37, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 5, 7, 14, 37, 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

2.101 [Amended]

■ 2. Amend section 2.101 in paragraph (b), in the definition "Inherently governmental function", by removing the last sentence in paragraph (2).

PART 5—PUBLICIZING CONTRACT ACTIONS

■ 3. Amend section 5.205 by revising paragraph (e) to read as follows:

5.205 Special situations.

* * * * *

(e) *Public-private competitions under OMB Circular A-76.* (1) The contracting officer shall make a formal public announcement for each streamlined or standard competition. The public announcement shall include, at a minimum, the agency, agency component, location, type of competition (streamlined or standard), activity being competed, incumbent service providers, number of Government personnel performing the activity, name of the Competitive Sourcing Official, name of the contracting officer, name of the Agency Tender Official, and projected end date of the competition.

(2) The contracting officer shall announce the end of the streamlined or standard competition by making a formal public announcement of the performance decision. (See OMB Circular A-76.)

* * * * *

PART 7—ACQUISITION PLANNING

■ 4. Amend section 7.105 by revising paragraph (b)(9) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b)* * *

(9) *Inherently governmental functions.* Address the consideration given to Subpart 7.5.

* * * * *

■ 5. Revise Subpart 7.3 to read as follows:

Subpart 7.3—Contractor Versus Government Performance

Sec.

7.300 [Reserved]

7.301 Definitions.

7.302 Policy.

- 7.303 [Reserved]
- 7.304 [Reserved]
- 7.305 Solicitation provisions and contract clause.

7.300 [Reserved]

7.301 Definitions.

Definitions of “inherently governmental activity” and other terms applicable to this subpart are set forth at Attachment D of the Office of Management and Budget Circular No. A-76 (Revised), Performance of Commercial Activities, dated May 29, 2003 (the Circular).

7.302 Policy.

(a) The Circular provides that it is the policy of the Government to—

(1) Perform inherently governmental activities with Government personnel; and

(2) Subject commercial activities to the forces of competition.

(b) As provided in the Circular, agencies shall—

(1) Not use contractors to perform inherently governmental activities;

(2) Conduct public-private competitions in accordance with the provisions of the Circular and, as applicable, these regulations;

(3) Give appropriate consideration relative to cost when making performance decisions between agency and contractor performance in public-private competitions;

(4) Consider the Agency Tender Official an interested party in accordance with 31 U.S.C. 3551 to 3553 for purposes of filing a protest at the Government Accountability Office; and

(5) Hear contests in accordance with OMB Circular A-76, Attachment B, Paragraph F.

(c) When using sealed bidding in public-private competitions under OMB Circular A-76, contracting officers shall not hold discussions to correct deficiencies.

7.303 [Reserved]

7.304 [Reserved]

7.305 Solicitation provisions and contract clause.

(a) The contracting officer shall, when soliciting offers and tenders, insert in solicitations issued for standard competitions the provision at 52.207-1, Notice of Standard Competition.

(b) The contracting officer shall, when soliciting offers, insert in solicitations issued for streamlined competitions the provision at 52.207-2, Notice of Streamlined Competition.

(c) The contracting officer shall insert the clause at 52.207-3, Right of First Refusal of Employment, in all

solicitations which may result in a conversion from in-house performance to contract performance of work currently being performed by the Government and in contracts that result from the solicitations, whether or not a public-private competition is conducted. The 10-day period in the clause may be varied by the contracting officer up to a period of 90 days.

7.500 [Amended]

■ 6. Amend section 7.500 by removing the last sentence.

PART 14—SEALED BIDDING

14.203-2 [Amended]

■ 7. Amend section 14.203-2 by removing the paragraph designation “(a)” and by removing paragraph (b).

PART 37—SERVICE CONTRACTING

■ 8. Amend section 37.503 by revising paragraph (c) to read as follows:

37.503 Agency-head responsibilities.

* * * * *

(c) Specific procedures are in place before contracting for services to ensure that inherently governmental functions are performed by Government personnel; and

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 9. Revise section 52.207-1 to read as follows:

52.207-1 Notice of Standard Competition.

As prescribed in 7.305(a), insert the following provision:

NOTICE OF STANDARD COMPETITION (MAY 2006)

(a) This solicitation is part of a standard competition under Office of Management and Budget Circular No. A-76 (Revised), Performance of Commercial Activities, dated May 29, 2003 (hereafter “the Circular”), to determine whether to accomplish the specified work under contract or by Government performance.

(b) The Government will evaluate private sector offers, the agency tender, and public reimbursable tenders, as provided in this solicitation and the Circular.

(c) A performance decision resulting from this standard competition will be publicly announced in accordance with the Circular. If the performance decision favors a private sector offeror, a contract will be awarded. If the performance decision favors an agency or a public reimbursable tender, the Contracting Officer shall establish, respectively, either a Most Efficient Organization letter of obligation or a fee-for-service agreement, as those terms are defined in the Circular.

(d) As provided in the Circular, directly interested parties may file contests, which are governed by the procedures in Federal

Acquisition Regulation 33.103. Until resolution of any contest, or the expiration of the time for filing a contest, only legal agents for directly interested parties shall have access to the certified standard competition form, the agency tender, and public reimbursable tenders.

(End of provision)

■ 10. Revise section 52.207-2 to read as follows:

52.207-2 Notice of Streamlined Competition.

As prescribed in 7.305(b), insert the following provision:

NOTICE OF STREAMLINED COMPETITION (MAY 2006)

(a) This solicitation is part of a streamlined competition under Office of Management and Budget Circular No. A-76 (Revised), Performance of Commercial Activities, dated May 29, 2003 (hereafter “the Circular”), to determine whether to accomplish the specified work under contract or by Government performance.

(b) The Government will evaluate the cost of private sector and Agency or public reimbursable performance, as provided in this solicitation and the Circular.

(c) A performance decision resulting from this streamlined competition will be publicly announced in accordance with the Circular. If the performance decision favors private sector performance, the Contracting Officer shall either award a contract or issue a competitive solicitation for private sector offers. If the performance decision favors Agency or public reimbursable performance, the Agency shall establish, respectively, either a letter of obligation or a fee-for-service agreement, as those terms are defined in the Circular.

(End of provision)

52.207-3 [Amended]

■ 11. Amend section 52.207-3 by revising the date of the clause to read “(MAY 2006)”; and by removing from paragraphs (a) and (b) of the clause the word “employees” and adding “personnel” in its place.

[FR Doc. 06-3689 Filed 4-18-06; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 12, 22, and 52**[FAC 2005–09; FAR Case 2005–012; Item
IV; Docket FAR–2006–0020]

RIN 9000–AK31

**Federal Acquisition Regulation; FAR
Case 2005–012, Combating Trafficking
in Persons****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 22
U.S.C. 7104(g). This statute requires that
contracts must include a provision that
authorizes the department or agency to
terminate the contract, if the Contractor
or any subcontractor engages in
trafficking in persons.**DATES:** *Effective Date:* April 19, 2006.*Comment Date:* Interested parties
should submit written comments to the
FAR Secretariat on or before June 19,
2006 to be considered in the
formulation of a final rule.**ADDRESSES:** Submit comments
identified by FAC 2005–09, FAR case
2005–012, 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.2005-012@gsa.gov. Include FAC 2005–09, FAR case 2005–012 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 2005–09, FAR case 2005–012, 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:** For clarification of content, contact Mr. William Clark, Procurement Analyst, at (202) 219–1813. Please cite FAC 2005–09, FAR case 2005–012. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.**SUPPLEMENTARY INFORMATION:****A. Background**

The Trafficking Victims Protection Reauthorization Act of 2003, as amended by the Trafficking Victims Protection Reauthorization Act of 2005, addresses the victimization of countless men, women, and children in the United States and abroad. The United States believes that its contractors can help combat trafficking in persons. 22 U.S.C. 7104(g) requires that the contract contain a clause allowing the agency to terminate the contract if the contractor or subcontractor engages in severe forms of trafficking in persons or has procured a commercial sex act, or used forced labor in the performance of the contract. For this purpose, “contractors” includes the contractor employees.

In order to implement the law, the Councils have added FAR Subpart 22.17 with an associated clause at 52.222–50 which address combating trafficking in persons.

The interim rule applies to contractors awarded service contracts (other than commercial service contracts under FAR Part 12). Such contractors must develop policies to combat trafficking in persons. The clause lists remedies, including termination, that may be imposed on contractors that support or promote or fail to monitor the conduct of their employees and subcontractors with regard to severe forms of trafficking in persons, the procurement of commercial sex acts, or use of forced labor.

This is a significant regulatory action and, therefore, is subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This interim rule raises novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order. 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.*, because the rule only applies to the acquisition of services (except commercial services under FAR Part 12). Furthermore, the impact will be minimal unless the contractor or its employees engage in forms of trafficking in persons or commercial sex acts that are illegal within the U.S. Although not considered significant, additional impact may be associated with contract performance in counties/states where certain commercial sex acts are legal. However, the termination authorities at 22 U.S.C. 7104(g) apply to Government contracts performed in these areas. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 12, 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 2005–09, FAR case 2005–012), in correspondence.**C. Paperwork Reduction Act**The Paperwork Reduction Act (Pub. L. 104–13) applies because the interim rule contains information collection requirements. Accordingly, the FAR Secretariat has forwarded a request for approval of a new information collection requirement concerning OMB Number 9000–00XX to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

The clause at 52.222–50 requires the contractor to notify the contracting officer of any information alleging employee misconduct under the clause, and any actions taken against employees pursuant to the clause.

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

Respondents: 250*Responses per respondent:* 1*Total annual responses:* 250*Preparation hours per response:* 1*Total response burden hours:* 250**D. Request for Comments Regarding
Paperwork Burden**

Submit comments, including suggestions for reducing this burden, not later than June 19, 2006 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VIR), 1800 F Street,

NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000-00XX, Combating Trafficking in Persons (FAR Case 2005-012), in all correspondence.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (VIR), Room 4035, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control Number 9000-00XX, Combating Trafficking in Persons (FAR Case 2005-012), in all correspondence.

E. 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 Trafficking Victims Protection Reauthorization Act of 2003 (Pub. L. 108-193), and the Trafficking Victims Protection Reauthorization Act of 2005 (Pub. L. 109-164) were effective upon enactment. 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 12, 22, and 52

Government procurement.

Dated: April 12, 2006.

Gerald Zaffos,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 12, 22, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 12, 22, 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 12—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Amend section 12.503 by revising the section heading and adding paragraph (a)(6) to read as follows:

12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial services.

(a)* * *

(6) 22 U.S.C. 7104, Trafficking Victims Protection Reauthorization Act of 2003 (see 22.1705).

* * * * *

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 3. Add Subpart 22.17 to read as follows:

Subpart 22.17—Combating Trafficking in Persons

Sec.

- 22.1700 Scope of subpart.
- 22.1701 Applicability.
- 22.1702 Definitions.
- 22.1703 Policy.
- 22.1704 Violations and remedies.
- 22.1705 Contract clause.

22.1700 Scope of subpart.

This subpart prescribes policy for implementing 22 U.S.C. 7104 as amended by Pub. L. No. 108-193 and 109-164.

22.1701 Applicability.

This subpart applies to acquisitions of all services except for commercial services under Part 12.

22.1702 Definitions.

As used in this subpart—

Coercion means—

- (1) Threats of serious harm to or physical restraint against any person;
- (2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
- (3) The abuse or threatened abuse of the legal process.

Commercial sex act means any sex act on account of which anything of value is given to or received by any person.

Debt bondage means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

Employee means an employee of a contractor directly engaged in the

performance of work under a Government contract, including all direct cost employees and any other contractor employee who has other than a minimal impact or involvement in contract performance.

Involuntary servitude includes a condition of servitude induced by means of—

(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or

(2) The abuse or threatened abuse of the legal process.

Severe forms of trafficking in persons means—

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

22.1703 Policy.

Contracts for services (except commercial services under Part 12) shall—

(a) Prohibit any activities on the part of the contractor or contractor employees that support or promote—

- (1) Severe forms of trafficking in persons;
- (2) The procurement of commercial sex acts; or
- (3) The use of forced labor in the performance of the contract;

(b) Require contractors to develop policies to combat severe forms of trafficking in persons, the procurement of commercial sex acts, and use of forced labor; and

(c) Impose suitable remedies, including termination, on contractors that support or promote or fail to monitor the conduct of their employees and subcontractors with regard to severe forms of trafficking in persons, the procurement of commercial sex acts, and use of forced labor.

22.1704 Violations and remedies.

(a) *Violations.* The Government may impose the remedies set forth in paragraph (b) of this section if—

(1) The contractor or any contractor employee engages in severe forms of trafficking in persons;

(2) Any contractor employee procures a commercial sex act during the period of performance of the contract;

(3) The contractor or any contractor employee uses forced labor in the performance of the contract; or

(4) The contractor fails to comply with the requirements of the clause at 52.222-50, Combating Trafficking in Persons.

(b) *Remedies.* After determining in writing that adequate evidence exists to suspect any of the violations at paragraph (a) of this section, the contracting officer may pursue any of the remedies specified in paragraph (e) of the clause at 52.222-50, Combating Trafficking in Persons. These remedies are in addition to any other remedies available to the Government.

22.1705 Contract clause.

Insert the clause at 52.222-50, Combating Trafficking in Persons, in all solicitations and contracts for the acquisition of services (except commercial services under Part 12).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Add section 52.222-50 to read as follows:

52.222-50 Combating Trafficking in Persons.

As prescribed in 22.1705, insert the following clause:

COMBATING TRAFFICKING IN PERSONS (APR 2006)

(a) *Definitions.* As used in this clause—
Coercion means—

(1) Threats of serious harm to or physical restraint against any person;

(2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(3) The abuse or threatened abuse of the legal process.

Commercial sex act means any sex act on account of which anything of value is given to or received by any person.

Debt bondage means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

Employee means an employee of a Contractor directly engaged in the performance of work under a Government contract, including all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

Individual means a Contractor that has no more than one employee including the Contractor.

Involuntary servitude includes a condition of servitude induced by means of—

(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or

(2) The abuse or threatened abuse of the legal process.

Severe forms of trafficking in persons means—

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

(b) *Policy.* The United States Government has adopted a zero tolerance policy regarding Contractors and Contractor employees that engage in or support severe forms of trafficking in persons, procurement of commercial sex acts, or use of forced labor. During the performance of this contract, the Contractor shall ensure that its employees do not violate this policy.

(c) *Contractor requirements.* The Contractor, if other than an individual, shall establish policies and procedures for ensuring that its employees do not engage in or support severe forms of trafficking in persons, procure commercial sex acts, or use forced labor in the performance of this contract. At a minimum, the Contractor shall—

(1) Publish a statement notifying its employees of the United States Government's zero tolerance policy described in paragraph (b) of this clause and specifying the actions that will be taken against employees for violations of this policy. Such actions may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment;

(2) Establish an awareness program to inform employees about—

(i) The Contractor's policy of ensuring that employees do not engage in severe forms of trafficking in persons, procure commercial sex acts, or use forced labor;

(ii) The actions that will be taken against employees for violation of such policy;

(iii) Regulations applying to conduct if performance of the contract is outside the U.S., including—

(A) All host country Government laws and regulations relating to severe forms of trafficking in persons, procurement of commercial sex acts, and use of forced labor; and

(B) All United States laws and regulations on severe forms of trafficking in persons, procurement of commercial sex acts, and use

of forced labor which may apply to its employees' conduct in the host nation, including those laws for which jurisdiction is established by the Military Extraterritorial Jurisdiction Act of 2000 (18 U.S.C. 3261-3267), and 18 U.S.C. 3271, Trafficking in Persons Offenses Committed by Persons Employed by or Accompanying the Federal Government Outside the United States;

(3) Provide all employees directly engaged in performance of the contract with a copy of the statement required by paragraph (c)(1) of this clause and obtain written agreement from the employee that the employee shall abide by the terms of the statement; and

(4) Take appropriate action, up to and including termination, against employees or subcontractors that violate the policy in paragraph (b) of this clause.

(d) *Notification.* The Contractor shall inform the contracting officer immediately of—

(1) Any information it receives from any source (including host country law enforcement) that alleges a contract employee has engaged in conduct that violates this policy; and

(2) Any actions taken against employees pursuant to this clause.

(e) *Remedies.* In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (c) or (d) of this clause may render the Contractor subject to—

(1) Required removal of a Contractor employee or employees from the performance of the contract;

(2) Required subcontractor termination;

(3) Suspension of contract payments;

(4) Loss of award fee for the performance period in which the Government determined Contractor non-compliance;

(5) Termination of the contract for default, in accordance with the termination clause of this contract; or

(6) Suspension or debarment.

(f) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts for the acquisition of services.

[FR Doc. 06-3681 Filed 4-18-06; 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 2005-09; FAR Case 2005-009; Item V; Docket FAR-2006-0020]

RIN 9000-AK22

Federal Acquisition Regulation; FAR Case 2005-009, Confirmation of HUBZone Certification

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 adopt as final without change, the interim rule amending the Federal Acquisition Regulation (FAR) to clarify that prime contractors must confirm that a subcontractor representing itself as a Historically Underutilized Business Zone (HUBZone) small business concern is certified, consistent with the requirements of 15 U.S.C. 632 *et seq.*, as amended.

DATES: *Effective Date:* April 19, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501-0044. Please cite FAC 2005-09, FAR case 2005-009. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 70 FR 43581, July 27, 2005, with request for comments. No public comments were received on the interim rule. The Councils agreed to convert the interim rule to a final 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 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 this final rule will have a positive effect on small businesses who are certified HUBZone small business concerns and are losing subcontracting opportunities taken by another company falsely claiming to be a certified HUBZone small business concern.

The FAR Secretariat has submitted a copy of the Final Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration. The analysis is summarized as follows:

Final Regulatory Flexibility Analysis

A Department of Defense Inspector General report D-2003-019 "DoD Contractor Subcontracting With Historically

Underutilized Business Zones (HUBZones) Small Businesses" found that prime contractors were overstating their HUBZone accomplishments because subcontractor's representations were not being verified. This final rule revises the Federal Acquisition Regulation to require a prime contractor to verify that its HUBZone subcontractors are certified as required by 15 U.S.C. 632 *et seq.*, as amended.

Interested parties may obtain a copy from the FAR Secretariat.

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: April 12, 2006.

Gerald Zaffos,

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 43581, July 27, 2005, is adopted as a final rule without change.

[FR Doc. 06-3682 Filed 4-18-06; 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 2005-09; FAR Case 2005-002; Item VI; Docket FAR-2006-0020]

RIN 9000-AK28

Federal Acquisition Regulation; FAR Case 2005-002; Expiration of the Price Evaluation Adjustment

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 adopt as final, without change, the interim rule published in the **Federal Register** at 70

FR 57462, September 30, 2005, to cancel for civilian agencies (except NASA and Coast Guard) the Small Disadvantaged Business (SDB) price evaluation adjustment which was originally authorized under the Federal Acquisition Streamlining Act of 1994. Civilian agencies (except NASA and Coast Guard) are not authorized to apply the price evaluation adjustment to their acquisitions.

DATES: *Effective Date:* April 19, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501-0044. Please cite FAC 2005-09, FAR case 2005-002. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published an interim rule at 70 FR 57462 on September 30, 2005, to cancel for civilian agencies (except NASA and Coast Guard) the Small Disadvantaged Business (SDB) price evaluation adjustment which was originally authorized under the Federal Acquisition Streamlining Act of 1994. The Councils received no comments on the interim rule. Therefore, the Councils have adopted the interim rule as a final 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 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 is summarized as follows:

Final Regulatory Flexibility Analysis

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 (Pub. L. 103-355, Sec. 7102) expired. This provision, as implemented in Federal Acquisition Regulation, 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 with the exception of NASA and Coast Guard, these agencies have no statutory authority to apply the small disadvantaged business price evaluation adjustment to their acquisitions.

This change will 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, not all of these small disadvantaged businesses will be affected because the price evaluation adjustment is authorized only for specific NAICS codes. The price evaluation adjustment is still authorized for the Department of Defense, U.S. Coast Guard, and National Aeronautics and Space Administration. The rule will positively impact certain large and small entities in specific NAICS codes competing with certain small disadvantaged business concerns in competitive acquisitions wherein the price evaluation adjustment could have applied if the authority had not expired. There will be a negative impact on a number of small disadvantaged businesses in competitive acquisitions for certain NAICS codes wherein the price evaluation adjustment authority could have applied.

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: April 12, 2006.

Gerald Zaffos,

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 57462, September 30, 2005, is adopted as a final rule without change.
[FR Doc. 06-3683 Filed 4-18-06; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 2005-09; FAR Case 2005-045; Item VII Docket FAR-2006-0020]

RIN 9000-AK43

Federal Acquisition Regulation; Removal of Sanctions Against Certain European Union Member States

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 remove the sanctions against certain European Union (EU) countries.

DATES: *Effective Date:* April 19, 2006.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before June 19, 2006 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005-09, FAR case 2005-045, 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.2005-045@gsa.gov. Include FAC 2005-09, FAR case 2005-045 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 2005-09, FAR case 2005-045, 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: For clarification of content, contact Mr.

William Clark, Procurement Analyst, at (202) 219-1813. Please cite FAC 2005-09, FAR case 2005-045. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Background

The USTR has issued a determination removing the sanctions against Austria, Belgium, Denmark, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Sweden, and the United Kingdom (71 FR 10093). These sanctions were put in place in 1993 and apply only to acquisitions not covered by the WTO GPA (*i.e.*, end products with an estimated acquisition value less than \$193,000, construction with an estimated acquisition value less than \$7,407,000, or services that are excluded from coverage by the WTO GPA). These sanctions did not apply to acquisitions by the Department of Defense.

This interim rule removes FAR Subpart 25.6, Trade Sanctions, and the clauses at FAR 52.225-15, Sanctioned European Union Country End Products, and 52.225-16, Sanctioned European Union Country Services, and other associated references in FAR Part 25.

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.*, because this rule only removes sanctions from end products from sanctioned EU countries with an estimated acquisition value less than \$193,000, sanctioned EU country construction with an estimated acquisition value less than \$7,407,000, or sanctioned EU country services that are excluded from coverage by the World Trade Organization Government Procurement Agreement. These sanctions did not apply to small business set-asides, to acquisitions below the simplified acquisition threshold using simplified acquisition procedures, or to acquisitions by the Department of Defense. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 25 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 2005–09, FAR case 2005–045), 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 removal of these sanctions went into effect March 1, 2006. 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 25 and 52

Government procurement.

Dated: April 12, 2006.

Gerald Zaffos,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 25 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 25 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 25—FOREIGN ACQUISITION

25.001 [Amended]

■ 2. Amend section 25.001 by removing paragraph (d).

25.002 [Amended]

■ 3. Amend section 25.002 in the table following the introductory paragraph by removing the entry “25.6 Trade Sanctions” and its corresponding line item entries and adding “25.6 [Reserved]” in its place.

25.003 [Amended]

■ 4. Amend section 25.003 by removing the definitions “Sanctioned European Union country construction”, “Sanctioned European Union country end product”, “Sanctioned European Union country services”, and

“Sanctioned European Union member state”.

■ 5. Amend section 25.501 by revising paragraph (c) to read as follows:

25.501 General.

* * * * *

(c) Must identify and reject offers of end products that are prohibited in accordance with Subpart 25.7; and

* * * * *

25.502 [Amended]

■ 6. Amend section 25.502 in paragraph (a)(1) by removing the phrase “sanctioned (see Subpart 25.6),”.

■ 7. Amend section 25.503 by revising paragraph (a)(1) to read as follows:

25.503 Group offers.

(a) * * *

(1) If any part of the award would consist of prohibited end products (see Subpart 25.7); or

* * * * *

Subpart 25.6 [Reserved]

■ 8. Remove and reserve Subpart 25.6.

25.1103 [Amended]

■ 9. Amend section 25.1103 by removing paragraph (c) and redesignating paragraph (d) as paragraph (c).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.212–5 [Amended]

■ 10. Amend section 52.212–5 by revising the date of the clause to read “(April, 2006)”; and in paragraph (b) of the clause by removing and reserving paragraphs (b)(27) and (b)(28).

52.225–15 and 52.225–16 [Reserved]

■ 11. Remove and reserve sections 52.225–15 and 52.225–16. [FR Doc. 06–3684 Filed 4–18–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 2005–09; FAR Case 2006–001; Item VIII; Docket FAR–2006–0020]

RIN 9000–AK45

Federal Acquisition Regulation; FAR Case 2006–001, Free Trade Agreements—Morocco

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 new Free Trade Agreement with Morocco as approved by Congress (Public Law 108–302). This Free Trade Agreement went into effect January 1, 2006.

DATES: *Effective Date:* April 19, 2006.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before June 19, 2006 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–09, FAR case 2006–001, 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.2006-001@gsa.gov. Include FAC 2005–09, FAR case 2006–001 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 2005–09, FAR case 2006–001, 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 For clarification of content, contact Mr. William Clark, Procurement Analyst, at (202) 219-1813. Please cite FAC 2005-09, FAR case 2006-001. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Background

This rule amends FAR Part 25 and the clauses at FAR 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, FAR 52.225-3, Buy American Act—Free Trade Agreements—Israeli Trade Act, FAR 52.225-5, Trade Agreements, FAR 52.225-11, Buy American Act—Construction Materials under Trade Agreements, and FAR 52.225-12, Notice of Buy American Act Requirement—Construction Materials under Trade Agreements, to implement the new Free Trade Agreement with Morocco, as approved by Congress (Public Law 108-302). This Free Trade Agreement waives the applicability of the Buy American Act for some foreign supplies and construction materials from Morocco, and specifies procurement procedures designed to ensure fairness, applicable to the acquisition of supplies and services.

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.* Although the rule opens up Government procurement to the products of Morocco, the Councils do not anticipate

any significant economic impact on U.S. small businesses. The Department of Defense only applies the trade agreements to the non-defense items listed at DFARS 225.401-70, and acquisitions that are set aside for small businesses are exempt. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 25 and 52 in accordance with 5 U.S.C. 610.

Interested parties must submit such comments separately and cite 5 U.S.C. 601, *et seq.* (FAC 2005-09, FAR case 2006-001), 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 Numbers 9000-0025 and 9000-0141.

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 Free Trade Agreement with Morocco, as approved by Congress (Public Law 108-302), went into effect January 1, 2006. 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 25 and 52

Government procurement.

Dated: April 12, 2006.

Gerald Zaffos,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 25 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 25 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 25—FOREIGN ACQUISITION

25.003 [Amended]

■ 2. Amend section 25.003, in paragraph (2) of the definition “Designated country” and the definition “Free Trade Agreement country” by adding “Morocco,” after “Mexico,”.

■ 3. Amend section 25.400 by—

■ a. Removing from the end of paragraph (a)(2)(iii) the word “and”;

■ b. Adding in paragraph (a)(2)(iv) the word “and” at the end of the paragraph; and

■ c. Adding a new paragraph (a)(2)(v) to read as follows:

25.400 Scope of Subpart.

(a) * * *

(2) * * *

(v) Morocco FTA (The United States—Morocco Free Trade Agreement, as approved by Congress in the United States—Morocco Free Trade Agreement Implementation Act (Pub. L. 108-302));

* * * * *

25.401 [Amended]

■ 4. Amend section 25.401 in paragraph (b), in the table heading, by removing from the fifth column the text “Australia FTA” and adding “Australia and Morocco FTA” in its place.

■ 5. Amend section 25.402 by revising the table following paragraph (b) to read as follows:

25.402 General.

* * * * *

(b) * * *

Trade Agreement	Supply Contract (equal to or exceeding)	Service Contract (equal to or exceeding)	Construction Contract (equal to or exceeding)
WTO GPA	\$193,000	\$193,000	\$7,407,000
FTAs			
Australia FTA	64,786	64,786	7,407,000
Chile FTA	64,786	64,786	7,407,000
Morocco FTA	193,000	193,000	7,407,000
NAFTA			
—Canada	25,000	64,786	8,422,165
—Mexico	64,786	64,786	8,422,165
Singapore FTA	64,786	64,786	7,407,000
Israeli Trade Act	\$50,000	-	-

■ 6. Amend section 25.1102 by revising the second sentence of paragraph (c)(3) to read as follows:

25.1102 Acquisition of construction.

(c) * * *
 (3) * * * List in paragraph (b)(3) of the clause all foreign construction material excepted from the requirements of the Buy American Act, unless the excepted foreign construction material is from a designated country other than Mexico.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.212–5 [Amended]

■ 7. Amend section 52.212–5 by revising the date of the clause to read “(APR 2006)”; and by removing from paragraphs (b)(24)(i) and (b)(25) “(JAN 2006)” and adding “(APR 2006)” in its place.

52.225–3 [Amended]

■ 8. Amend section 52.225–3 by revising the date of the clause to read “(APR 2006)”; and in paragraph (c) by adding to the first sentence “(except the Morocco FTA)” after “FTAs”.

52.225–5 [Amended]

■ 9. Amend section 52.225–5 by revising the date of the clause to read “(APR 2006)”; and in paragraph (a), in the definition “Designated country” by adding to paragraph (2) “Morocco,” after “Mexico,”.

52.225–11 [Amended]

- 10. Amend section 52.225–11 by—
- a. Revising the date of the clause;
- b. Adding to paragraph (a), in the definition “Designated country” in paragraph (2) “Morocco,” after “Mexico,”;
- c. Removing from paragraph (b)(2) “domestic,” and adding “domestic or” in its place.
- d. Amending Alternate I by—
- 1. Revising the date of Alternate I;
- 2. Removing from the introductory paragraph “Australian or Chilean” and adding “Australian, Chilean, or Moroccan” in its place;
- 3. Revising the definition “Australian or Chilean construction material”; and
- 4. Removing from paragraphs (b)(1) and (b)(2) “Australian or Chilean” and adding “Australian, Chilean, or Moroccan” in its place.
- The revised text reads as follows:

52.225–11 Buy American Act—Construction Materials under Trade Agreements.

* * * * *

BUY AMERICAN ACT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS “(APR 2006)”

* * * * *
 Alternate I “(APR 2006)”. * * *

Australian, Chilean, or Moroccan construction material means a construction material that—

- (1) Is wholly the growth, product, or manufacture of Australia, Chile, or Morocco; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Australia, Chile, or Morocco into a new and different construction material distinct from the materials from which it was transformed.

* * * * *

52.225–12 [Amended]

■ 11. Amend section 52.225–12 by revising the date of Alternate II to read “(APR 2006)”; and by removing from paragraphs (a), (d)(1) twice, and (d)(3) twice “Australian or Chilean” and adding “Australian, Chilean, or Moroccan” in its place.

[FR Doc. 06–3685 Filed 4–18–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 2005–09; FAR Case 2004–031; Item IX; Docket FAR–2006–0020]

RIN 9000–AK24

Federal Acquisition Regulation; FAR Case 2004–031, Fast Payment Procedures

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 fast payment procedures. The revision permits, but does not require, fast payment when invoices and/or outer shipping containers are not marked “Fast Pay” provided the contract includes the “Fast Payment Procedure” clause. As highlighted in the clause, if the clause is in the contract, the invoices will no longer be rejected, as is

the current practice. Instead, they will be paid using either fast payment or normal payment procedures. In addition, the revision deletes the requirement for marking invoices “No Receiving Report Prepared.”

DATES: Effective Date: May 19, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Jeremy Olson, Procurement Analyst, at (202) 501–3221. Please cite FAC 2005–09, FAR case 2004–031. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule, FAR case 2004–031, at 70 FR 40279 on July 13, 2005, to obtain comments on a proposal to amend the policies and contract clause regarding Fast Pay procedures. No comments were submitted and the rule was converted to a final rule without change from the proposed rule. FAR 52.213–1, Fast Payment Procedure, is revised to permit acceptance and payment under invoices that are not prominently marked “FAST PAY.”

This change provides the payment office flexibility to make fast payments when invoices and/or outer shipping containers are not marked “FAST PAY.” The change permits, but does not require, fast payment when invoices and/or outer shipping containers are not marked “FAST PAY” provided the contract includes the “Fast Payment Procedure” clause. However, if the payment office decides to not process invoices as “FAST PAY” because the proper markings are not present, the payment date will be the payment date that would have applied had the “Fast Payment Procedure” clause not been in the contract. In this manner, an unmarked invoice will not be rejected. This change does not eliminate the requirement for the contractor to annotate an invoice “FAST PAY;” the contractor remains at risk that fast payment procedures will not be applied unless the invoice is annotated accordingly.

If a receiving report is not prepared, it is imperative that the invoice includes sufficient information to facilitate follow-up verification that the item was received. The FAR revision does not eliminate that requirement for such information on the invoice. However, the revision does not require the statement “No Receiving Report Prepared” on the invoice.

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 it will have a beneficial, but small, impact. Under the prior policy and clause, small businesses which failed to follow the fast payment clause instructions to mark the invoice "FAST PAY" had their invoices rejected, which means they would not be paid until they sent a corrected invoice. The clause revisions mean the invoices would not have to be automatically rejected. No comments were received from small entities or other members of the public.

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 52

Government procurement.

Dated: April 12, 2006.

Gerald Zaffos,

Director, Contract Policy Division.

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

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 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).

■ 2. Amend section 52.213-1 by revising the date of the clause and paragraphs (c)(1)(ii), (c)(3), and (e) to read as follows:

52.213-1 Fast Payment Procedure.

* * * * *

FAST PAYMENT PROCEDURE (APR 2006)

* * * * *

(c) * * *

(1) * * *

(ii) Display prominently on the invoice "FAST PAY." Invoices not prominently marked "FAST PAY" via manual or electronic means may be accepted by the

payment office for fast payment. If the payment office declines to make fast payment, the Contractor shall be paid in accordance with procedures applicable to invoices to which the Fast Payment clause does not apply.

* * * * *

(3) If this contract, order, or blanket purchase agreement requires the preparation of a receiving report, the Contractor shall either—

(i) Submit the receiving report on the prescribed form with the invoice; or

(ii) Include the following information on the invoice:

(A) Shipment number.

(B) Mode of shipment.

(C) At line item level—

(1) National stock number and/or manufacturer's part number;

(2) Unit of measure;

(3) Ship-To Point;

(4) Mark-For Point, if in the contract; and

(5) FEDSTRIP/MILSTRIP document number, if in the contract.

* * * * *

(e) *Fast pay container identification.* The Contractor shall mark all outer shipping containers "FAST PAY." When outer shipping containers are not marked "FAST PAY," the payment office may make fast payment. If the payment office declines to make fast payment, the Contractor shall be paid in accordance with procedures applicable to invoices to which the Fast Payment clause does not apply.

(End of clause)

[FR Doc. 06-3686 Filed 4-18-06; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 19

[FAC 2005-09; Item X; Docket FAR-2006-0021]

Federal Acquisition Regulation; Technical Amendment

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

ACTION: Final rule.

SUMMARY: This document amends the Federal Acquisition Regulation (FAR) to make an editorial correction.

DATES: *Effective Date:* April 19, 2006.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. Please

cite FAC 2005-09, Technical Amendment.

List of Subjects in 48 CFR Part 19

Government procurement.

Dated: April 12, 2006.

Gerald Zaffos,

Director, Contract Policy Division.

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

PART 19—SMALL BUSINESS PROGRAMS

■ 1. The authority citation for 48 CFR part 19 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).

19.1005 [Amended]

■ 2. Amend section 19.1005 in paragraph (a) in Item 3 of the NAICS Description by removing from the end of NAICS code entry "541310" the word "or".

[FR Doc. 06-3687 Filed 4-18-06; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR-2006-0023]

Federal Acquisition Regulation; Federal Acquisition Circular 2005-09; 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) 2005-09 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

2005–09 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) 501–4225. For clarification of content,

contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2005–09

Item	Subject	FAR case	FAR Analyst
I	Federal Technical Data Solution (FedTeDS)	2004–007	Zaffos.
II	Definition of Information Technology	2004–030	Davis.
III	OMB Circular A–76	2004–021	Zaffos.
IV	Combating Trafficking in Persons (Interim)	2005–012	Clark.
*V	Confirmation of HUBZone Certification	2005–009	Cundiff.
*VI	Expiration of the Price Evaluation Adjustment	2005–002	Cundiff.
VII	Removal of Sanctions Against Certain European Union Member States (Interim)	2005–045	Clark.
VIII	Free Trade Agreements Morocco (Interim)	2006–001	Clark.
IX	Fast Payment Procedures	2004–031	Olson.
X	Technical Amendment.		

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 2005–09 amends the FAR as specified below:

Item I—Federal Technical Data Solution (FedTeDS) (FAR Case 2004–007)

This final rule amends the FAR to require contracting officers to make solicitation-related information that requires limited availability or distribution available to offerors electronically via the Federal Technical Data Solution (FedTeDS), unless certain exceptions apply. FedTeDS provides secure, user identification and password protected access to solicitation-related data that should not be made available to the public on the Governmentwide Point of Entry (GPE) website.

Item II—Definition of Information Technology (FAR Case 2004–030)

This final rule adopts without change the interim rule which amended FAR 2.101(b) by revising the definition for “information technology” to reflect changes to the definition resulting from the enactment of Public Law 108–199, Consolidated Appropriations Act, 2004. Section 535(b) of Division F of Public Law 108–199 permanently revises the term “information technology,” which is defined at 40 U.S.C. 11101, to add “analysis” and “evaluation” and to clarify the term “ancillary equipment.”

Item III—OMB Circular A–76 (FAR Case 2004–021)

This final rule amends FAR Subpart 7.3 to provide language that is consistent with OMB Circular A–76 (Revised), *Performance of Commercial*

Activities, dated May 29, 2003. In addition, it provides two new provisions that inform potential offerors of the procedures the Government will follow for streamlined and standard competitions, as they are defined in the Circular.

Item IV—Combating Trafficking in Persons (FAR Case 2005–012)

This interim rule amends FAR Parts 12, 22 and 52 to implement the Trafficking Victims Protection Reauthorization Act of 2003, as amended by the Trafficking Victims Protection Reauthorization Act of 2005. The statute (22 U.S.C. 7104(g)) requires that the contract contain a clause allowing the agency to terminate the contract without penalty if the contractor or subcontractor engage in severe forms of trafficking in persons or has procured a commercial sex act, or used forced labor in the performance of the contract. The interim rule applies to contractors awarded service contracts (other than commercial service contracts under Part 12). Such contractors must develop policies to combat trafficking in persons and notify the contracting officer immediately of any information it received from any source that alleges a contract employee has engaged in conduct that violates this policy, and any actions taken against the employee pursuant to the clause.

Item V—Confirmation of HUBZone Certification (FAR Case 2005–009)

The interim rule published at 70 FR 43581, July 27, 2005 is converted to a final rule without change. The interim rule amended FAR 19.703 and the clause at 52.219–9 to clarify that prime contractors must confirm that a subcontractor representing itself as a Historically Underutilized Business Zone (HUBZone) small business concern is certified, consistent with the

requirements of 15 U.S.C. 632 *et seq.*, as amended. This change is expected to increase subcontracting opportunities for certified HUBZone small business concerns and ensure accurate reporting of subcontract awards to HUBZone small business concerns under Government contracts.

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

This final rule adopts, without change, an interim rule that amended the FAR to cancel 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 was required because the statutory authority for the adjustments had 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 VII—Removal of Sanctions Against Certain European Union Member States (FAR Case 2005–045)

This interim rule removes the sanctions in FAR Part 25 against Austria, Belgium, Denmark, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Sweden, and the United Kingdom on acquisitions not covered by the World Trade Organization Government Procurement Agreement (WTO GPA). These sanctions did not apply to small business set-asides, to acquisitions below the simplified acquisition threshold using simplified acquisition procedures, or to acquisitions by the Department of Defense. Contracting officers may now consider offers of end products,

services, and construction that were previously prohibited by the sanctions.

Item VIII—Free Trade Agreements - Morocco (FAR Case 2006-001)

This interim rule allows contracting officers to purchase the products of Morocco without application of the Buy American Act if the acquisition is subject to the Morocco Free Trade Agreement. The U.S. Trade Representative negotiated a Free Trade Agreement with Morocco, which went into effect January 1, 2006. This agreement joins the North American Free Trade Agreement (NAFTA) and the Australia, Chile, and Singapore Free

Trade Agreements which are already in the FAR. The threshold for applicability of the Morocco Free Trade Agreement is \$193,000 for supplies and services, \$7,407,000 for construction.

Item IX—Fast Payment Procedures (FAR Case 2004-031)

This amendment permits, but does not require, fast payment when invoices and/or outer shipping containers are not marked “Fast Pay”, provided the contract includes the “Fast Payment Procedure” clause. If the Fast Payment clause is in the contract, such unmarked invoices will no longer be rejected. Instead, they will be paid using either

fast payment or normal payment procedures. In addition, the revision deletes the requirement for marking invoices “No Receiving Report Prepared.”

X—Technical Amendment

An editorial change is made at FAR 19.1005(a) in Item 3 of the NAICS Description by removing from the end of NAICS code entry “541310” the word “or”.

Dated: April 12, 2006.

Gerald Zaffos,

Director, Contract Policy Division.

[FR Doc. 06-3688 Filed 4-18-06; 8:45 am]

BILLING CODE 6820-EP-S