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Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1 et al.

Federal Acquisition Regulation; Final 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 2005–10; 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) 2005–10. 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.acquisition.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 2005–10 and specific FAR case number(s). Interested parties may also visit our Web site at *http://www.acquisition.gov/far*. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

Item	Subject	FAR case	Analyst
I	Central Contractor Registration —Taxpayer Identification Number (TIN) Validation	2005–007	Jackson.
II	Procedures Related to Procurement Center Representatives	2006–003	Cundiff.
III	Submission of Cost or Pricing Data on Noncommercial Modifications of Commercial Items	2004–035	Olson.
IV	Implementation of Wage Determinations OnLine (WDOL) (Interim)	2005–033	Sochon.
V	Free Trade Agreements—El Salvador, Honduras, and Nicaragua (Interim)	2006–006	Sochon.
VI	Buy-Back of Assets	2004–014	Olson.
VII	Technical Amendments		

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 2005–10 amends the FAR as specified below:

Item I—Central Contractor Registration—Taxpayer Identification Number (TIN) Validation (FAR Case 2005–007)

The rule adds the process of the government validating a Central Contractor Registration (CCR) registrant's taxpayer identification number (TIN) with the Internal Revenue Service (IRS) to improve the quality of data in the CCR and the federal procurement system. Additionally, the rule removes outdated language requiring modifications of contracts prior to December 31, 2003, regarding CCR.

Item II—Procedures Related to Procurement Center Representatives (FAR Case 2006–003)

This final rule amends the Federal Acquisition Regulation (FAR) to provide internal procedures to cover situations when the FAR requires interaction with a procurement center representative and one has not been assigned to the procuring activity or contract administration office. It primarily impacts contracting officers and procurement center representatives.

Item III—Submission of Cost or Pricing Data on Noncommercial Modifications of Commercial Items (FAR Case 2004–035)

This final rule amends the interim rule issued in FAC 2005–004 and implements an amendment to 10 U.S.C. 2306a. The policy requires that the exception from the requirement to obtain certified cost or pricing data for a commercial item does not apply to noncommercial modifications of a commercial item that are expected to cost, in the aggregate, more than $500,000 or 5 percent of the total price of the contract, whichever is greater. Section 818 of Public Law 108–375, the Ronald W. Reagan National Defense Authorization Act of Fiscal Year 2005 applies to offers submitted, and to modifications of contracts or subcontracts made, on or after June 1, 2005. This new policy results from a statute which changed 10 U.S.C. 2306a. 10 U.S.C. 2306a applies only to contracts or task or delivery orders funded by DoD, NASA, and the Coast Guard. The new policy does, however, also apply to contracts awarded or task or delivery orders placed on behalf of DoD, NASA, or the Coast Guard by an official of the United States outside of those agencies, because the statutory requirement of Section 818 applies to the funds provided by DoD, NASA, or the Coast Guard.

The change to the interim rule clarifies the policy to ensure it is applied properly. The threshold in the rule applies to an instant contract action, not to the total value of all contract actions and, as applicable to subcontractors, the threshold applies to the value of the subcontract, not the value of the prime contract.

Item IV—Implementation of Wage Determinations OnLine (WDOL) (FAR Case 2005–033) (Interim)

This interim rule implements the Department of Labor (DOL) Wage Determinations OnLine (WDOL) internet website as the source for Federal contracting agencies to obtain wage determinations issued by the DOL for service contracts subject to the McNamara-O'Hara Service Contract Act (SCA) and for construction contracts subject to the Davis-Bacon Act (DBA). The rule amends the FAR to direct Federal contracting agencies to obtain DBA and SCA wage determinations from the WDOL website.

The Contracting Officer (CO) will be able to check the WDOL website (*http://www.wdol.gov*) to find the applicable wage determination for a contract action subject to the SCA or DBA. If the WDOL database does not contain the applicable wage determination for a SCA contract action, the CO must use the e98 process to request a wage determination from DOL. The e98 means a DOL approved electronic application, (available at *http://www.wdol.gov*), whereby a contacting officer submits pertinent information to the DOL and requests a wage determination directly from the Wage and Hour Division. With regard to DBA requirements, if the WDOL

database does not contain the applicable wage determination for a DBA contract action, the CO must request a wage determination by submitting SF–308 to DOL.

The WDOL and e98 processes replace the paper Standard Forms 98 and 98a. In addition, Standard Forms 99, 98, and 98a are deleted from FAR Part 53. This interim rule also incorporates new geographical jurisdictions for DOL's Wage and Hour Regional Offices and eliminates FAR references to the Government Printing Office (GPO) publication of general wage determinations.

Item V—Free Trade Agreements—El Salvador, Honduras, and Nicaragua (FAR Case 2006–006) (Interim)

This interim rule allows contracting officers to purchase the goods and services of El Salvador, Honduras, and Nicaragua without application of the Buy American Act, if the acquisition is subject to the Free Trade Agreements. The U.S. Trade Representative negotiated the Dominican Republic—Central America-United States Free Trade Agreement with Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and the Dominican Republic. However, the agreements will not all take effect at the same time. This agreement with El Salvador, Honduras, and Nicaragua joins the North American Free Trade Agreement (NAFTA) and the Australia, Chile, Morocco, and Singapore Free Trade Agreements which are already in the FAR. The threshold for applicability of the Dominican Republic—Central America—United States Free Trade Agreement is $64,786 for supplies and services (the same as other Free Trade Agreements to date except Morocco and Canada) and $7,407,000 for construction (the same as all other Free Trade Agreements to date except NAFTA).

Item VI—Buy-Back of Assets (FAR Case 2004–014)

This final rule amends the Federal Acquisition Regulation (FAR) contract cost principle for depreciation costs. The final rule adds language which addresses the allowability of depreciation costs of reacquired assets involved in a sale and leaseback arrangement.

Item VII—Technical Amendments

Editorial changes are made at FAR 8.714, 33.102, and52.225–11 in order to update references.

Dated: June 20, 2006.

Ralph De Stefano,

Director, Contract Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005-10 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 2005-10 is effective, July 28, 2006 except for Items IV, V, and VII which are effective June 28, 2006.

Dated: June 19, 2006.

Shay D. Assad,

Director, Defense Procurement and Acquisition Policy.

Dated: June 20, 2006.

Roger D. Waldron,

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

Dated: June 19, 2006.

Tom Luedtke,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 06–5712 Filed 6–27–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, and 52

[FAC 2005–10; FAR Case 2005–007; Item I; Docket 2006–0020, Sequence 9]

RIN 9000–AK33

Federal Acquisition Regulation; FAR Case 2005–007, Central Contractor Registration—Taxpayer Identification Number (TIN) Validation

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 include the process of validating a Central Contractor Registration (CCR) registrant's taxpayer identification number (TIN) with the Internal Revenue Service (IRS) to improve the quality of data in the Federal procurement system. Additionally, the amendment removes outdated language requiring modifications of contracts prior to December 31, 2003, regarding CCR.

DATES: *Effective Date:* July 28, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Michael O. Jackson, Procurement Analyst, at (202) 208–4949. Please cite FAC 2005–10, FAR case 2005–007. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

Vendor registration in the CCR as a pre-requisite for receiving a contract has been required in the Department of Defense since 1998, and in civilian agencies since 2003. Since CCR's inception, validation of a registrant's TIN with the IRS has been contemplated in order to improve the quality of data throughout the Federal procurement system. This capability, although actively pursued, was never implemented as the Internal Revenue Code (I.R.C.) restricted disclosure of TINs without the taxpayer's consent, which due to technology at the time, would have been costly and inefficient to pursue. However, in its Fall 2004 ''Report to Senate Committee on Governmental Affairs Permanent Subcommittee on Investigations,'' the Federal Contractor Tax Compliance Task Force (which included the Office of Management and Budget, the Department of Treasury, the Department of Defense, the General Services Administration, the Department of Justice, and the IRS) recommended that ''... a consent-based TIN validation under I.R.C. § 6103 should be instituted.'' The capability for an event driven, near real-time, or real-time, web-based solution integrating the CCR with an IRS validation is now possible due to advances in technology. The Task Force recommended updating the FAR to specifically identify the validation of the TIN as a part of CCR registration. In August 2005, a computer matching agreement was established between the IRS, as manager of the TIN database; GSA, as manager of the Integrated Acquisition Environment (IAE) Federal eGov initiative; and DOD, as executive agent for CCR.

Additionally, FAR Subpart 4.11, Central Contractor Registration, contains language that was included when this subpart was implemented in the FAR in

2003. This outdated language required modifications of contracts by December 31, 2003, to include CCR registration requirements. As this date is past, the case removes the associated language.

This final rule amends the Federal Acquisition Regulation by—

1. Modifying Subpart 2.101 to indicate that the validation requirement for ''registered in CCR'' includes TIN matching.

2. Removing FAR section 4.1103(a)(3), (a)(3)(i)-(ii) and a part of 4.1104 to remove the language requiring action by December 31, 2003.

3. Adding detail to FAR 52.204–7, Central Contractor Registration, to specifically identify validation of the TIN as a part of the definition ''Registered in the CCR Database,'' and to indicate that consent is part of that process.

4. Removing Alternate I to FAR 52.204–7, Central Contractor Registration.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 70 FR 60782, October 19, 2005. The Councils received two public comments in response to the proposed rule.

1. *Comment:* One commenter indicated that the language in the preamble under the Summary paragraph should read: ''... CCR) registrant's taxpayer identification number with the Internal Revenue Service to improve the quality of data in both the CCR and the Federal Procurement Data System—Next Generation (FPDS-NG'')

Vice the original language:

''... CCR) registrant's taxpayer identification number with the Internal Revenue Service to improve data accuracy in the Federal procurement system.''

Disposition: The Councils agree that the rule improves the quality of data. For clarification, FPDS-NG does not retain the Taxpayer Identification Number (TIN), and the validation process does not involve the FPDS-NG system.

2. *Comment:* One commenter suggested that the General Services Administration include a mechanism to be used in the event that an employer is unable to receive validation for its taxpayer identification number (TIN) during the Central Contractor Registration (CCR) process. He stated a conditional registration may be in order until the contractor in concert with the GSA and IRS can determine the error. If a contractor is unable to obtain the TIN validation, a process for resolving the matter should be laid out for them online. A conditional registration should be allowed for participation in a bid so long as the contractor can show the TIN was valid at the time it applied for registration. Due to potential delays involving the interaction of two major agency computer systems, it seems reasonable that some safeguard should be in place for contractors, especially first time registrants that are likely to be smaller firms. The commenter asked that this issue be addressed by the Councils in its final rulemaking.

Disposition: The intent of the rule is to make sure that the TIN an entity places in CCR is the same one that is designated by the IRS. A new CCR registration takes approximately 48 hours to process. Vendors with questions or comments relating to TIN matching or the registration process may contact the CCR Assistance Center at *http://www.ccr.gov/help.asp* or 888–227–2423. Vendors with general questions relating to TINs, or questions relating to a specific TIN, should contact the IRS. The Council will suggest the resolution of registration delays due to TIN matching to be addressed online in the CCR FAQs. While contractors may not receive an award without a valid CCR registration (see FAR 4.1102(a)), they may participate in the bid process, which the Councils deem to be an adequate mechanism.

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.*, as no new requirements are being placed on the vendor community. No comments on this issue were received 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 Parts 2, 4, and 52

Government procurement.

Dated: June 20, 2006.

Ralph De Stefano,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 4, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 4, and 52 continues to read as follows:

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

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 in paragraph (b)(2) by revising paragraph (2) of the definition ''Registered in the CCR database'' to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

Registered in the CCR database means that—

(1) * * *

(2) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS), and has marked the record ''Active''. The contractor will be required to provide consent for TIN validation to the Government as a part of the CCR registration process.

* * * * *

PART 4—ADMINISTRATIVE MATTERS

■ 3. Amend section 4.1103 by—

■ a. Revising paragraph (a)(1);

■ b. Removing paragraph (a)(3);

■ c. Redesignating paragraph (b) as paragraph (a)(3); and

■ d. Redesignating paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d), respectively.

■ The revised text reads as follows:

4.1103 Procedures.

(a) * * *

(1) Shall verify that the prospective contractor is registered in the CCR database (see paragraph (b) of this section) before awarding a contract or agreement. Contracting officers are encouraged to check the CCR early in the acquisition process, after the competitive range has been established, and then communicate to the unregistered offerors that they must register;

* * * * *

4.1104 [Amended]

■ 4. Amend section 4.1104 by removing the last sentence.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Amend section 52.204–7 by—
■ a. Revising the date of the clause;
■ b. Revising paragraph (a)(2) of the definition ''Registered in the CCR database''; and
■ c. Removing Alternate I.
■ The revised and added text reads as follows:

52.204–7 Central Contractor Registration.

* * * * *

CENTRAL CONTRACTOR REGISTRATION (JUL 2006)

(a) * * *

Registered in the CCR database means that—

(1) * * *

(2) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS), and has marked the record ''Active''. The Contractor will be required to provide consent for TIN validation to the Government as a part of the CCR registration process.

* * * * *

[FR Doc. 06–5711 Filed 6–27–06; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 10 and 19

[FAC 2005–10; FAR Case 2006–003; Item II; Docket 2006–0020, Sequence 12]

Federal Acquisition Regulation; FAR Case 2006–003, Procedures Related to Procurement Center Representatives

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 internal procedures to cover situations when the FAR requires interaction with a procurement center representative and one has not been assigned to the procuring activity or contract administration office.

DATES: *Effective Date:* July 28, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501–0044. Please cite FAC 2005–10, FAR case 2006–003. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the Federal Acquisition Regulation to provide internal procedures to cover situations when the FAR requires interaction with a Small Business Administration procurement center representative and one has not been assigned to the procuring activity or contract administration office.

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

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Parts 10 and 19 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2005–10, FAR case 2006–003), 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 10 and 19

Government procurement.

Dated: June 20, 2006.

Ralph De Stefano,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 10 and 19 as set forth below:

■ 1. The authority citation for 48 CFR parts 10 and 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).

PART 10—MARKET RESEARCH

■ 2. Amend section 10.001 by revising paragraph (c)(1) to read as follows:

10.001 Policy.

* * * * *

(c) * * *

(1) When performing market research, should consult with the local Small Business Administration procurement center representative (PCR). If a PCR is not assigned, see 19.402 (a); and

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

■ 3. Amend section 19.201 by revising the introductory text of paragraph (d)(5) to read as follows:

19.201 General Policy.

* * * * *

(d) * * *

(5) Work with the SBA procurement center representative (or, if a procurement center representative is not assigned, see 19.402(a)) to—

* * * * *

■ 4. Amend section 19.202–1 by revising the introductory text of paragraph (e)(1) and paragraph (e)(4) to read as follows:

19.202–1 Encouraging small business participation in acquisitions.

* * * * *

(e)(1) Provide a copy of the proposed acquisition package to the SBA procurement center representative (or, if a procurement center representative is not assigned, see 19.402(a)) at least 30 days prior to the issuance of the solicitation if—

* * * * *

(4) If the contracting officer rejects the SBA representative's recommendation made in accordance with 19.402(c)(2), the contracting officer shall document the basis for the rejection and notify the SBA representative in accordance with 19.505.

■ 5. Amend section 19.202–2 by revising the last sentence in paragraph (a) to read as follows:

19.202–2 Locating small business sources.

* * * * *

(a) * * * This effort should include contacting the SBA procurement center representative (or, if a procurement center representative is not assigned, see 19.402(a)).

* * * * *

■ 6. Amend section 19.402 by redesignating paragraph (a) as (a)(1); adding a new paragraph (a)(2); revising paragraph (b); and revising the second

sentence of paragraph (c)(2) to read as follows:

19.402 Small Business Administration procurement center representatives.

(a) * * *

(2) If a SBA procurement center representative is not assigned to the procuring activity or contract administration office, contact the SBA Office of Government Contracting Area Office serving the area in which the procuring activity is located for assistance in carrying out SBA policies and programs. See *http://www.sba.gov/GC/pcr.html* for the location of the SBA office servicing the activity.

(b) Upon their request and subject to applicable acquisition and security regulations, contracting officers shall give SBA procurement center representatives (or, if a procurement center representative is not assigned, see paragraph (a) of this section) access to all reasonably obtainable contract information that is directly pertinent to their official duties.

(c) * * *

(2) * * * If the SBA procurement center representative (or, if a procurement center representative is not assigned, see paragraph (a) of this section) believes that the acquisition, as proposed, makes it unlikely that small businesses can compete for the prime contract, the representative shall recommend any alternate contracting method that the representative reasonably believes will increase small business prime contracting opportunities. * * *

* * * * *

■ 7. Amend section 19.501 by revising the last sentence in paragraph (b) and paragraph (f) to read as follows:

19.501 General.

* * * * *

(b) * * * A joint determination is one that is recommended by the Small Business Administration (SBA) procurement center representative (or, if a procurement center representative is not assigned, see 19.402(a)) and concurred in by the contracting officer.

* * * * *

(f) At the request of an SBA procurement center representative, (or, if a procurement center representative is not assigned, see 19.402(a)) the contracting officer shall make available for review at the contracting office (to the extent of the SBA representative's security clearance) all proposed acquisitions in excess of the micro-purchase threshold that have not been unilaterally set aside for small business.

* * * * *

■ 8. Amend section 19.503 by revising the last sentence in paragraph (d) to read as follows:

19.503 Setting aside a class of acquisitions for small business.

* * * * *

(d) * * * If there are any changes of such a material nature as to result in probable payment of more than a fair market price by the Government or in a change in the capability of small business concerns to satisfy the requirements, the contracting officer may withdraw or modify (see 19.506(a)) the unilateral or joint set-aside by giving written notice to the SBA procurement center representative (or, if a procurement center representative is not assigned, see 19.402(a)) stating the reasons.

■ 9. Amend section 19.505 by revising paragraphs (a), (b), and (c)(1) to read as follows:

19.505 Rejecting Small Business Administration recommendations.

(a) If the contracting officer rejects a recommendation of the SBA procurement center representative (or, if a procurement center representative is not assigned, see 19.402(a)) or breakout procurement center representative, written notice shall be furnished to the appropriate SBA representative within 5 working days of the contracting officer's receipt of the recommendation.

(b) The SBA procurement center representative (or, if a procurement center representative is not assigned, see 19.402(a)) may appeal the contracting officer's rejection to the head of the contracting activity (or designee) within 2 working days after receiving the notice. The head of the contracting activity (or designee) shall render a decision in writing, and provide it to the SBA representative within 7 working days. Pending issuance of a decision to the SBA representative, the contracting officer shall suspend action on the acquisition.

(c) * * *

(1) Within 2 working days, the SBA procurement center representative (or, if a procurement center representative is not assigned, see 19.402(a)) may request the contracting officer to suspend action on the acquisition until the SBA Administrator appeals to the agency head (see paragraph (f) of this section); and

* * * * *

■ 10. Amend section 19.506 by revising the second sentence in paragraph (a) and paragraph (b) to read as follows:

19.506 Withdrawing or modifying small business set-asides.

(a) * * * The contracting officer shall initiate a withdrawal of an individual small business set-aside by giving written notice to the agency small business specialist and the SBA procurement center representative (or, if a procurement center representative is not assigned, see 19.402(a)) stating the reasons. * * *

(b) If the agency small business specialist does not agree to a withdrawal or modification, the case shall be promptly referred to the SBA representative (or, if a procurement center representative is not assigned, see 19.402(a)) for review.

* * * * *

■ 11. Revise section 19.705–3 to read as follows:

19.705–3 Preparing the solicitation.

The contracting officer shall provide the Small Business Administration's (SBA's) procurement center representative (or, if a procurement center representative is not assigned, see 19.402(a)) a reasonable period of time to review any solicitation requiring submission of a subcontracting plan and to submit advisory findings before the solicitation is issued.

■ 12. Amend section 19.705–4 by revising paragraph (d)(7) to read as follows:

19.705–4 Reviewing the subcontracting plan.

* * * * *

(d) * * *

(7) Obtain advice and recommendations from the SBA procurement center representative (or, if a procurement center representative is not assigned, see 19.402(a)) and the agency small business specialist.

■ 13. Amend section 19.705–5 by revising the first sentence in paragraph (a)(3) to read as follows:

19.705–5 Awards involving subcontracting plans.

(a) * * *

(3) Notify the SBA procurement center representative (or, if a procurement center representative is not assigned, see 19.402(a)) of the opportunity to review the proposed contract (including the plan and supporting documentation). * * *

* * * * *

■ 14. Amend section 19.705–6 by revising the introductory text of paragraph (c) and paragraph (d) to read as follows:

19.705–6 Postaward responsibilities of the contracting officer.

* * * * *

(c) Giving to the SBA procurement center representative (or, if a procurement center representative is not assigned, see 19.402(a)) a copy of—

* * * * *

(d) Notifying the SBA procurement center representative (or, if a procurement center representative is not assigned, see 19.402(a)) of the opportunity to review subcontracting plans in connection with contract modifications.

* * * * *

■ 15. Amend section 19.1305 by revising the second sentence of paragraph (e) to read as follows:

19.1305 HUBZone set-aside procedures.

* * * * *

(e) * * * When the SBA intends to appeal a contracting officer's decision to reject a recommendation of the SBA procurement center representative (or, if a procurement center representative is not assigned, see 19.402(a)) to set aside an acquisition for competition restricted to HUBZone small business concerns, the SBA procurement center representative shall notify the contracting officer, in writing, of its intent within 5 working days of receiving the contracting officer's notice of rejection. * * *

■ 16. Amend section 19.1405 by revising the second sentence of paragraph (d) to read as follows:

19.1405 Service-disabled veteran-owned small business set-aside procedures.

* * * * *

(d) * * * When the SBA intends to appeal a contracting officer's decision to reject a recommendation of the SBA procurement center representative (or, if a procurement center representative is not assigned, see 19.402(a)) to set aside an acquisition for competition restricted to service-disabled veteran-owned small business concerns, the SBA procurement center representative shall notify the contracting officer, in writing, of its intent within 5 working days of receiving the contracting officer's notice of rejection. * * *

[FR Doc. 06–5709 Filed 6–27–06; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

[FAC 2005–10; FAR Case 2004–035; Item III; Docket 2006–0020, Sequence 8]

RIN 9000–AK04

Federal Acquisition Regulation; FAR Case 2004–035, Submission of Cost or Pricing Data on Noncommercial Modifications of Commercial Items

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) regarding prohibition on obtaining cost or pricing data to implement Section 818 of Public Law 108–375, the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005.

DATES: *Effective Date:* July 28, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Jeremy Olson, at (202) 501–3221. Please cite FAC 2005–10, FAR case 2004–035. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

Section 818 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 amends 10 U.S.C. 2306a. 10 U.S.C. 2306a provides exceptions to the requirement for submission of cost or pricing data, including an exception for commercial items. Section 818 states that the exception for a commercial item does not apply to noncommercial modifications of a commercial item that are expected to cost, in the aggregate, more than $500,000 or 5 percent of the total price of the contract, whichever is greater. Section 818 applies to offers submitted, and to modifications of contracts or subcontracts made, on or after June 1, 2005.

An interim rule was published in the **Federal Register** on June 8, 2005 (70 FR 33659) to implement the statute.

In response to the interim rule, comments were received from seven respondents. One commenter opposes the rule in its entirety, while the other commenters recommend various revisions to the final rule regarding thresholds, definition of total cost, definition of noncommercial modifications, and waivers.

Public Comments

1. Rule fails to recognize the time-honored recognition prohibiting obtainment of cost or pricing data for commercial or modified commercial items.

Comment: One commenter asserts that this revision invalidates long standing procurement streamlining policies previously promoted by the acquisition community. This commenter states that ''The exemption allowance from submission of cost or pricing data afforded to providers of commercial items should not be abolished on the basis of an arbitrary dollar threshold.'' This commenter further states that the interim rule will pose an unnecessary burden to a large segment of the contracting community, and that concerns may also surface with respect to the safeguard from inadvertent disclosure of the required cost or pricing data. This commenter urges the abolishment of the rule.

Councils' Response: The interim rule implements a statutory requirement to obtain cost or pricing data for noncommercial modifications when the statutory thresholds are met. The Councils do not have the authority to decline implementation of the statute. As to the concern regarding safeguarding data, the Government has a long-standing set of procedures that has effectively protected contractor proprietary cost and pricing data from unauthorized disclosure. These same procedures will apply when cost or pricing data are obtained under the subject rule.

2. Dollar and percentage thresholds.

a. *Comment:* Two commenters assert that the interim rule should be revised to clearly state that the requirements for submitting certified cost or pricing data apply only if both the TINA threshold and the NDAA thresholds have been met. These commenters state that Section 818 created an exception to the commercial item exception, but did not change the threshold for TINA. Thus, noncommercial modifications are subject to TINA if over the NDAA thresholds, but only if the noncommercial modifications also exceed the TINA thresholds.

Councils' Response: The Councils agree with the commenters and have revised the interim rule accordingly.

Section 818 states that the exception for commercial items does not apply to cost or pricing data on noncommercial modifications that exceed the $500,000 or 5 percent threshold (whichever is greater). This means that, when the thresholds are exceeded, the commercial item exception does not apply. It does not mean that cost or pricing data must automatically be submitted. Rather, when the Section 818 thresholds are exceeded, the TINA requirements for submission of cost or pricing data need to be evaluated to determine if the noncommercial modifications are otherwise exempt from CAS (*e.g.,* is the cost less than $550,000 or are any of the other TINA exceptions present).

b. *Comment:* One commenter recommends raising the threshold in the interim rule from $500,000 to $550,000 to match the FAR requirement for obtaining cost or pricing data at FAR 15.403–4(a)(1). A second commenter also recommends changing the $500,000 to $550,000. This second commenter notes that, while Section 818 uses the $500,000 figure to amend 10 U.S.C. 2306a, subsection (a)(7) of 10 U.S.C. 2306a provides for adjustments every five years to the $500,000 threshold. This second commenter further states that the threshold is currently adjusted to $550,000, and to simplify matters and avoid confusion, other FAR sections also use the $550,000. The second commenter recommends a similar approach be taken for this rule.

Councils' Response: The interim rule required cost or pricing data if the total price exceeds the $550,000 threshold for the reasons stated in comment 2a. The Councils note that the adjustments required by subsection (a)(7) do not affect the $500,000 threshold in Section 818. The requirement to adjust the thresholds every five years is based on Section 807 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–375), which requires that the FAR Council periodically adjust statutory acquisition-related dollar thresholds in the FAR for inflation based on the change in the Consumer Price Index. However, acquisition-related thresholds in statutes that took effect after October 1, 2000, are escalated proportionately for the number of months between the effective date of the statute, and October 1, 2005. The statute also requires rounding to the nearest $50,000 for thresholds between $100,000 and $1,000,000. Application of the CPI as of June 1, 2005 (the effective date of Section 818) to October 1, 2005 yields a revised threshold of approximately $510,000, which when rounded results in no change to the Section 818 threshold of $500,000.

c. *Comment:* One commenter was concerned about application of the rule to a noncommercial modification that was between $500,000 and 5 percent of the contract. For example, if the proposal price is $100 million, and the noncommercial modification price is $4.5 million, no certified cost or pricing data would be obtained because the modification does not exceed 5 percent of the contract price. Conversely, if the proposal price was $9 million and the noncommercial modification was $600,000, certified cost or pricing data would be obtained because the modification exceeds 5 percent of the contract price and also exceeds $500,000. This commenter asserts that, from a taxpayer's point of view, this defies common sense. The $4,500,000 modification will most likely yield a bigger cost reduction as a result of obtaining cost or pricing data than would a $600,000 modification. This commenter therefore recommends substituting a specific dollar value of $550,000 in place of the dual thresholds (dollar value and percentage) contained in the interim rule.

Councils' Response: The interim rule required cost or pricing data if the total price exceeds $550,000 for the reasons stated in comment 2a. The interim rule implemented a statutory requirement to obtain cost or pricing data for noncommercial modifications when the statutory thresholds are met. The commenter is suggesting that the Councils revise or eliminate the five percent threshold contained in the legislation. The Councils do not have the authority to revise the statutorily mandated thresholds.

3. *''Minor'' modifications.*

Comment: One commenter recommends adding the word ''minor'' in front of the word modifications in the paragraphs under FAR 15.403–1(c)(3)(ii). This commenter states that, although the paragraph at FAR 15.403–1(c)(3)(ii) defines the applicability of the requirements for minor modifications, the addition of the word ''minor'' in each paragraph would make the applicability more explicit and minimize the possibilities for the paragraphs to be misread in isolation to encompass all modifications.

Councils' Response: The Councils agree that clarification would be helpful. However, since paragraph (3)(ii) is applied to ''minor modifications defined in paragraph (c)(3)(ii) of the definition of a commercial item at 2.101 that do not change the item from a commercial item to a noncommercial item,'' simply adding the word ''minor'' could cause more confusion than clarity. The Councils therefore have revised the language in paragraphs at FAR 15.403–1(c)(3)(ii)(A) thru (C) to add the word ''such,'' to minimize the possibility that the paragraphs could be misread in isolation.

4. Expected to ''cost'' more than $500,000.

Comment: One commenter notes that Section 818 establishes a limitation to the cost or pricing exception when the noncommercial modifications are expected to ''cost'' more than $500,000 or 5 percent of the total ''price'' of the contract. This commenter states that this ''cost'' should refer to the expected price of the modification, i.e., the cost to the Government. This commenter is concerned that the language in the interim rule could be construed as ''cost to the contractor'', thereby requiring that the expected cost be measured by FAR Part 31 to determine whether the noncommercial modification is within the dollar/percentage thresholds of the rule.

Councils' Response: The Councils agree that ''cost'', as used in the interim rule and the statute, does not require contractors to produce an estimated cost computed in accordance with the requirements of FAR part 31 for purposes of applying the thresholds. The term ''cost'' refers to the cost to the Government, *i.e.,* the price of the commercial modifications. The Councils do not believe that the interim rule could reasonably be construed to require computation in accordance with the requirements of FAR part 31. In addition, the Councils do not believe that ''cost to the Government'' would add clarity, since it could be misconstrued to the same extent as the term ''cost.'' However, the Councils recognize that the term ''cost'' should be clarified. The Councils have therefore revised the term ''cost'' to ''price'' in paragraphs at FAR 15.401–1(c)(3)(ii)(B) and (C) of the final rule to provide clarity while also accurately reflecting the intent of the statute.

5. *Definition of ''Noncommercial modification''.*

Comment: Two commenters recommended adding a definition of a ''noncommercial modification'' to distinguish such modifications from commercial modifications. These two commenters assert that a modification that merely alters appearance or is ''of a type'' requested for commercial use is not a ''noncommercial modification''. These two commenters further state that modifications such as additional wiring provisions, additional tubing or piping, thicker materials or doublers to strengthen structural components are

not noncommercial modifications even if they are made for the purpose of accommodating the later installation of military-specific equipment such as missile delivery systems, electronic warfare systems, or aerial refueling systems.

Councils' Response: Modification to the commercial item can be of three types. The first is a modification of such magnitude that the item no longer meets the definition of a commercial item at FAR 2.101. Such modifications are clearly not covered by Section 818. Since the item is no longer a commercial item, the established threshold of $550,000 for submittal of cost or pricing data would apply.

The second is a modification of a type customarily available in the commercial marketplace. These would be commercial modifications, and as such would also not be subject to the requirements of Section 818.

The third type is a modification defined in paragraph (c)(3)(ii) of the definition of a commercial item at FAR 2.101, which states:

> Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. Minor modifications are those modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor.

These minor modifications are the type of modifications the statute was intended to address. The Councils do not see any criteria in the statute or elsewhere that distinguishes minor modifications based on whether such modifications merely alter the appearance or are ''of a type'' requested for commercial use. The Councils see no basis for adding new criteria that would subdivide the FAR definition of minor modifications not available in the commercial marketplace into two new categories. The Councils are concerned that any such subdivision would result in inappropriate application of the statute by exempting certain modifications to which Congress intended the statute to apply.

6. Application of the rule to paragraph (c)(3)(i) of the definition of a commercial item at FAR 2.101.

Comment: Two commenters state that the statute is not intended to apply to the modifications of the type at paragraph (c)(3)(i) of the definition of a commercial item at FAR 2.101, and has recommended adding regulatory language to clarify that this exception remains.

Councils' Response: The interim rule specifically referenced paragraph (c)(3)(ii) of the definition of a commercial item at FAR 2.101. The Councils believe the interim rule clearly does not apply to paragraph (c)(3)(i) of that definition, since there is no reference to that paragraph.

7. ''Total Cost'' vs. ''In the Aggregate''.

Comment: Two commenters note that the statute applies the $500,000 or 5 percent (whichever is greater) threshold ''in the aggregate'', whereas the interim rule refers to ''total cost.'' One commentor states that any final rule should clarify that the ''total cost'' applies on a per-transaction basis, not on a cumulative basis. These two commenters state that, if treated cumulatively, the threshold would have to apply retroactively, which is impracticable and unfair. Also, if treated cumulatively, subsequent modifications of a non-commercial nature might be refused by an entity with an accounting system unable to comply with the requirements for certified cost or pricing data.

Councils' Response: The Councils agree that the thresholds should not require retroactive determinations of the total cost of all noncommercial modifications. The Councils therefore have revised the final rule to specify that the thresholds apply to modifications of a commercial item for a particular contract action. This is consistent with the application of TINA, which is done on an individual contract action basis.

8. Waivers of requirement to submit cost or pricing data.

Comment: Two commenters state that, where the offeror does not have, nor is required to have, an approved Cost Accounting Standards compliant system, the requirement for cost or pricing data should be waived, as provided for at FAR 15.403–1(c)(4).

Councils' Response: FAR 15.403–1(c)(4) permits the head of the contracting activity to waive the requirement for submission of cost or pricing data in exceptional cases.

This is a case-by-case determination, based on the particular facts and circumstances. The Councils do not believe that it is advisable to revise this by providing for a blanket exception. The Councils are concerned that such an exception would fail to take into account the specific facts and circumstances of each case, and could also be perceived as circumventing the Congressional intent of the statute. Furthermore, such an exception cannot be provided for DoD contracts. Exceptional circumstances for DoD contracts are limited by the provisions of Section 817 of the National Defense Authorization Act of 2003. These provisions limit the exceptional circumstances to instances in which the property or services cannot reasonably be obtained without the waiver, the price can be determined fair and reasonable without obtaining the cost or pricing data, and there are demonstrated benefits of granting the waiver.

9. *Does the 5 percent threshold apply to the prime contract or to the subcontract value when a subcontract is at issue?*

Comment. One commenter asked for clarification about how to apply this rule to subcontracts.

Councils' Response: FAR 15.403–4(a)(1) states that *''Unless an exception applies, cost or pricing data are required before accomplishing actions expected to exceed the current threshold . . .''*. The actions include *''. . . (ii) The award of a subcontract at any tier, if the contractor and each higher-tier subcontractor were required to submit cost or pricing data . . .''*. This means that a prime contractor, or a higher tier subcontractor, must apply TINA to their lower-tiered subcontractors. If one of those lower-tiered subcontractors qualifies for an exception to TINA (as outlined in FAR 15.403–1(b) & (c)) then TINA does not apply to that subcontract.

Based on this, if the higher tier contractor is required to submit cost or pricing data, the application of the $500,000 or 5 percent of total contract price threshold applies to the lower tier contractor whenever a commercial item being procured is to be modified, regardless of the tier, and is calculated using the amounts related to that subcontract. For subcontracting purposes, the threshold is based on the subcontract amount and not the prime, or higher tier contract amount.

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 (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA) 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 number of small entities providing commercial items with noncommercial modifications costing more than $500,000 is expected to be very low. Although comments submitted on the interim rule prompted several technical amendments necessary to correct the rule, this expectation remains unchanged.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any 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 15

Government procurement.

Dated: June 20, 2006.

Ralph De Stefano,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 15 as set forth below:

PART 15—CONTRACTING BY NEGOTIATION

■ 1. The authority citation for 48 CFR part 15 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. Section 15.403–1 is amended by revising paragraphs (c)(3)(ii)(A), (B), and (C) to read as follows:

15.403–1 Prohibition on obtaining cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).

* * * * *

(c) * * *

(3) Commercial items. (i) * * *

(ii) * * *

(A) For acquisitions funded by any agency other than DoD, NASA, or Coast Guard, such modifications of a commercial item are exempt from the requirement for submission of cost or pricing data.

(B) For acquisitions funded by DoD, NASA, or Coast Guard, such modifications of a commercial item are exempt from the requirement for submission of cost or pricing data provided the total price of all such modifications under a particular contract action does not exceed the greater of $500,000 or 5 percent of the total price of the contract.

(C) For acquisitions funded by DoD, NASA, or Coast Guard such modifications of a commercial item are not exempt from the requirement for submission of cost or pricing data on the basis of the exemption provided for at FAR 15.403–1(c)(3) if the total price of all such modifications under a particular contract action exceeds the greater of $500,000 or 5 percent of the total price of the contract.

* * * * *

[FR Doc. 06–5710 Filed 6–27–06; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 22, 47, 52, and 53

[FAC 2005–10; FAR Case 2005–033; Item IV; Docket 2006–0020, Sequence 11]

RIN 9000–AK47

Federal Acquisition Regulation; FAR Case 2005–033, Implementation of Wage Determinations OnLine (WDOL)

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

ACTION: Interim rule.

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 Wage Determinations OnLine (WDOL) internet website as the source for Federal contracting agencies to obtain wage determinations issued by the Department of Labor (DOL) for service contracts subject to the McNamara-O'Hara Service Contract Act (SCA) and for construction contracts subject to the Davis-Bacon Act (DBA).

DATES: *Effective Date*: June 28, 2006.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before August 28, 2006 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–10, FAR case 2005–033, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.acquisition.gov/far/ProposedRules/ proposed.htm*. Click on the FAR case number to submit comments.
- E-mail: *farcase.2005–033@gsa.gov*. Include FAC 2005–10, FAR case 2005–033 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 2005–10, FAR case 2005–033, in all correspondence related to this case. All comments received will be posted without change to *http://www.acquisition.gov/far/ProposedRules/comments.htm* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Gloria Sochon, Procurement Analyst, at (202) 219–0311. Please cite FAC 2005–10, FAR case 2005–033. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

In the August 26, 2005 **Federal Register** (70 FR 50888), the DOL issued a final rule to amend Title 29 CFR parts 1 and 4 to allow for full implementation of the Wage Determinations OnLine (WDOL) Internet Website (*http://www.wdol.gov*) as the source for Federal contracting agencies to use when obtaining wage determinations issued by the DOL for service contracts subject to the SCA and for construction contracts subject to the DBA. The Councils are not seeking comments on the DOL rule, which has already been issued in final, but are requesting comments as to whether the FAR policy in this rule implementing the DOL rule is clear. This interim rule amends FAR Part 22 to direct Federal contracting agencies to obtain wage determinations issued by the DOL for contracts subject to the SCA and DBA from the WDOL website.

This interim rule incorporates new geographical jurisdictions for DOL's Wage and Hour Regional Offices and eliminates FAR references to the Government Printing Office (GPO) publication of general wage determinations. The Contracting Officer (CO) will be able to access the WDOL website (*http://www.wdol.gov*) to find the applicable wage determination for a contract action subject to the SCA or DBA. If the WDOL database does not contain the applicable wage determination for a SCA contract action, the CO must use the e98 process to request a wage determination from DOL.

The e98 means a DOL approved electronic application, (also available at *http://www.wdol.gov*), whereby a CO submits pertinent information to the DOL and requests a wage determination directly from the Wage and Hour Division. If the WDOL database does not contain the applicable wage determination for a DBA contract action, the CO must request a wage determination by submitting a SF–308 to the Wage and Hour Division. The DOL made an administrative determination that providing Federal contracting agencies with an electronic submission option for the infrequent instances in which an agency files a SF–308 does not justify the considerable expense that developing such a system would entail. To substantiate its decision, the DOL noted that in FY 2004, it processed less than 100 SF–308's.

This FAR rule eliminates the requirement for the CO to submit a copy of collective bargaining agreements (CBAs) to the DOL for the purpose of obtaining a wage determination under Section 4(c) of the SCA, unless directed by the DOL to do so. The CO instead, is required to prepare a wage determination using the WDOL process, and to incorporate the complete CBA and all its attachments into the solicitation or contract action. The wage determination prepared by the CO is a one page document that references the CBA by the name of the incumbent contractor and the name of the union, and stipulates that the economic terms of the CBA will apply as the SCA minimum wages and monetary benefits for the contract resulting from the solicitation pursuant to DOL Regulation 29 CFR subpart 4.1b.

This interim rule also deletes the clause at 52.222–47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreement (CBA), because with the WDOL process it is no longer necessary. In addition, FAR clause 52.222–49, Service Contract Act-Place of Performance Unknown, is revised to make conforming changes to FAR references; and Standard Forms 98, 98a and 99 are deleted from FAR Part 53 in their entirety.

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

B. Regulatory Flexibility Act

This 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 involves internal Government processes between the DOL and Federal contracting.

During the design phase of WDOL.gov, the WDOL Task Force coordinated with a number of labor organizations, contractors, the Contract Services Association and various Federal contracting agencies to address and satisfy any concerns about the effect of the rule on all interested parties including small entities.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR parts 22, 47, 52, and 53 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 2005–10, FAR case 2005–033), 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 rule allows agencies to use the WDOL website as the source for obtaining wage determinations issued by DOL for service contracts subject to the SCA and DBA. Thus, the rule will streamline and improve the internal operating procedures of the Government. The rule will not have a significant cost or administrative impact on contractors or offerors. 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 22, 47, 52, and 53

Government procurement.

Dated: June 20, 2006.

Ralph De Stefano,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 4, 22, 47, 52, and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 4, 22, 47, 52, and 53 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 4—ADMINISTRATIVE MATTERS

■ 2. Amend section 4.1202 by revising paragraph (q) to read as follows:

4.1202 Solicitation provision and contract clause.

* * * * *

(q) 52.222–48, Exemption from Application of Service Contract Act Provisions—Contractor Certification.

* * * * *

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 3. Amend section 22.001 by revising the section heading, and by adding, in alphabetical order, the definitions ''e98'' and ''Wage Determinations OnLine (WDOL)'' to read as follows:

22.001 Definitions.

* * * * *

e98 means the Department of Labor's approved electronic application (*http://www.wdol.gov*), whereby a contracting officer submits pertinent information to the Department of Labor and requests a Service Contract Act wage determination directly from the Wage and Hour Division.

Wage Determinations OnLine (WDOL) means the Government Internet website for both Davis-Bacon Act and Service Contract Act wage determinations available at *http://www.wdol.gov*.

■ 4. Amend section 22.102–2 by revising paragraph (c) to read as follows:

22.102–2 Administration.

* * * * *

(c) The U.S. Department of Labor is responsible for the administration and enforcement of the Occupational Safety and Health Act. The Department of Labor's Wage and Hour Division is responsible for administration and enforcement of numerous wage and hour statutes including Davis-Bacon and Related Acts, McNamara-O'Hara Service Contract Act, Walsh-Healey Public Contracts Act, Copeland Act, and Contract Work Hours and Safety Standards Act. Contracting officers should contact the Wage and Hour Division's regional offices when

required by the subparts relating to these statutes unless otherwise specified. Addresses for these offices may be found at 29 CFR 1, Appendix B.

■ 5. Amend section 22.404–1 by revising paragraph (a) to read as follows:

22.404–1 Types of wage determinations.

(a) *General wage determinations*. (1) A general wage determination contains prevailing wage rates for the types of construction designated in the determination, and is used in contracts performed within a specified geographical area. General wage determinations contain no expiration date and remain valid until modified, superseded, or canceled by the Department of Labor. Once incorporated in a contract, a general wage determination normally remains effective for the life of the contract, unless the contracting officer exercises an option to extend the term of the contract (see 22.404–12). These determinations shall be used whenever possible. They are issued at the discretion of the Department of Labor either upon receipt of an agency request or on the Department of Labor's own initiative.

(2) General wage determinations are published on the WDOL website. General wage determinations are effective on the publication date of the wage determination or upon receipt of the wage determination by the contracting agency, whichever occurs first. ''Publication'' within the meaning of this section shall occur on the first date the wage determination is published on the WDOL. Archived Davis-Bacon Act general wage determinations that are no longer current may be accessed in the ''Archived DB WD'' database on WDOL for information purposes only. Contracting officers may not use an archived wage determination in a contract action without obtaining prior approval of the Department of Labor. To obtain prior approval, contact the Department of Labor, Wage and Hour Division, using *http://www.dol.gov/esa*, or contact the procurement agency labor advisor listed on *http://www.wdol.gov*.

* * * * *

■ 6. Amend section 22.404–3 by revising paragraph (a); and the paragraph heading and the first sentence of the introductory text of paragraph (b) to read as follows:

22.404–3 Procedures for requesting wage determinations.

(a) *General wage determinations*. If there is a general wage determination on the WDOL website applicable to the project, the agency may use it without notifying the Department of Labor. When necessary, a request for a general wage determination may be made by submitting Standard Form (SF) 308, Request for Determination and Response to Request (see 53.301–308), to the Administrator, Wage and Hour Division, Attention: Branch of Construction Contract Wage Determinations, 200 Constitution Avenue, NW, Washington, DC 20210.

(b) *Project wage determinations*. If a general wage determination is not available on WDOL, a contracting agency shall submit requests for project wage determinations on SF 308 to the Department of Labor. * * *

* * * * *

■ 7. Amend section 22.404–6 by—

■ a. Revising paragraph (a)(3);

■ b. Revising paragraph (b)(1)(i), the first sentence of (b)(1)(ii), (b)(2), and the first and second sentences of (b)(6);

■ c. Revising paragraph (c)(1); and

■ d. Revising paragraph (d)(1)(ii).

■ The revised text reads as follows:

22.404–6 Modifications of wage determinations.

(a) *General*. * * *

(3) The need for inclusion of the modification of a general wage determination for the primary site of the work in a solicitation is determined by the date the modified wage determination is published on the WDOL, or by the date the agency receives actual written notice of the modification from the Department of Labor, whichever occurs first. (Note the distinction between receipt by the agency (modification is effective) and receipt by the contracting officer, which may occur later.) During the course of the solicitation, the contracting officer shall monitor the WDOL website to determine whether the applicable wage determination has been revised. Revisions published on the WDOL website or otherwise communicated to the contracting officer within the timeframes prescribed at 22.404–6(b) and (c) are applicable and must be included in the resulting contract. Monitoring can be accomplished by use of the WDOL website's ''Alert Service''.

(b) * * *

(1) * * *

(i) It is received by the contracting agency, or is published on the WDOL, 10 or more calendar days before the date of bid opening; or

(ii) It is received by the contracting agency, or is published on the WDOL, less than 10 calendar days before the date of bid opening, unless the contracting officer finds that there is not reasonable time available before bid opening to notify the prospective bidders. * * *

(2) All written actions modifying wage determinations received by the contracting agency after bid opening, or modifications to general wage determinations published on the WDOL after bid opening, shall not be effective and shall not be included in the solicitation (but see paragraph (b)(6) of this subsection).

* * * * *

(6) If an award is not made within 90 days after bid opening, any modification to a general wage determination which is published on the WDOL before award, shall be effective for any resultant contract unless an extension of the 90–day period is obtained from the Administrator, Wage and Hour Division. An agency head may request such an extension from the Administrator. * * *

(c) * * *

(1) All written actions modifying wage determinations received by the contracting agency before contract award, or modifications to general wage determinations published on the WDOL before award, shall be effective.

* * * * *

(d) * * *

(1) * * *

(ii) The Department of Labor publishes the modification to a general wage determination on the WDOL before exercise of the option.

* * * * *

22.608 [Amended]

■ 8. Amend section 22.608 by removing from the parenthetical in paragraph (b) ''22.609'' and adding ''29 CFR part 1, Appendix B'' in its place.

22.609 [Removed and Reserved]

■ 9. Remove and reserve section 22.609.

22.1001 [Amended]

■ 10. Amend section 22.1001 by removing the definition ''Notice''.

■ 11. Amend 22.1002–3 by revising paragraph (b) to read as follows:

22.1002–3 Wage determinations based on collective bargaining agreements.

* * * * *

(b) Paragraphs in this Subpart 22.10 which deal with this statutory requirement and the Department of Labor's implementing regulations are 22.1010, concerning notification to contractors and bargaining representatives of procurement dates; 22.1012–2, explaining when a collective bargaining agreement will not apply due to late receipt by the contracting officer; and 22.1013 and 22.1021, explaining when the application of a collective bargaining agreement can be challenged

due to a variance with prevailing rates or lack of arm's length bargaining.

22.1003–4 [Amended]

■ 12. Amend section 22.1003–4 at paragraph (b)(4)(ii)(D) by removing ''22.1006(e)'' and adding ''22.1006(d)'' in its place.

22.1004 [Amended]

■ 13. Amend section 22.1004 at paragraph (b) by removing ''29 CFR part 4, subpart B'' and inserting ''29 CFR part 4, subparts A and B'' in its place.

22.1006 [Amended]

■ 14. Amend section 22.1006 by removing and reserving paragraph (d); and in paragraph (e)(1) by adding ''—Contractor Certification'' following ''Provisions''.

■ 15. Amend section 22.1007 by revising the section heading and the introductory paragraph; and by removing the parenthetical from the end of paragraph (c)(2). The revised text reads as follows:

22.1007 Requirement to obtain wage determinations.

The contracting officer shall obtain wage determinations for the following service contracts:

* * * * *

■ 16. Revise sections 22.1008 and 22.1008–1 to read as follows:

22.1008 Procedures for obtaining wage determinations.

22.1008–1 Obtaining wage determinations.

(a) Contracting officers may obtain most prevailing wage determinations using the WDOL website. Contracting officers may also use the Department of Labor's e98 electronic process, located on the WDOL website, to request a wage determination directly from the Department of Labor. If the WDOL database does not contain the applicable prevailing wage determination for a contract action, the contracting officer must use the e98 process to request a wage determination from the Department of Labor.

(b) In using the e98 process to obtain prevailing wage determinations, contracting officers shall provide as complete and accurate information on the e98 as possible. Contracting officers shall ensure that the email address submitted on an e98 request is accurate.

(c) The contracting officer must anticipate the amount of time required to gather the information necessary to obtain a wage determination, including sufficient time, if necessary, to contact the Department of Labor to request wage determinations that are not available through use of the WDOL.

(d) Although the WDOL website provides assistance to the contracting agency to select the correct wage determination, the contracting agency remains responsible for the wage determination selected. If the contracting agency has used the e98 process, the Department of Labor will respond to the contracting agency based on the information provided on the e98. The contracting agency may rely upon the Department of Labor response as the correct wage determination for the contract.

(e) To obtain the applicable wage determination for each contract action, the contracting officer shall determine the following information concerning the service employees expected to be employed by the contractor and any subcontractors in performing the contract:

(1) Determine the classes of service employees to be utilized in performance of the contract using the Wage and Hour Division's *Service Contract Act Directory of Occupations* (Directory). The Directory can be found on WDOL's Library Page, and is for sale by the Superintendent of Documents, U.S. Government Printing Office.

(2) Determine the locality where the services will be performed (see 22.1009).

(3) Determine whether Section 4(c) of the Act applies (see 22.1008–2, 22.1010 and 22.1012–2).

(4) Determine the wage rate that would be paid each class if employed by the agency and subject to the wage provisions of 5 U.S.C. 5341 and/or 5332 (see 22.1016).

(f) If the contracting officer has questions regarding the procedures for obtaining a wage determination, or questions regarding the selection of a wage determination, the contracting officer should request assistance from the agency labor advisor.

22.1008–2 [Removed]

22.1008–3 [Redesignated as 22.1008–2]

■ 17a. Remove section 22.1008–2 and redesignate 22.1008–3 as 22.1008–2.

■ 17b. In addition to the amendment above, amend the newly designated section 22.1008–2 by—

■ a. Revising the second sentence of paragraph (a);

■ b. Amending paragraphs (c)(2)(i)(A) and (B) by removing ''22.1012–3'' and adding ''22.1012–2'' in its place;

■ c. Redesignating paragraph (d) as (d)(1) and removing the last sentence of the paragraph; and adding paragraphs (d)(2) and (d)(3);

■ d. Redesignating paragraphs (e)(1) and (2) as (e)(i) and (e)(ii), respectively, and paragraph (e) as (e)(1); and adding paragraph (e)(2); and

■ e. Revising the introductory text of paragraph (g).

■ The revised text reads as follows:

22.1008–2 Section 4(c) successorship with incumbent contractor collective bargaining agreement.

(a) * * * The contracting officer shall determine whether there is a predecessor contract covered by the Act and, if so, whether the incumbent prime contractor or its subcontractors and any of their employees have a collective bargaining agreement.

* * * * *

(d)(1) * * *

(2) If the contracting officer has timely received the collective bargaining agreement, the contracting officer may use the WDOL website to prepare a wage determination referencing the agreement and incorporate that wage determination, attached to a complete copy of the collective bargaining agreement, into the successor contract action. In using the WDOL process, it is not necessary to submit a copy of the collective bargaining agreement to the Department of Labor unless requested to do so.

(3) The contracting officer may also use the e98 process on WDOL to request that the Department of Labor prepare the cover wage determination. The Department of Labor's response to the e98 may include a request for the contracting officer to submit a complete copy of the collective bargaining agreement. Any questions regarding the applicability of the Act to a collective bargaining agreement should be directed to the agency labor advisor.

(e)(1) * * *

(2) If the contracting officer's review (see 22.1013) indicates that monetary provisions of the collective bargaining agreement may be substantially at variance or may not have been reached as a result of arm's length bargaining, the contracting officer shall immediately contact the agency labor advisor to consider if further action is warranted.

* * * * *

(g) If the collective bargaining agreement does not apply to all service employees under the contract, the contracting officer shall access WDOL to obtain the prevailing wage determination for those service employee classifications that are not covered by the collective bargaining agreement. The contracting officer shall separately list in the solicitation and contract the service employee classifications—

* * * * *

22.1008–4 through 22.1008–7 [Removed]

■ 18. Remove sections 22.1008–4 through 22.1008–7.

■ 19. Revise sections 22.1009–3 and 22.1009–4 to read as follows:

22.1009–3 All possible places of performance identified.

(a) If the contracting officer can identify all the possible places or areas of performance (even though the actual place of performance will not be known until the successful offeror is chosen), the contracting officer shall obtain a wage determination for each locality where services may be performed (see 22.1008).

(b) If the contracting officer subsequently learns of any potential offerors in previously unidentified places before the closing date for submission of offers, the contracting officer shall—

(1) Obtain wage determinations for the additional places of performance and amend the solicitation to include all wage determinations. If necessary, the contracting officer shall extend the time for submission of final offers; and

(2) Follow the procedures in 22.1009–4.

22.1009–4 All possible places of performance not identified.

If the contracting officer believes that there may be offerors interested in performing in unidentified places or areas, the contracting officer may use the following procedures:

(a) Include the following information in the synopsis and solicitation:

(1) That the place of performance is unknown.

(2) The possible places or areas of performance that the contracting officer has already identified.

(3) That the contracting officer will obtain wage determinations for additional possible places of performance if asked to do so in writing.

(4) The time and date by which offerors must notify the contracting officer of additional places of performance.

(b) Include the information required by paragraphs (a)(2) and (a)(4) of this section in the clause at 52.222–49, Service Contract Act-Place of Performance Unknown (see 22.1006(f)). The closing date for receipt of offerors' requests for wage determinations for additional possible places of performance should allow reasonable time for potential offerors to review the solicitation and determine their interest in competing. Generally, 10 to 15 days from the date of issuance of the solicitation may be considered a reasonable period of time.

(c) The procedures in 14.304 shall apply to late receipt of offerors' requests for wage determinations for additional places of performance. However, late receipt of an offeror's request for a wage determination for additional places of performance does not preclude the offeror's competing for the proposed acquisition.

(d) If the contracting officer receives any timely requests for wage determinations for additional places of performance the contracting officer shall—

(1) Obtain wage determinations for the additional places of performance; and

(2) Amend the solicitation to include all wage determinations and, if necessary, extend the time for submission of final offers.

(e) If the successful offeror did not make a timely request for a wage determination and will perform in a place of performance for which the contracting officer therefore did not request a wage determination, the contracting officer shall—

(1) Award the contract;

(2) Obtain a wage determination; and

(3) Incorporate the wage determination in the contract, retroactive to the date of contract award and with no adjustment in contract price, pursuant to the clause at 52.222–49, Service Contract—Place of Performance Unknown.

22.1010 [Amended]

■ 20. Amend section 22.1010 by removing from paragraph (b) ''22.1012–3(a)'' and adding ''22.1012–2(a)'' in its place.

22.1011 through 22.1011–2 [Removed and Reserved]

■ 21. Remove and reserve section 22.1011, which consists of 22.1011–1 and 22.1011–2.

■ 22. Revise sections 22.1012 and 22.1012–1 to read as follows:

22.1012 Applicability of revisions to wage determinations.

22.1012–1 Prevailing wage determinations.

(a)(1) The Wage and Hour Administrator may issue revisions to prevailing wage determinations periodically. The need for inclusion of a revised prevailing wage determination in a solicitation, contract or contract modification (see 22.1007) is determined by the date of receipt of the revised prevailing wage determination by the contracting agency. (Note the distinction between receipt by the agency and receipt by the contracting officer which may occur later.)

(i) For purposes of using WDOL, the time of receipt by the contracting agency shall be the first day of publication of the revised prevailing wage determination on the website.

(ii) For purposes of using the e98 process, the time of receipt by the contracting agency shall be the date the agency receives actual notice of a new or revised prevailing wage determination from the Department of Labor as an e98 response.

(2) In selecting a prevailing wage determination from the WDOL website for use in a solicitation or other contract action, the contracting officer shall monitor the WDOL website to determine whether the applicable wage determination has been revised. Revisions published on the WDOL website or otherwise communicated to the contracting officer within the timeframes prescribed at 22.1012–1(b) and (c) are effective and must be included in the resulting contract. Monitoring can be accomplished by use of the WDOL website's ''Alert Service''.

(b) The following shall apply when contracting by sealed bidding: a revised prevailing wage determination shall not be effective if it is received by the contracting agency less than 10 days before the opening of bids, and the contracting officer finds that there is not reasonable time to incorporate the revision in the solicitation.

(c) For contractual actions other than sealed bidding, a revised prevailing wage determination received by the contracting agency after award of a new contract or a modification as specified in 22.1007(b) shall not be effective provided that the start of performance is within 30 days of the award or the specified modification. If the contract does not specify a start of performance date which is within 30 days of the award or the specified modification, and if contract performance does not commence within 30 days of the award or the specified modification, any revision received by the contracting agency not less than 10 days before commencement of the work shall be effective.

(d) If the contracting officer has submitted an e98 to the Department of Labor requesting a prevailing wage determination and has not received a response within 10 days, the contracting officer shall contact the Wage and Hour Division by telephone to determine when the wage determination can be expected. (The telephone number is provided on the e98 website.)

22.1012–2 [Removed]

22.1012–3 [Redesignated as 22.1012–2]

22.1012–4 and 22.1012–5 [Removed]

■ 23a. Remove sections 22.1012–2, 22.1012–4 and 22.1012–5; and redesignate 22.1012–3 as 22.1012–2.

■ 23b. In addition to the amendment above, revise the redesignated section 22.1012–2 to read as follows:

22.1012–2 Wage determinations based on collective bargaining agreements.

(a) In sealed bidding, a new or changed collective bargaining agreement shall not be effective under section 4(c) of the Act if the contracting agency has received notice of the terms of the new or changed collective bargaining agreement less than 10 days before bid opening and the contracting officer determines that there is not reasonable time to incorporate the new or changed terms of the collective bargaining agreement in the solicitation.

(b) For contractual actions other than sealed bidding, a new or changed collective bargaining agreement shall not be effective under section 4(c) of the Act if notice of the terms of the new or changed collective bargaining agreement is received by the contracting agency after award of a successor contract or a modification as specified in 22.1007(b), provided that the contract start of performance is within 30 days of the award of the contract or of the specified modification. If the contract does not specify a start of performance date which is within 30 days of the award of the contract or of the specified modification, or if contract performance does not commence within 30 days of the award of the contract or of the specified modification, any notice of the terms of a new or changed collective bargaining agreement received by the agency not less than 10 days before commencement of the work shall be effective for purposes of the successor contract under section 4(c) of the Act.

(c) The limitations in paragraphs (a) and (b) of this subsection shall apply only if timely notification required in 22.1010 has been given.

(d) If the contracting officer has submitted an e98 to Department of Labor requesting a wage determination based on a collective bargaining agreement and has not received a response from the Department of Labor within 10 days, the contracting officer shall contact the Wage and Hour Division by telephone to determine when the wage determination can be expected. (The telephone number is provided on the e98 website.) If the Department of Labor is unable to provide the wage determination by the latest date needed to maintain the acquisition schedule, the contracting officer shall incorporate the collective bargaining agreement itself in a solicitation or other contract action (*e.g.*, exercise of option) and include a wage determination referencing that collective bargaining agreement created by use of the WDOL website (see 22.1008–2(d)(2)).

■ 24. Revise section 22.1014 to read as follows:

22.1014 Delay over 60 days in bid opening or commencement of work.

If a wage determination was obtained through the e98 process, and bid opening, or commencement of work under a negotiated contract has been delayed, for whatever reason, more than 60 days from the date indicated on the previously submitted e98, the contracting officer shall submit a new e98. Any revision of a wage determination received by the contracting agency as a result of that communication shall supersede the earlier response as the wage determination applicable to the particular acquisition subject to the time frames in 22.1012–1(b) and (c).

22.1017 [Removed and Reserved]

■ 25. Remove and reserve section 22.1017.

PART 47—TRANSPORTATION

■ 26. Amend section 47.202 by revising paragraph (a) to read as follows:

47.202 Presolicitation planning.

* * * * *

(a) The Service Contract Act of 1965 (SCA) requirement to obtain a wage determination by accessing the Wage Determination OnLine website (*http://www.wdol.gov*) using the WDOL process or by submitting a request directly to the Department of Labor on this website using the e98 process before the issuance of an invitation for bid, request for proposal, or commencement of negotiations for any contract exceeding $2,500 that may be subject to the SCA (see Subpart 22.10);

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.212–5 [Amended]

■ 27. Amend section 52.212–5 by revising the date of the clause to read ''(JUN 2006)''; and by removing paragraph (c)(5).

52.222–47 [Removed and Reserved]

■ 28. Remove and reserve section 52.222–47.

■ 29. Amend section 52.222–48 by revising the section and clause headings as set forth below.

52.222–48 Exemption from Application of Service Contract Act Provisions—Contractor Certification.

* * * * *

EXEMPTION FROM APPLICATION OF SERVICE CONTRACT ACT PROVISIONS—CONTRACTOR CERTIFICATION (JUN 2006)

* * * * *

52.222–49 [Amended]

■ 30. Amend section 52.222–49 by removing from the introductory text ''and 22.1009–4(c)''.

PART 53—FORMS

53.222 [Amended]

■ 31. Amend section 53.222 by removing ''99,'' from the section heading; and removing and reserving paragraph (b).

53.301 [Amended]

■ 32. Remove sections 53.301–98, 53.301–98a, and 53.301–99.

[REMOVE SF'S 98, 98A AND 99]

[FR Doc. 06–5708 Filed 6–27–06; 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 2005–10; FAR Case 2006–006; Item V; Docket 2006–0020, Sequence 10]

RIN 9000–AK49

Federal Acquisition Regulation; FAR Case 2006–006, Free Trade Agreements—El Salvador, Honduras, and Nicaragua

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 Dominican Republic-Central America-United States Free Trade Agreement with respect to El Salvador, Honduras, and Nicaragua.

DATES: *Effective Date:* June 28, 2006.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before August 28, 2006 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–10, FAR case 2006–006 by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.acquisition.gov/far/ProposedRules/comments.htm*. Click on the FAR case number to submit comments.
- E-mail: *farcase.2006–006@gsa.gov*. Include FAC 2005–10, FAR case 2006–006, 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 2005–10, FAR case 2006–006, in all correspondence related to this case. All comments received will be posted without change to *http://www.acquisition.gov/far/ProposedRules/comments.htm*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT For clarification of content, contact Ms. Gloria Sochon, Procurement Analyst, at (202) 219–0311. Please cite FAC 2005–10, FAR case 2006–006. 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 52.212–3, Offeror Representations and Certifications—Commercial Items, 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, 52.225–3, Buy American Act—Free Trade Agreements—Israeli Trade Act, 52.225–4, Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, 52.225–5, Trade Agreements, 52.225–11, Buy American Act—Construction Materials under Trade Agreements, and 52.225–12, Notice of Buy American Act Requirement—Construction Materials under Trade Agreements, to implement the Dominican Republic—Central America—United States Free Trade Agreement (CAFTA-DR) with respect to El Salvador, Honduras, and Nicaragua. Congress approved the CAFTA-DR in the Dominican Republic—Central America—United States Free Trade Agreement Implementation Act (Public Law 109–53). Other signatory countries to the CAFTA-DR are Costa Rica, the Dominican Republic, and Guatemala. These regulations will be amended when the CAFTA-DR takes effect for these other countries. The CAFTA-DR waives the applicability of the Buy American Act for some foreign supplies and construction materials from El Salvador, Honduras, and Nicaragua and specifies procurement procedures designed to ensure fairness in the acquisition of supplies and services.

The excluded services for the CAFTA-DR are the same as for the Chile FTA and NAFTA. For supply and service contracts, the CAFTA-DR has the same threshold as the other FTAs ($64,786), except the Morocco FTA and the NAFTA with respect to supply contracts involving Canada. For construction contracts, CAFTA-DR has the same threshold as the Chile FTA, Morocco FTA, Singapore FTA, and the WTO GPA ($7,407,000), lower than the NAFTA threshold of $8,422,165.

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 goods and services of El Salvador, Honduras, and Nicaragua, 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 should cite 5 U.S.C 601, *et seq.* (FAC 2005–10, FAR case 2006–006), 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 CAFTA-DR took effect with respect to El Salvador on March 1, 2006, and took effect with respect to Honduras and Nicaragua on April 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: June 20, 2006.

Ralph De Stefano,

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

■ 2. Amend section 25.003 by—

■ a. Revising the definition ''Caribbean Basin country''

■ b. Revising paragraph (2) of the definition ''Designated country'' and removing from paragraph (4) of the definition ''El Salvador,'', ''Honduras,'', and ''Nicaragua,'' and

■ c. Revising the definition ''Free Trade Agreement country''.

■ The revised text reads as follows:

25.003 Definitions.

* * * * *

Caribbean Basin country means any of the following countries: Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Dominican Republic, Grenada, Guatemala, Guyana, Haiti,

Jamaica, Montserrat, Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago.

* * * * *

Designated country * * *

(1) * * *

(2) A Free Trade Agreement country (Australia, Canada, Chile, El Salvador, Honduras, Mexico, Morocco, Nicaragua, or Singapore);

* * * * *

Free Trade Agreement country means Australia, Canada, Chile, El Salvador, Honduras, Mexico, Morocco, Nicaragua, or Singapore.

* * * * *

■ 3. Amend section 25.400 by removing from the end of paragraph (a)(2)(iv) the word ''and'' adding at the end of paragraph (a)(2)(v) the word ''and''; and adding a new paragraph (a)(2)(vi) to read as follows:

25.400 Scope of Subpart.

(a) * * *

(2) * * *

(i) * * *

(vi) CAFTA-DR (The Dominican Republic-Central America-United States Free Trade Agreement, as approved by Congress in the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (Pub. L. 109–53);

* * * * *

25.401 [Amended]

■ 4. Amend section 25.401 in paragraph (b), in the table heading, by removing from the third column ''NAFTA and Chile FTA'' and adding ''NAFTA, CAFTA-DR, and Chile FTA'' in its place.

25.402 [Amended]

■ 5. Amend section 25.402 in paragraph (b), in the table, by adding after ''Australia FTA'' the entry ''CAFTA-DR (El Salvador, Honduras, and Nicaragua'') and in its corresponding line items ''64,786'', ''64,786'', and ''7,407,000'', respectively.

■ 6. Amend section 25.405 by adding a new sentence to the end of the paragraph to read as follows:

25.405 Caribbean Basin Trade Initiative.

* * * In accordance with Section 201 (a)(3) of the Dominican Republic—Central America—United States Free Trade Implementation Act (Pub. L. 109–53), when the CAFTA-DR agreement enters into force with respect to a country, that country is no longer designated as a beneficiary country for purposes of the Caribbean Basin Economic Recovery Act, and is therefore no longer included in the definition of ''Caribbean Basin country'' for purposes of the Caribbean Basin Trade Initiative.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 7. Amend section 52.212–3 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraph (g)(1)(i) ''and ''United States'' and adding '''Free Trade Agreement country,'' and ''United States'''' in its place;

■ c. Revising paragraph (g)(1)(ii); and

■ d. Revising the paragraph headings for (g)(2) and (g)(3) by removing the parenthetical ''(JAN 2004)''.

■ The revised text reads as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS (JUN 2006)

* * * * *

(g)(1) * * *

(i) * * *

(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products (other than Moroccan end products) or Israeli end products as defined in the clause of this solicitation entitled ''Buy American Act—Free Trade Agreements—Israeli Trade Act'':

Free Trade Agreement Country End Products (Other than Moroccan End Products) or Israeli End Products:

LINE ITEM NO.	COUNTRY OF ORIGIN
______	______
______	______
______	______

[List as necessary]

* * * * *

52.212–5 [Amended]

■ 8. Amend section 52.212–5 by—

■ a. Revising the date of the clause to read ''(JUN 2006)'';

■ b. Removing from paragraph (b)(24)(i) ''(APR 2006)'' and adding ''(JUN 2006)'' in its place and adding to the end of the paragraph '', and 109–53''; and

■ c. Removing from paragraph (b)(25) ''(APR 2006)'' and adding ''(JUN 2006)'' in its place.

■ 9. Amend section 52.225–3 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraph (a) the definition ''End product of Australia, Canada, Chile, Mexico, or Singapore''; and adding, in alphabetical order, the definitions ''Free Trade Agreement country'', ''Free Trade Agreement country end product'', and ''Moroccan end product''; and

■ c. Revising the last sentence in paragraph (c).

■ The revised and added text reads as follows:

52.225–3 Buy American Act—Free Trade Agreements—Israeli Trade Act.

* * * * *

BUY AMERICAN ACT—FREE TRADE AGREEMENTS—ISRAELI TRADE ACT (JUN 2006)

* * * * *

Definitions. * * *

* * * * *

Free Trade Agreement country means Australia, Canada, Chile, El Salvador, Honduras, Mexico, Morocco, Nicaragua, or Singapore.

Free Trade Agreement country end product means an article that—

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

* * * * *

Moroccan end product means an article that—

(1) Is wholly the growth, product, or manufacture of Morocco; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Morocco into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but

for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

* * * * *

(c) * * * If the Contractor specified in its offer that the Contractor would supply a Free Trade Agreement country end product (other than a Moroccan end product) or an Israeli end product, then the Contractor shall supply a Free Trade Agreement country end product (other than a Moroccan end product), an Israeli end product or, at the Contractor's option, a domestic end product.

* * * * *

■ 10. Amend section 52.225–4 by—
■ a. Revising the date of the clause;
■ b. Revising the second sentence of paragraph (a); and
■ c. Revising paragraph (b).
■ The revised text reads as follows:

52.225–4 Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate.

* * * * *

BUY AMERICAN ACT—FREE TRADE AGREEMENTS—ISRAELI TRADE ACT CERTIFICATE (JUN 2006)

(a) * * * The terms ''component,'' ''domestic end product,'' ''end product,'' ''foreign end product,'' ''Free Trade Agreement country,'' ''Free Trade Agreement country end product,'' ''Israeli end product,'' ''Moroccan end product,'' and ''United States'' are defined in the clause of this solicitation entitled ''Buy American Act—Free Trade Agreements—Israeli Trade Act.''

(b) The offeror certifies that the following supplies are Free Trade Agreement country end products (other than Moroccan end products) or Israeli end products as defined in the clause of this solicitation entitled ''Buy American Act—Free Trade Agreements—Israeli Trade Act'':

Free Trade Agreement Country End Products (Other than Moroccan End Products) or Israeli End Products:

LINE ITEM NO.	COUNTRY OF ORIGIN
__________	__________
__________	__________
__________	__________

[List as necessary]

* * * * *

■ 11. Amend section 52.225–5 by—
■ a. Revising the date of the clause; and
■ b. In paragraph (a), in the definition ''Designated country'', revising paragraph (2), and removing from paragraph (4) ''El Salvador'', ''Honduras,'', and ''Nicaragua,''.
■ The revised text reads as follows:

52.225–5 Trade Agreements.

* * * * *

TRADE AGREEMENTS (JUN 2006)

* * * * *

(a) *Definitions.* * * *
Designated country * * *
(1) * * *
(2) Free Trade Agreement country (Australia, Canada, Chile, El Salvador, Honduras, Mexico, Morocco, Nicaragua, or Singapore).

* * * * *

■ 12. Amend section 52.225–11 by—
■ a. Revising the date of the clause;
■ b. In paragraph (a), in the definition ''Designated country'', revising paragraph (2), and removing from paragraph (4) ''El Salvador,'' ''Honduras,'' and Nicaragua,''; and
■ c. Revising Alternate I.
■ 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 (JUN 2006)

* * * * *

(a) *Definitions.* * * *
Designated country * * *
(2) Free Trade Agreement country (Australia, Canada, Chile, El Salvador, Honduras, Mexico, Morocco, Nicaragua, or Singapore);

* * * * *

Alternate I ''(JUN 2006)''. As prescribed in 25.1102(c)(3), add the following definition of ''Mexican construction material'' to paragraph (a) of the basic clause, and substitute the following paragraphs (b)(1) and (b)(2) for paragraphs (b)(1) and (b)(2) of the basic clause:

Mexican construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of Mexico; 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 Mexico into a new and different construction material distinct from the materials from which it was transformed.

(b) *Construction materials.* (1) This clause implements the Buy American Act (41 U.S.C. 10a - 10d) by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and all the Free Trade Agreements except NAFTA apply to this acquisition. Therefore, the Buy American Act restrictions are waived for designated country construction materials other than Mexican construction materials.

(2) The Contractor shall use only domestic or designated country construction material other than Mexican construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

■ 13. In section 52.225–12, amend Alternate II by revising the introductory text; removing paragraph (a); and revising paragraph (d)(1) and the introductory text of paragraph (d)(3) to read as follows:

52.225–12 Notice of Buy American Act Requirement—Construction Materials Under Trade Agreements.

* * * * *

Alternate II ''(JUN 2006)''. As prescribed in 25.1102(d)(3), add the definition of ''Mexican construction material'' to paragraph (a) and substitute the following paragraph (d) for paragraph (d) of the basic provision:

* * * * *

(d) *Alternate offers.* (1) When an offer includes foreign construction material, except foreign construction material from a designated country other than Mexico, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225–11, the offeror also may submit an alternate offer based on use of equivalent domestic or designated country construction material other than Mexican construction material.

* * * * *

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225–11 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or designated country construction material other than Mexican construction material. An offer based on use of the foreign construction material for which an exception was requested—

* * * * *

[FR Doc. 06–5707 Filed 6–27–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 2005–10; FAR Case 2004–014; Item VI; Docket 2006–0020, Sequence 7]

RIN 9000–AK19

Federal Acquisition Regulation; FAR Case 2004–014, Buy-Back of Assets

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) by revising the contract cost principle regarding depreciation costs. The final rule adds language which addresses the allowability of depreciation costs of reacquired assets involved in a sale and leaseback arrangement.

DATES: *Effective Date:* July 28, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Jeremy Olson, at (202) 501–4755. Please cite FAC 2005–10, FAR case 2004–014. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Background

In response to public comments related to proposed language at FAR 31.205–16 regarding the recognition of gains and losses associated with a sale and leaseback arrangement (submitted under FAR case 2002–008 by the FAR Part 31 Ad Hoc Committee), the Committee revised FAR 31.205–16 to state that the disposition date is the date of the sale and leaseback arrangement. FAR case 2002–008 addressed three cost principles. A new case, FAR case 2004–005, was later split-off and only addressed sale and leaseback arrangements.

During the deliberations of FAR case 2002–008, DCAA brought to the Committee's attention a concern regarding the cost treatment when a contractor subsequently re-acquires title to an asset under a sale and leaseback arrangement. The Committee recognized this concern, not just for sale and leaseback arrangements, but also for assets that are purchased, depreciated, sold, and subsequently repurchased. As such, the issue involves a myriad of situations where a contractor depreciates an asset or charges cost of ownership in lieu of lease costs, disposes of that asset, and then reacquires the asset.

For example, in a sale and leaseback arrangement, a contractor may purchase an asset in 2001. The contractor then enters into a sale and leaseback arrangement in 2004, with a ten year lease. At the end of 2014, the contractor reacquires the asset. The question is if and how much the contractor can charge for depreciation costs or usage charge related to that asset.

In addition, consider a purchase of an asset in 2003 (without a sale leaseback arrangement). The contractor depreciates the asset for 15 years, and then in 2018 sells the asset. In 2020, the contractor reacquires the asset. Again the question is if and how much the contractor can charge for depreciation costs or usage charges related to the asset.

The Committee recognized this issue required research and deliberation. The Committee therefore recommended that the DAR Council establish a new case to address this buyback issue. The DAR Council concurred with the recommendation, established the subject case (FAR case 2004–014), and assigned the case to the FAR Acquisition Finance Team.

On August 31, 2004, the FAR Acquisition Finance Team issued its report on the subject case. The report noted that there are situations when a contractor can and will reacquire an asset after relinquishing title, in either a sale and leaseback arrangement or simply a typical sale and subsequent repurchase. After extensive discussion within the Team and respective members' Agencies, the Team concluded that the only area that currently requires coverage is a sale and leaseback arrangement.

The report noted that a contractor should not benefit or be penalized for entering into a sale and leaseback arrangement, *i.e.*, the Government should reimburse the contractor the same amount for the subject asset as if the contractor had retained title throughout the service life of the asset. Therefore, the Team recommended revised language for the determination of allowable depreciation expense that includes consideration of—

- The depreciation expense taken prior to the sale and leaseback arrangement;
- Any gain or loss recognized in accordance with FAR 31.205–16(b); and
- Any depreciation expense included in the calculation of the normal cost of ownership for the limitations at FAR 31.205–36(b)(2) and 31.205–11(h)(1).

A proposed rule was published in the **Federal Register** at 70 FR 34080, June 13, 2005. In response to the proposed rule, comments were received from two commenters. These commenters oppose the proposed rule, asserting that the rule penalizes contractors, ignores GAAP and CAS, ignores the requirement to pay a contractor a reasonable cost, and imposes an administrative burden. In addition, one commenter asserts that the rule would cause a situation where a given asset's value and allowable depreciation will differ depending on the relationships of the parties from whom the asset is acquired. The Councils disagree with each of the commenters assertions. As such, the final rule is identical to the proposed rule published on June 13, 2005.

Public Comments

1. Contractor is penalized under proposed rule.

Comment: The commenters assert that the proposed rule is not consistent with the Government position that a contractor should not benefit or be penalized for entering into a sale and leaseback arrangement. The commenters further assert that the recent changes to FAR 31.205–11, 31.205–16, and 31.205–36 have constructed parameters that penalize a contractor for having owned its facilities at any time during contract performance. The commenters state that these rules ensure the Government never pays more than the initial capitalized cost of an asset regardless of changes in ownership, changes in invested capital or changes in market rate.

Councils' Response: When a contractor purchases an asset and holds that asset for the entire period of contact performance, the Government pays no more than the initial capitalized cost of an asset. This has been the longstanding policy of the Government. The Councils believe this same policy should apply when a contractor re-acquires an asset for which there was a sale and leaseback arrangement, *i.e.*, the Government should pay no more than the initial capitalized cost of the asset. The Councils believe the proposed rule accomplishes this objective.

2. GAAP and CAS 404.

Comment: The commenters assert that limiting allowable depreciation costs to that which would have resulted if the contractor had retained title throughout the service life of the asset ignores

fundamental Cost Accounting Standard (CAS) 404 requirements and Generally Accepted Accounting Principles (GAAP) for an asset to be capitalized at its purchase price, even if that purchase is the reacquisition of a previously owned asset.

Councils' Response: CAS provides criteria for measuring, assigning, and allocating costs for CAS-covered contracts. However, FAR part 31 provides the criteria for allowability of those costs. Under the proposed and final rules, the costs are measured, assigned, and allocated in accordance with CAS for contracts that are subject to CAS 404. The proposed and final rules provide for a limitation on the allowability of those measured, assigned, and allocated costs. Thus, the proposed rule does not conflict with CAS.

In regards to GAAP, there are a number of cost principles, as well as some cost accounting standards, that deviate from GAAP. This deviation occurs for a variety of reasons. In many cases, the deviation is necessary because GAAP is focused on reporting to investors, while FAR focuses on cost reimbursement for Government contracts.

In the subject case, the Councils believe that neither CAS nor GAAP provide adequate coverage when a contractor re-acquires an asset that was part of a sale and leaseback arrangement. The Councils believe this final rule is necessary to provide for consistent reimbursement treatment for capital assets, *i.e.,* the Government pays no more than the initial capitalized cost of the asset.

3. Contractor should be reimbursed a reasonable cost.

Comment: The commenters assert that the proposed rule ignores the basic principle that a contractor should be reimbursed for reasonable cost incurred in the course of business.

Councils' Response: The Councils do not believe the contractor is reimbursed an unreasonable cost under the proposed rule. The Councils believe the longstanding policy of reimbursement based on the initial capitalized cost is reasonable. The Councils further believe it is unreasonable to reimburse a contractor for additional costs merely because it sold an asset and then chose to re-acquire it shortly afterwards.

4. Administrative burden.

Comment: The commenters state that the administrative time required to document and track the ownership trail of the asset will become needlessly complex and excessively burdensome.

Councils' Response: In drafting the proposed rule, the Councils considered the administrative burden of tracking these assets for long periods of time. The application of this provision is limited to instances where the asset generated either depreciation expense or cost of money during the most recent accounting period prior to the date of reacquisition. The Councils do not believe it is an administrative burden to obtain the necessary records in such cases, since the sale and leaseback arrangement would have expired no earlier than the accounting period prior to when the asset is re-acquired. The Councils note that the application period for re-acquired assets is also consistent with CAS 404–50(d)(1), which provides the capitalization criteria for the acquisition of assets resulting from a business combination.

5. Asset value and allowable depreciation differ based on relationships of the parties.

Comment: One commenter asserts that the rule would cause a situation where a given asset's value and allowable depreciation will differ depending on the relationships of the parties from whom the asset is acquired. The commenter states that when a contractor that owns the building and then re-acquires the asset is compared to a contractor that is conducting business under an operating lease, the contractor that leases the building is reimbursed significantly more costs than the contractor that owned the building. The commenter asserts that the contractor that owned the building is forced to absorb millions of dollars of costs deemed unallowable for Government costing purposes.

Team Response: The subject rule does not establish a new policy of providing differing reimbursement based on whether the contractor leases or owns the asset (this is already an established policy). Under FAR part 31, a contractor that enters into an operating lease is reimbursed based on actual rental payments made. On the other hand, a contractor that purchases an asset is reimbursed based on the actual costs of ownership, which includes depreciation. As a result, the amount a contractor is reimbursed differs depending on whether the contractor leases or owns the asset. Under the subject rule, the reimbursement for purchased assets continues to be based on cost of ownership, i.e., the basis for reimbursement is the initial capitalized cost of the asset.

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

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principles and procedures discussed in this rule. For Fiscal Year 2003, only 2.4% of all contract actions were cost contracts awarded to small business.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: June 20, 2006.

Linda Nelson,

Deputy Director, Contract Policy Division.

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

PART 31–CONTRACT COST PRINCIPLES AND PROCEDURES

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

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

■ 2. Amend section 31.205–11 by revising paragraph (g); removing paragraph (h); and redesignating paragraph (i) as (h). The revised text reads as follows:

31.205–11 Depreciation.

* * * * *

(g) Whether or not the contract is otherwise subject to CAS the following apply:

(1) The requirements of 31.205–52 shall be observed.

(2) In the event of a write-down from carrying value to fair value as a result of impairments caused by events or changes in circumstances, allowable depreciation of the impaired assets is limited to the amounts that would have been allowed had the assets not been

written down (see 31.205–16(g)). However, this does not preclude a change in depreciation resulting from other causes such as permissible changes in estimates of service life, consumption of services, or residual value.

(3)(i) In the event the contractor reacquires property involved in a sale and leaseback arrangement, allowable depreciation of reacquired property shall be based on the net book value of the asset as of the date the contractor originally became a lessee of the property in the sale and leaseback arrangement—

(A) Adjusted for any allowable gain or loss determined in accordance with 31.205–16(b); and

(B) Less any amount of depreciation expense included in the calculation of the amount that would have been allowed had the contractor retained title under 31.205–11(h)(1) and 31.205–36(b)(2).

(ii) As used in this paragraph (g)(3), reacquired property is property that generated either any depreciation expense or any cost of money considered in the calculation of the limitations under 31.205–11(h)(1) and 31.205–36(b)(2) during the most recent accounting period prior to the date of reacquisition.

* * * * *

31.205–16 [Amended]

■ 3. Amend section 31.205–16 by—

■ a. Removing from the introductory text of paragraph (b) ''31.205–11(i)(1)'' and adding ''31.205–11(h)(1)'' in its place; and

■ b. Removing from paragraph (c) ''31.205–11(i)'' and adding ''31.205–11(h)'' in its place.

[FR Doc. 06–5706 Filed 6–27–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8, 33, and 52

[FAC 2005–10; Item VII; Docket 2006–0021]

Federal Acquisition Regulation; Technical Amendments

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 editorial changes.

DATES: Effective Date: June 28, 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 2005–10, Technical Amendments.

SUPPLEMENTARY INFORMATION:

List of Subjects in 48 CFR Parts 8, 33, and 52

Government procurement.

Dated: June 20, 2006.

Ralph De Stefano,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 8, 33, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 8, 33, 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 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 2. Revise section 8.714(a)(1) and (2) to read as follows:

8.714 Communications with the central nonprofit agencies and the Committee.

(a) * * *

(1) National Industries for the Blind, 1310 Braddock Place, Alexandria, VA 22314–1691, (703) 310–0500; and

(2) NISH, 8401 Old Courthouse Road, Vienna, VA 22182, (571) 226–4660.

* * * * *

PART 33—PROTESTS, DISPUTES, AND APPEALS

33.102 [Amended]

■ 3. Amend section 33.102 by removing from the end of paragraph (b)(1) the word ''and''; and by removing the period from the end of paragraph (b)(2) and adding ''; and'' in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend section 52.208–9 by revising the date of the clause and paragraphs (c)(1) and (2) to read as follows:

52.208–9 Contractor Use of Mandatory Sources of Supply or Services.

* * * * *

CONTRACTOR USE OF MANDATORY SOURCES OF SUPPLY OR SERVICES (JUN 2006)

* * * * *

(c) * * *

(1) National Industries for the Blind, 1310 Braddock Place, Alexandria, VA 22314–1691, (703) 310–0500; and

(2) NISH, 8401 Old Courthouse Road, Vienna, VA 22182, (571) 226–4660.

(End of clause)

■ 5. Amend section 52.212–3 by revising the date of the clause; and removing from the heading of paragraph (h) ''Executive Order 12549'' and adding ''Executive Order 12689'' in its place. The revised text reads as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS (JUN 2006)

* * * * *

■ 6. Amend section 52.225–11 by revising the date of the clause; and removing from paragraph (b)(2) the comma after ''or'' in the first line. 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 (JUN 2006)

* * * * *

[FR Doc. 06–5705 Filed 6–27–06; 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 2005–10; 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 of 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) 2005–10 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 2005–10 which precedes this document. These documents are also available via the Internet at *http://www.acquisition.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.

Item	Subject	FAR case	Analyst
I	Central Contractor Registration—Taxpayer Identification Number (TIN) Validation	2005–007	Jackson.
II	Procedures Related to Procurement Center Representatives	2006–003	Cundiff.
III	Submission of Cost or Pricing Data on Noncommercial Modifications of Commercial Items	2004–035	Olson.
IV	Implementation of Wage Determinations OnLine (WDOL) (Interim)	2005–033	Sochon.
V	Free Trade Agreements—El Salvador, Honduras, and Nicaragua (Interim)	2006–006	Sochon.
VI	Buy-Back of Assets	2004–014	Olson.
VII	Technical Amendments		

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 2005–10 amends the FAR as specified below:

Item I—Central Contractor Registration—Taxpayer Identification Number (TIN) Validation (FAR Case 2005–007)

The rule adds the process of the government validating a Central Contractor Registration (CCR) registrant's taxpayer identification number (TIN) with the Internal Revenue Service (IRS) to improve the quality of data in the CCR and the federal procurement system. Additionally, the rule removes outdated language requiring modifications of contracts prior to December 31, 2003, regarding CCR.

Item II—Procedures Related to Procurement Center Representatives (FAR Case 2006–003)

This final rule amends the Federal Acquisition Regulation (FAR) to provide internal procedures to cover situations when the FAR requires interaction with a procurement center representative and one has not been assigned to the procuring activity or contract administration office. It primarily impacts contracting officers and procurement center representatives.

Item III—Submission of Cost or Pricing Data on Noncommercial Modifications of Commercial Items (FAR Case 2004–035)

This final rule amends the interim rule issued in FAC 2005–004 and implements an amendment to 10 U.S.C. 2306a. The policy requires that the exception from the requirement to obtain certified cost or pricing data for a commercial item does not apply to noncommercial modifications of a commercial item that are expected to cost, in the aggregate, more than $500,000 or 5 percent of the total price of the contract, whichever is greater. Section 818 of Public Law 108–375, the Ronald W. Reagan National Defense Authorization Act of Fiscal Year 2005 applies to offers submitted, and to modifications of contracts or subcontracts made, on or after June 1, 2005. This new policy results from a statute which changed 10 U.S.C. 2306a. 10 U.S.C. 2306a applies only to contracts or task or delivery orders funded by DoD, NASA, and the Coast Guard. The new policy does, however, also apply to contracts awarded or task or delivery orders placed on behalf of DoD, NASA, or the Coast Guard by an official of the United States outside of those agencies, because the statutory requirement of Section 818 applies to the funds provided by DoD, NASA, or the Coast Guard.

The change to the interim rule clarifies the policy to ensure it is applied properly. The threshold in the rule applies to an instant contract action, not to the total value of all contract actions and, as applicable to subcontractors, the threshold applies to the value of the subcontract, not the value of the prime contract.

Item IV—Implementation of Wage Determinations OnLine (WDOL) (FAR Case 2005–033) (Interim)

This interim rule implements the Department of Labor (DOL) Wage Determinations OnLine (WDOL) internet website as the source for Federal contracting agencies to obtain wage determinations issued by the DOL for service contracts subject to the McNamara-O'Hara Service Contract Act (SCA) and for construction contracts subject to the Davis-Bacon Act (DBA). The rule amends the FAR to direct Federal contracting agencies to obtain DBA and SCA wage determinations from the WDOL website.

The Contracting Officer (CO) will be able to check the WDOL website (*http://www.wdol.gov*) to find the applicable wage determination for a contract action subject to the SCA or DBA. If the WDOL database does not contain the applicable wage determination for a SCA contract action, the CO must use the e98 process to request a wage determination from DOL. The e98 means a DOL approved electronic application, (available at *http://www.wdol.gov*), whereby a contacting officer submits pertinent information to the DOL and requests a wage determination directly from the Wage and Hour Division. With regard to DBA requirements, if the WDOL database does not contain the applicable wage determination for a DBA contract action, the CO must request a wage determination by submitting SF–308 to DOL.

The WDOL and e98 processes replace the paper Standard Forms 98 and 98a. In addition, Standard Forms 99, 98, and 98a are deleted from FAR Part 53. This interim rule also incorporates new geographical jurisdictions for DOL's Wage and Hour Regional Offices and eliminates FAR references to the Government Printing Office (GPO) publication of general wage determinations.

Item V—Free Trade Agreements—El Salvador, Honduras, and Nicaragua (FAR Case 2006–006) (Interim)

This interim rule allows contracting officers to purchase the goods and services of El Salvador, Honduras, and Nicaragua without application of the Buy American Act, if the acquisition is subject to the Free Trade Agreements. The U.S. Trade Representative negotiated the Dominican Republic—Central America-United States Free

Trade Agreement with Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and the Dominican Republic. However, the agreements will not all take effect at the same time. This agreement with El Salvador, Honduras, and Nicaragua joins the North American Free Trade Agreement (NAFTA) and the Australia, Chile, Morocco, and Singapore Free Trade Agreements which are already in the FAR. The threshold for applicability of the Dominican Republic—Central America—United States Free Trade Agreement is $64,786 for supplies and services (the same as other Free Trade Agreements to date except Morocco and Canada) and $7,407,000 for construction (the same as all other Free Trade Agreements to date except NAFTA).

Item VI—Buy-Back of Assets (FAR Case 2004–014)

This final rule amends the Federal Acquisition Regulation (FAR) contract cost principle for depreciation costs. The final rule adds language which addresses the allowability of depreciation costs of reacquired assets involved in a sale and leaseback arrangement.

Item VII—Technical Amendments

Editorial changes are made at FAR 8.714, 33.102, and 52.225–11 in order to update references.

Dated: June 20, 2006.

Ralph De Stefano,

Director, Contract Policy Division.

[FR Doc. 06–5704 Filed 6–27–06; 8:45 am]

BILLING CODE 6820–EP–S