

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2012-0080, Sequence 1]

Federal Acquisition Regulation; Federal Acquisition Circular 2005-56; Introduction

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

and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2005-56. 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.regulations.gov>.

DATES: For effective dates and comment dates see separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to each FAR case. Please cite FAC 2005-56 and the specific FAR case numbers. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755.

LIST OF RULES IN FAC 2005-56

Item	Subject	FAR Case	Analyst
I	Women-Owned Small Business (WOSB) Program	2010-015	Morgan
II	Proper Use and Management of Cost-Reimbursement Contracts	2008-030	Clark
III	Requirements for Acquisitions Pursuant to Multiple-Award Contracts	2007-012	Clark
IV	Socioeconomic Program Parity	2011-004	Morgan
V	Trade Agreements Thresholds	2012-002	Davis
VI	New Designated Country (Armenia) and Other Trade Agreements Updates	2011-030	Davis
VII	Government Property	2010-009	Glover
VIII	Technical Amendments.		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item numbers and subject set forth in the documents following these item summaries. FAC 2005-56 amends the FAR as specified below:

Item I—Women-Owned Small Business (WOSB) Program (FAR Case 2010-015)

This rule adopts as final, with changes, an interim rule published in the **Federal Register** at 76 FR 18304 on April 1, 2011, which provides a tool to assist Federal agencies in achieving the 5 percent statutory goal for contracting with women-owned small businesses. This case is based on the Small Business Administration's (SBA) regulations establishing the Women-Owned Small Business (WOSB) Program, authorized under section 8(m) of the Small Business Act (15 U.S.C. 637(m)).

Agencies may restrict competition to Economically Disadvantaged Women-Owned Small Business (EDWOSB) concerns, for contracts assigned a North American Industry Classification Systems (NAICS) code in an industry in which SBA has determined that WOSBs are underrepresented in Federal procurement. For NAICS code industries where WOSBs are not just underrepresented, but substantially underrepresented, agencies may restrict

competition to either EDWOSB concerns or to WOSB concerns eligible under the WOSB Program.

EDWOSB concerns and WOSB concerns eligible under the WOSB Program must be owned and controlled by one or more women who are citizens of the United States. An EDWOSB concern is automatically a WOSB concern eligible under the WOSB Program.

This rule may positively affect EDWOSBs that participate in Federal procurement in industries where SBA determines that WOSBs are underrepresented and may positively affect WOSBs that participate in Federal procurement in industries where SBA determines that WOSBs are substantially underrepresented.

Item II—Proper Use and Management of Cost-Reimbursement Contracts (FAR Case 2008-030)

This final rule amends the FAR to implement section 864 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417), enacted on October 14, 2008. This law aligns with the President's goal of reducing high-risk contracting as denoted in the March 4, 2009, Presidential Memorandum on Government Contracting. Section 864 of the law requires amending the FAR to address the use and management of

cost-reimbursement contracts in the following three areas:

1. Circumstances when cost-reimbursement contracts are appropriate.
 2. Acquisition plan findings to support the selection of a cost-reimbursement contract.
 3. Acquisition resources necessary to award and manage a cost-reimbursement contract.
- This rule does not impose any information collection requirements on small business. There is no significant impact on small businesses because this rule is only applicable to internal operating procedures of the Government.

Item III—Requirements for Acquisitions Pursuant to Multiple-Award Contracts (FAR Case 2007-012)

This final rule adopts, with changes, an interim rule published in the **Federal Register** at 76 FR 14548 on March 16, 2011, that amended the FAR to implement section 863 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417). Section 863 requires the FAR to be amended to enhance competition in the purchase of property and services by all executive agencies pursuant to multiple-award contracts (including Federal Supply Schedules (FSS)). This final rule requires an FSS ordering activity to conduct appropriate analysis and document the file to determine price

reasonableness when placing an order under a blanket purchase agreement (BPA) with hourly rate services. The final rule also removes the requirement for an ordering activity's competition advocate to approve a contracting officer's annual review of a single-award BPA prior to exercise of an option to extend the term of the BPA. This should benefit contractors because it removes a requirement that is considered to be a restriction on the use of FSS single-award BPAs.

Item IV—Socioeconomic Program Parity (FAR Case 2011–004)

This rule adopts as final, with changes, an interim rule published in the **Federal Register** at 76 FR 14566 on March 16, 2011, which implemented section 1347 of the Small Business Jobs Act of 2010 (Pub. L. 111–240). Section 1347(b) clarifies that there is no order of precedence among the small business socioeconomic programs. The FAR interim rule clarified the existence of socioeconomic parity and that contracting officers may exercise discretion when determining whether an acquisition will be restricted to small businesses participating in the 8(a) Business Development Program (8(a)), Historically Underutilized Business Zones (HUBZone) Program, Service-Disabled Veteran-Owned Small Business (SDVOSB) Program, or the Women-Owned Small Business (WOSB) Program. This final rule may have a positive impact on small businesses as it presents the maximum practicable opportunity for small business concerns qualified under the socioeconomic programs to participate in the performance of contracts, and assist Federal agencies in meeting each of the Government's small business contracting goals.

Item V—Trade Agreements Thresholds (FAR Case 2012–002)

This final rule adjusts the thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements as determined by the United States Trade Representative, according to a formula set forth in the agreements. The threshold changes do not have significant cost or administrative impact, because they maintain the status quo by keeping pace with inflation.

Item VI—New Designated Country (Armenia) and Other Trade Agreements Updates (FAR Case 2011–030)

This final rule allows contracting officers to purchase the goods and services of Armenia without application

of the Buy American Act if the acquisition is covered by the World Trade Organization Government Procurement Agreement. It also updates the lists of countries that are party to the Agreement on Trade in Civil Aircraft. This rule has no significant impact on small business concerns.

Item VII—Government Property (FAR Case 2010–009)

This final rule amends the FAR to clarify reporting, reutilization, and disposal of Government property and the contractor requirements under the Government property clause. The proposed rule was published on April 4, 2011 (76 FR 18497).

The rule specifically impacts contracting officers and contractors by clarifying disposal of Government property. The rule does not have a significant economic impact on small entities because the rule does not impose any additional requirements on small business.

Item VIII—Technical Amendments

Editorial changes are made at FAR 19.812, 42.203, and 52.209–9.

Dated: February 21, 2012.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Federal Acquisition Circular (FAC) 2005–56 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 2005–56 is effective March 2, 2012, except for Items I, II, III, IV, and VII which are effective April 2, 2012.

Dated: February 17, 2012.

Richard Ginman,

Director, Defense Procurement and Acquisition Policy.

Dated: February 15, 2012.

Mindy S. Connolly, CPCM,

Chief Acquisition Officer, U.S. General Services Administration.

Dated: February 15, 2012.

William P. McNally,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 2012–4457 Filed 3–1–12; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 4, 6, 13, 14, 15, 18, 19, 26, 33, 36, 42, 52, and 53

[FAC 2005–56; FAR Case 2010–015; Item I; Docket 2010–0015, Sequence 1]

RIN 9000–AL97

Federal Acquisition Regulation; Women-Owned Small Business (WOSB) Program

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

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA have adopted as final, with changes, an interim rule amending the Federal Acquisition Regulation (FAR) to implement the Small Business Administration's regulations establishing the Women-Owned Small Business (WOSB) Program. This rule authorizes the restriction of competition for Federal contracts in certain industries to economically disadvantaged women-owned small business (EDWOSB) concerns or WOSB concerns eligible under the WOSB Program.

DATES: *Effective Date:* April 2, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Karlos Morgan, Procurement Analyst, at 202–501–2364, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–56, FAR Case 2010–015.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 76 FR 18304 on April 1, 2011, to implement the Small Business Administration (SBA) regulations at 13 CFR part 127 and the procedures authorized under section 8(m) of the Small Business Act, Public Law 85–536, (15 U.S.C. 637(m)). Seven respondents submitted comments on the interim rule. All respondents expressed support for the WOSB Program; however, some revisions to the WOSB Program were recommended. This final rule incorporates changes made in response to public comments as well as minor technical corrections.

On December 21, 2000, Congress enacted the Small Business Reauthorization Act of 2000 (Act), (Pub. L. 106–554). Section 811 of Appendix I of the Act amended the Small Business Act to provide for a procurement program for women-owned small business concerns. Today, this program is known as the Women-Owned Small Business (WOSB) Program. The purpose of the WOSB Program is to ensure that women-owned small business concerns have an equal opportunity to participate in Federal contracting and to assist agencies in achieving their women-owned small business concern participation goals.

Under the WOSB Program, contracting officers may restrict competition for Federal contracts to small business concerns owned and controlled by women, under certain conditions, including but not limited to: (1) The procurement requirement is in an industry the SBA has determined to be underrepresented or substantially underrepresented by small business concerns owned and controlled by women; and (2) small business concerns owned and controlled by women participating in the WOSB Program have met the Program's eligibility requirements. The contracting officer must expect that two or more concerns will submit offers; contract award will be made at a fair and reasonable price; and the anticipated award price of the contract (including options) will not exceed \$6.5 million in the case of a contract assigned a North American Industry Classification System (NAICS) code for manufacturing, or \$4 million, in the case of all other contracts. These figures are higher than the statute and SBA regulation figures because they are adjusted for inflation (see FAR 1.109).

Section 3(n) of the Small Business Act (15 U.S.C. 632(n)) broadly defines a small business concern owned and controlled by women as one that is at least 51 percent owned by one or more women (or in the case of any publicly owned business, at least 51 percent of the stock is owned by one or more women) and whose management and daily business operations are controlled by one or more women. The Governmentwide goal for participation by small business concerns owned and controlled by women is 5 percent of the total value of all prime and subcontract awards (15 U.S.C. 644(g)). However, not all small business concerns owned and controlled by women are eligible to participate in the WOSB Program set forth in section 8(m) of the Small Business Act (15 U.S.C. 637(m)).

The SBA established detailed criteria at 13 CFR 127.200, 127.201, 127.202,

and 127.203 for the women-owned small businesses authorized under the Act to participate in the Program: EDWOSB concerns and WOSB concerns eligible under the WOSB Program. In contrast with the broader definition for women-owned small businesses provided at 15 U.S.C. 632(n), both EDWOSB concerns and WOSB concerns eligible under the WOSB Program must be no less than 51 percent unconditionally and directly owned by one or more women who are United States citizens. (Other WOSB Program-specific eligibility criteria are set forth in the SBA's regulations and FAR subpart 19.15.) Thus, EDWOSB concerns and WOSB concerns eligible under the WOSB Program are actually subcategories of the larger group of women-owned small business concerns.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Changes From the Interim Rule

This final rule makes minor changes to the interim rule. The term "WOSB concern" is corrected to "WOSB concern eligible under the WOSB Program" in the FAR and in the Standard Forms. The relevant Paperwork Reduction Act burden control number is added to the list at FAR 1.106.

B. Analysis of Public Comments

1. The WOSB Program Should Be Modeled After Current SBA Programs

Comment: One respondent commented that the WOSB Program should be modeled after current SBA programs and require either a self-certification or an SBA Certification where eligibility appears on the firm's Central Contractor Registration (CCR) database and Online Representations and Certifications Application (ORCA) profiles.

Response: The WOSB Program adheres to the authorizing statute, section 811 of the Small Business Reauthorization Act of 2000, Public Law 106–554, and SBA regulations. The statute permits both self-certifications by the concern and third-party certification from an entity approved by the SBA. In the SBA final rule the supporting legislative history stated that there was no intent to create a

certification program similar to the one for the section 8(a) Business Development Program.

2. The WOSB Program Repository Is Burdensome

Comment: One respondent commented that the WOSB Program Repository is burdensome and to have companies register in CCR, ORCA and then a third system seems extraneous.

Response: The WOSB Program Repository is SBA's solution to facilitate the statutory requirement to provide documents verifying program eligibility. SBA established the repository so that WOSB concerns eligible under the WOSB Program and EDWOSB concerns would not have to submit documents each time they are the apparent successful offeror. The WOSB Program repository minimizes paperwork burden and increases oversight and program monitoring capabilities.

3. The WOSB Program Requirement To Submit Additional (and Sensitive) Documents Could Create a Disincentive for the Use of the Program

Comment: One respondent commented that the WOSB Program's requirement to submit personal information and the additional reviews on behalf of the Government might create a disincentive to utilize the program and contracting authority to the fullest extent possible.

Response: The certification and additional documentation requirements are necessary to meet the statutory provisions and regulatory requirements of the WOSB Program, and to ensure that only WOSB concerns eligible under the WOSB Program receive the benefits of the WOSB Program.

4. Dollar Thresholds and Eligibility Requirements

Comment: One respondent commented that the WOSB Program's EDWOSB limits and eligibility requirements need to be re-evaluated as the \$750,000.00 threshold may be too low.

Response: The \$750,000 personal net worth requirement was established by the SBA. See the SBA regulation at 13 CFR 127.203 for limitations and for exclusions, e.g., primary personal residence, ownership interest in the EDWOSB concern, and retirement accounts.

5. Mentor-Protégé Program for WOSB Program

Comment: One respondent commented that the Councils should consider a Mentor-Protégé Program for the WOSB Program. Such a program

already exists for the section 8(a) program. A Mentor-Protégé Program would allow women-owned small businesses to learn from larger, more successful businesses.

Response: Under the Small Business Jobs Act of 2010, Public Law 111–240, SBA was given the authority to establish mentor-protégé programs for small business concerns owned and controlled by service-disabled veterans, small business concerns owned and controlled by women, and HUBZone small business concerns modeled on the Mentor-Protégé Program of the SBA for small business concerns participating in programs under section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

6. Order of Precedence Among the WOSB Program and Other Small Business and Socioeconomic Contracting Programs

Comment: One respondent commented that the interim rule implementing the WOSB Program did not revise FAR 19.203(c) to include WOSB concerns eligible under the WOSB Program in the list of programs to be considered before using a small business set-aside pursuant to FAR 19.502–2(b). The interim rule, therefore, creates some uncertainty as to whether a contracting officer must first consider an acquisition under section 8(a), HUBZone, or service-disabled veteran-owned small business programs before he or she can properly set-aside an acquisition for competition among WOSB concerns eligible under the WOSB Program or EDWOSB concerns.

Response: The interim rule did revise FAR 19.203(c) by adding WOSB programs.

7. “WOSB Concern” Is Used Interchangeably With “WOSB Concerns Eligible Under the WOSB Program”

Comment: One respondent commented that FAR subpart 19.15 appears to use the term “WOSB concern” interchangeably with “WOSB concerns eligible under the WOSB Program.” This is potentially confusing and may lead to a misrepresentation of eligibility by a non-eligible WOSB concern.

Response: Where applicable, for clarity and consistency, references to WOSB concern were revised to add “eligible under the WOSB Program.”

8. Clarification Is Needed To Differentiate Between Eligibility Under the WOSB Program and Eligibility as a WOSB in General

Comment: One respondent commented that the terms “Women-Owned Small Business Concern” and

“Women-Owned Small Business (WOSB) Concern Eligible under the WOSB Program” (in accordance with 13 CFR 127) should be clarified. It was further suggested that the legislative and regulatory history for these definitions should be provided in the Background section of the **Federal Register**.

Response: The “Background” of this final rule provides a brief legislative and regulatory history for the definitions of “Women-Owned Small Business Concern” and “Women-Owned Small Business (WOSB) Concern Eligible under the WOSB Program.” A more expansive historical perspective can be found in the SBA’s proposed rule published in the **Federal Register** at 75 FR 10030 on March 4, 2010, and final rule published in the **Federal Register** at 75 FR 62258 on October 7, 2010.

C. Other changes

Other changes include a minor revision to the Optional Form (OF) 347, Order for Supplies and Services; Standard Form (SF) 1447, Solicitation/Contract; and the SF 1449, Solicitation/Contract/Order for Commercial Items, to add to the business classification for Women-Owned Small Business (WOSB) “eligible under the WOSB Program.”

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This rule finalizes an interim rule that revised the FAR to implement section 8(m) of the Small Business Act, 15 U.S.C. 637(m), to provide a tool for Federal agencies to ensure equal opportunity, and thereby increases Federal procurement opportunities to Women-Owned Small Business (WOSB) concerns.

The objective of the final rule is to assist Federal agencies in eliminating barriers to the participation by women-owned small business concerns in Federal contracting, thereby achieving the Federal Government’s goal of awarding five percent of Federal contract dollars to women-owned small business concerns, as provided in the Federal Acquisition Streamlining Act of 1994.

There were no significant issues raised by the public in response to the Initial Regulatory Flexibility Analysis. No public comments were filed by the Chief Counsel for Advocacy of the Small Business Administration in response to this rule.

The Central Contractor Registration (CCR) database currently lists approximately 3,800 Small Disadvantaged Businesses (SDBs) owned and controlled by one or more women. While DoD, GSA, and NASA acknowledge that there may be other women-owned small business concerns in existence other than those listed in the CCR as being certified by SBA as SDBs, it is difficult to envision more than 6,000 women-owned small business concerns that could meet SBA’s eligibility criteria and that are also ready, willing, and able to bid on Government contracts.

In addition, not all areas of Federal procurement have been designated as underrepresented or substantially underrepresented, and opportunities in some of the qualified industries may be limited. Consequently, many otherwise-qualified EDWOSB and WOSB concerns eligible under the WOSB Program may not find it advantageous to pursue contract opportunities under these procedures.

Contracting opportunities identified by Federal agencies as candidates to be set aside for WOSB concerns eligible under the WOSB Program (including EDWOSB concerns) will come from new contracting requirements and contracts currently performed by small and large business concerns. At this time, DoD, GSA, and NASA cannot accurately predict how the existing distribution of contracts by business type may change with this rule.

DoD, GSA, and NASA determined that this rule imposes new reporting and recordkeeping requirements. The certification process described in 13 CFR Subpart C, 127.300 to 127.302, is an information collection. The certification process requires a concern seeking to benefit from Federal contracting opportunities designated for WOSB concerns eligible under the WOSB Program or EDWOSB concerns to verify its status by providing documents to the WOSB Program Repository, submitting a certification to the WOSB Program Repository, and representing its status in an existing electronic contracting system (*i.e.*, Online Representations and Certifications Application (ORCA)). The WOSB concern eligible under the WOSB Program or EDWOSB concern will have to represent in ORCA that it meets each eligibility requirement of the program. Specifically, the WOSB concern eligible under the WOSB Program or EDWOSB concern will be required to submit certain documents verifying eligibility at the time of certification in ORCA (and every year thereafter). These documents will be submitted to a document

repository established by SBA. Further, the protest and eligibility examination procedures will require the submission of documents from those parties subject to a protest and eligibility examination. To reduce the burden on the WOSB concerns eligible under the WOSB Program or EDWOSB concerns, the same documents submitted at the time of certification will be used for the protests and eligibility examinations, except that for protests and eligibility examinations, SBA will also request copies of proposals submitted in response to a solicitation set-aside for WOSB concerns eligible under the WOSB Program or EDWOSB concerns and certain other documents and information to verify the status of an EDWOSB concern. Finally, this rule also requires the WOSB concerns eligible under the WOSB Program or EDWOSB concerns to retain copies of the documents submitted for a period of six (6) years. DoD, GSA, and NASA believe that any additional burden imposed by this recordkeeping requirement would be minimal since the firms would maintain the information in their general course of business.

This final rule minimizes the significant economic impact on small entities by allowing WOSB concerns eligible under the WOSB Program, including EDWOSB concerns, to be certified by a Federal agency, a State government, or a national certifying entity approved by the SBA. WOSB concerns eligible under the WOSB Program, including EDWOSB concerns, may also self-certify eligibility status to the contracting officer through submission of the required documentation in accordance with standards established by SBA. An alternative approach would have been to require EDWOSB concerns and WOSB concerns eligible under the WOSB Program to apply for formal certification. This alternative approach was ruled out as unnecessary, not required by statute, and too costly. DoD, GSA, and NASA believe that eligibility examinations and protest procedures incorporated into this final rule will minimize the likelihood of fraud and misrepresentation of status as a WOSB concern eligible under the WOSB Program or an EDWOSB concern. DoD, GSA, and NASA have decided that allowing self-certification and the option for firms to apply for certification from SBA-approved certifiers, when combined with random eligibility examinations and a formal protest procedure is a more viable approach than formal certification and greatly reduces the burden on small entities.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat. The Regulatory Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

V. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies. The rule contains information collection requirements. The Office of Management and Budget (OMB) has

cleared this information collection requirement under OMB Control Number 3245-0374, titled: "Certification for the Women-Owned Small Business Federal Contract Program." SBA's request is discussed in detail in its proposed rule that published in the **Federal Register** at 75 FR 10030 on March 4, 2010, and the final rule that published in the **Federal Register** at 75 FR 62258 on October 7, 2010.

List of Subjects in 48 CFR Parts 1, 2, 4, 6, 13, 14, 15, 18, 19, 26, 33, 36, 42, 52, and 53

Government procurement.

Dated: February 21, 2012.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR parts 2, 4, 6, 13, 14, 15, 18, 19, 26, 33, 36, 42, 52, and 53, which was published in the **Federal Register** at 76 FR 18304 on April 1, 2011, is adopted as final with the following changes:

- 1. The authority citation for 48 CFR parts 1, 2, 4, 18, 19, 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 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

- 2. Amend section 1.106, in the table following the introductory text, by adding in numerical sequence, FAR segment "52.219-29" and its corresponding OMB Control Number "3245-0374", and FAR segment "52.219-30" and its corresponding OMB Control Number "3245-0374".

PART 2—DEFINITIONS OF WORDS AND TERMS

- 3. Amend section 2.101, in paragraph (b)(2), in the definition "Women-Owned Small Business (WOSB) Program" by revising paragraph (3) to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

Women-Owned Small Business (WOSB) Program. * * *

(3) *Women-owned small business (WOSB) concern eligible under the WOSB Program* means a small business concern that is at least 51 percent

directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States (13 CFR part 127).

* * * * *

PART 4—ADMINISTRATIVE MATTERS

4.803 [Amended]

- 4. Amend section 4.803 by removing from the introductory text of paragraph (a)(42) "concerns or" and adding "concerns eligible under the WOSB Program or" in its place.

PART 18—EMERGENCY ACQUISITIONS

18.117 [Amended]

- 5. Amend section 18.117 by removing "concerns on" and adding "concerns eligible under the WOSB Program on" in its place.

PART 19—SMALL BUSINESS PROGRAMS

- 6. Amend section 19.201 by revising paragraph (d)(10) to read as follows:

19.201 General policy.

* * * * *

(d) * * *

(10) Make recommendations in accordance with agency procedures as to whether a particular acquisition should be awarded under subpart 19.5 as a small business set-aside, under subpart 19.8 as a section 8(a) award, under subpart 19.13 as a HUBZone set-aside, under subpart 19.14 as a service-disabled veteran-owned small business set-aside, or under subpart 19.15 as a set-aside for economically disadvantaged women-owned small business (EDWOSB) concerns or women-owned small business (WOSB) concerns eligible under the WOSB Program.

* * * * *

19.308 [Amended]

- 7. Amend section 19.308 by removing from paragraphs (h)(2)(i) and (h)(3)(iv) "concern, and" and adding "concern eligible under the WOSB Program, and" in its place.

- 8. Amend section 19.501 by revising the second sentence of paragraph (c) to read as follows:

19.501 General.

* * * * *

(c) * * * The contracting officer shall perform market research and document why a small business set-aside is inappropriate when an acquisition is not set aside for small business, unless

an award is anticipated to a small business under the 8(a), HUBZone, SDVOSB, or WOSB Programs. * * *

■ 9. Amend section 19.1500 by revising paragraph (b) and adding paragraph (c) to read as follows:

19.1500 General.

* * * * *

(b) The purpose of the WOSB Program is to ensure women-owned small business concerns have an equal opportunity to participate in Federal contracting and to assist agencies in achieving their women-owned small business participation goals (see 13 part CFR 127).

(c) An economically disadvantaged women-owned small business (EDWOSB) concern or WOSB concern eligible under the WOSB Program is a subcategory of “women-owned small business concern” as defined in 2.101.

■ 10. Revise section 19.1503 to read as follows:

19.1503 Status.

(a) Status as an EDWOSB concern or WOSB concern eligible under the WOSB Program is determined in accordance with 13 CFR part 127.

(b) The contracting officer shall verify that the offeror—

(1) Is registered in Central Contractor Registration (CCR);

(2) Is self-certified in the Online Representations and Certifications Application (ORCA); and

(3) Has submitted documents verifying its eligibility at the time of initial offer to the WOSB Program Repository. The contract shall not be awarded until all required documents are received.

(c)(1) An EDWOSB concern or WOSB concern eligible under the WOSB Program that has been certified by a SBA approved third party certifier, (which includes SBA certification under the 8(a) Program), must provide the following eligibility requirement documents—

(i) The third-party certification;

(ii) SBA’s WOSB Program Certification form (SBA Form 2413 for WOSB concerns eligible under the WOSB Program and SBA Form 2414 for EDWOSB concerns); and

(iii) The joint venture agreement, if applicable.

(2) An EDWOSB concern or WOSB concern eligible under the WOSB Program that has not been certified by an SBA approved third party certifier or by SBA under the 8(a) Program, must provide the following documents:

(i) The U.S. birth certificate, naturalization documentation, or

unexpired U.S. passport for each woman owner.

(ii) The joint venture agreement, if applicable.

(iii) For limited liability companies, Articles of organization (also referred to as certificate of organization or articles of formation) and any amendments, and the operating agreement and any amendments.

(iv) For corporations, articles of incorporation and any amendments, by-laws and any amendments, all issued stock certificates, including the front and back copies, signed in accord with the by-laws, stock ledger, and voting agreements, if any.

(v) For partnerships, the partnership agreement and any amendments.

(vi) For sole proprietorships, corporations, limited liability companies and partnerships if applicable, the assumed/fictitious name certificate(s).

(vii) SBA’s WOSB Program Certification form (SBA Form 2413 for WOSB concerns eligible under the WOSB Program and SBA Form 2414 for EDWOSB concerns).

(viii) For EDWOSB concerns, in addition to the above, the SBA Form 413, Personal Financial Statement, available to the public at <http://www.sba.gov/tools/Forms/index.html>, for each woman claiming economic disadvantage.

(d)(1) A contracting officer may accept a concern’s self-certification as accurate for a specific procurement reserved for award under this subpart if—

(i) The apparent successful WOSB eligible under the WOSB Program or EDWOSB offeror provided the required documents;

(ii) There has been no protest or other credible information that calls into question the concern’s eligibility as an EDWOSB concern or WOSB concern eligible under the WOSB Program; and

(iii) There has been no decision issued by SBA as a result of a current eligibility examination finding the concern did not qualify as an EDWOSB concern or WOSB concern eligible under the WOSB Program at the time it submitted its initial offer.

(2) The contracting officer shall file a status protest in accordance with 19.308 if—

(i) There is information that questions the eligibility of a concern; or

(ii) The concern fails to provide all of the required documents to verify its eligibility.

(e) If there is a decision issued by SBA as a result of a current eligibility examination finding that the concern did not qualify as an EDWOSB concern or WOSB concern eligible under the

WOSB Program, the contracting officer may terminate the contract, and shall not exercise any option nor award further task or delivery orders. The contracting officer shall not count or include the award toward the small business accomplishments for an EDWOSB concern or WOSB concern eligible under the WOSB Program and must update FPDS from the date of award.

(f) A joint venture may be considered an EDWOSB concern or WOSB concern eligible under the WOSB Program if it meets the requirements of 13 CFR 127.506.

(g) An EDWOSB concern or WOSB concern eligible under the WOSB Program that is a non-manufacturer, as defined in 13 CFR 121.406(b), may submit an offer on a requirement set aside for an EDWOSB concern or a WOSB concern eligible under the WOSB Program with a NAICS code for supplies, if it meets the requirements under the non-manufacturer rule set forth in that regulation.

■ 11. Amend section 19.1505 by revising paragraphs (a), (c)(1), (d), and (f) to read as follows:

19.1505 Set-aside procedures.

(a) The contracting officer—

(1) Shall comply with 19.203 before deciding to set aside an acquisition under the WOSB Program.

(2) May set aside acquisitions exceeding the micro-purchase threshold for competition restricted to EDWOSB concerns or WOSB concerns eligible under the WOSB Program in those NAICS codes in which SBA has determined that WOSB concerns eligible under the WOSB program are underrepresented or substantially underrepresented in Federal procurement, as specified on SBA’s Web site at <http://www.sba.gov/WOSB>.

* * * * *

(c) * * *

(1) Two or more WOSB concerns eligible under the WOSB Program (including EDWOSB concerns), will submit offers;

* * * * *

(d) The contracting officer may make an award, if only one acceptable offer is received from a qualified EDWOSB concern or WOSB concern eligible under the WOSB Program.

* * * * *

(f) If no acceptable offers are received from an EDWOSB concern or WOSB concern eligible under the WOSB Program, the set-aside shall be withdrawn and the requirement, if still valid, must be considered for set aside

in accordance with 19.203 and subpart 19.5.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 12. Amend section 52.212–3 by revising the date of the provision and paragraphs (c)(6)(ii), (c)(7)(i), and (c)(7)(ii) to read as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS APR 2012

* * * * *

(c) * * *
(6) * * *

(ii) It is, is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(6)(i) of this provision is accurate for each WOSB concern eligible under the WOSB Program participating in the joint venture. [The offeror shall enter the name or names of the WOSB concern eligible under the WOSB Program and other small businesses that are participating in the joint venture: _____.] Each WOSB concern eligible under the WOSB Program participating in the joint venture shall submit a separate signed copy of the WOSB representation.

(7) * * *

(i) It is, is not an EDWOSB concern, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It is, is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(7)(i) of this provision is accurate for each EDWOSB concern participating in the joint venture. [The offeror shall enter the name or names of the EDWOSB concern and other small businesses that are participating in the joint venture: _____.] Each EDWOSB concern participating in the joint venture shall submit a separate signed copy of the EDWOSB representation.

* * * * *

■ 13. Amend section 52.212–5 by revising the date of the clause and paragraphs (b)(24) and (b)(25) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS APR 2012

* * * * *

(b) * * *

(24) 52.219–29, Notice of Set-Aside for Economically Disadvantaged Women-Owned

Small Business (EDWOSB) Concerns (4/2/12) (15 U.S.C. 637(m)).

(25) 52.219–30, Notice of Set-Aside for Women-Owned Small Business (WOSB) Concerns Eligible Under the WOSB Program (4/2/12) (15 U.S.C. 637(m)).

* * * * *

■ 14. Amend section 52.219–1 by revising the date of the provision and paragraphs (b)(4)(ii) and (b)(5)(ii) to read as follows:

52.219–1 Small Business Program Representations.

* * * * *

SMALL BUSINESS PROGRAM REPRESENTATIONS APR 2012

* * * * *

(b) * * *
(4) * * *

(ii) It is, is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (b)(4)(i) of this provision is accurate for each WOSB concern eligible under the WOSB Program participating in the joint venture. [The offeror shall enter the name or names of the WOSB concern eligible under the WOSB Program and other small businesses that are participating in the joint venture: _____.] Each WOSB concern eligible under the WOSB Program participating in the joint venture shall submit a separate signed copy of the WOSB representation.

(5) * * *

(ii) It is, is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (b)(5)(i) of this provision is accurate for each EDWOSB concern participating in the joint venture. [The offeror shall enter the name or names of the EDWOSB concern and other small businesses that are participating in the joint venture: _____.] Each EDWOSB concern participating in the joint venture shall submit a separate signed copy of the EDWOSB representation.

* * * * *

■ 15. Amend section 52.219–29 by—

- a. Revising the date of the clause;
- b. Removing from paragraph (c)(3) “EDWOSB concern” and adding “apparent successful offeror” in its place; and
- c. Removing from paragraph (f) “An EDWOSB that” and adding “An EDWOSB concern that” in its place.

The revised text reads as follows:

52.219–29 Notice of Set-Aside for Economically Disadvantaged Women-Owned Small Business Concerns.

* * * * *

NOTICE OF SET-ASIDE FOR ECONOMICALLY DISADVANTAGED WOMEN-OWNED SMALL BUSINESS CONCERNS APR 2012

* * * * *

■ 16. Amend section 52.219–30 by—

- a. Revising the date of the clause, paragraph (c), and the introductory text of paragraphs (d) and (e);
- b. Removing from paragraph (e)(2) “concern;” and adding “concern eligible under the WOSB Program;” in its place;
- c. Removing from paragraph (e)(3)(ii) “WOSB as” and adding “WOSB concern eligible under the WOSB Program as” in its place;
- d. Revising paragraph (e)(5); and
- e. Removing from paragraph (f) “WOSB that” and adding “WOSB concern eligible under the WOSB Program that” in its place.

The revised text reads as follows:

52.219–30 Notice of Set-Aside for Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program.

* * * * *

NOTICE OF SET-ASIDE FOR WOMEN-OWNED SMALL BUSINESS CONCERNS ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM APR 2012

* * * * *

(c) *General.* (1) Offers are solicited only from WOSB concerns eligible under the WOSB Program. Offers received from concerns that are not WOSB concerns eligible under the WOSB program shall not be considered.

(2) Any award resulting from this solicitation will be made to a WOSB concern eligible under the WOSB Program.

(3) The Contracting Officer will ensure that the apparent successful offeror has provided the required documents to the WOSB Program Repository. The contract shall not be awarded until all required documents are received.

(d) *Agreement.* A WOSB concern eligible under the WOSB Program agrees that in the performance of the contract for— * * *

* * * * *

(e) *Joint Venture.* A joint venture may be considered a WOSB concern eligible under the WOSB Program if—

* * * * *

(5) The procuring activity executes the contract in the name of the WOSB concern eligible under the WOSB Program or joint venture.

* * * * *

PART 53—FORMS

53.212 [Amended]

■ 17. Amend section 53.212 by removing “SF 1449, (Rev. 10/2010)” and adding “SF 1449 (Rev. 2/2012)” in its place.

53.213 [Amended]

■ 18. Amend section 53.213 by removing from paragraph (a) “SF 1449, (Rev. 10/2010)” and adding “SF 1449 (Rev. 2/2012)” in its place; and by removing from paragraph (f) “SF 1449, (Rev. 10/2010)” and “OF 347, (Rev. 10/

2010)" and adding "SF 1449 (Rev. 2/2012)" and "OF 347 (Rev. 2/2012)" in their place, respectively.

53.214 [Amended]

■ 19. Amend section 53.214 by removing from paragraph (d) "SF 1447

(Rev. 11/2010)" and adding "SF 1447 (Rev. 2/2012)" in its place.

53.236-1 [Amended]

■ 20. Amend section 53.236-1 by removing from paragraph (e) "OF 347

(Rev. 10/2010)" and adding "OF 347 (Rev. 2/2012)" in its place.

■ 21. Revise section 53.301-1447 to read as follows:

53.301-1447 Solicitation/Contract

BILLING CODE 6820-EP-P

SOLICITATION/CONTRACT		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)		RATING	PAGE OF
BIDDER/OFFEROR TO COMPLETE BLOCKS 11, 13, 15, 21, 22, & 27					
2. CONTRACT NO.	3. AWARD/EFFECTIVE DATE	4. SOLICITATION NUMBER	5. SOLICITATION TYPE <input type="checkbox"/> SEALED BIDS (IFB) <input type="checkbox"/> NEGOTIATED (RFP)		6. SOLICITATION ISSUE DATE
7. ISSUED BY		CODE	8. THIS ACQUISITION IS <input type="checkbox"/> UNRESTRICTED OR <input type="checkbox"/> SET ASIDE: % FOR: <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> WOMEN-OWNED SMALL BUSINESS (WOSB) ELIGIBLE UNDER THE WOSB PROGRAM <input type="checkbox"/> HUBZONE SMALL BUSINESS <input type="checkbox"/> EDWOSB <input type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS NAICS: <input type="checkbox"/> 8(A) SIZE STANDARD:		
9. (AGENCY USE) NO COLLECT CALLS					
10. ITEMS TO BE PURCHASED (BRIEF DESCRIPTION) <input type="checkbox"/> SUPPLIES <input type="checkbox"/> SERVICES					
11. IF OFFER IS ACCEPTED BY THE GOVERNMENT WITHIN _____ CALENDAR DAYS (60 CALENDAR DAYS UNLESS OFFEROR INSERTS A DIFFERENT PERIOD) FROM THE DATE SET FORTH IN BLOCK 9 ABOVE, THE CONTRACTOR AGREES TO HOLD ITS OFFERED PRICES FIRM FOR THE ITEMS SOLICITED HEREIN AND TO ACCEPT ANY RESULTING CONTRACT SUBJECT TO THE TERMS AND CONDITIONS STATED HEREIN.			12. ADMINISTERED BY		
13. CONTRACTOR OFFEROR			14. PAYMENT WILL BE MADE BY		
TELEPHONE NUMBER _____ DUNS NUMBER _____			16. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION <input type="checkbox"/> 10 U.S.C. 2304 <input type="checkbox"/> 41 U.S.C. 253		
15. PROMPT PAYMENT DISCOUNT			17. ITEM NO.		
18. SCHEDULE OF SUPPLIES/SERVICES			19. QUANTITY	20. UNIT	21. UNIT PRICE
					22. AMOUNT
23. ACCOUNTING AND APPROPRIATION DATA					24. TOTAL AWARD AMOUNT (FOR GOVERNMENT USE ONLY)
25. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN _____ COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY CONTINUATION SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN.			26. AWARD OF CONTRACT: YOUR OFFER ON SOLICITATION NUMBER SHOWN IN BLOCK 4 INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:		
27. SIGNATURE OF OFFEROR/CONTRACTOR			28. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)		
NAME AND TITLE OF SIGNER (TYPE OR PRINT)		DATE SIGNED	NAME OF CONTRACTING OFFICER		DATE SIGNED

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STANDARD FORM 1447 (REV. 2/2012)
Prescribed by GSA - FAR (48 CFR) 53.214(d)

NO RESPONSE FOR REASONS CHECKED	
CANNOT COMPLY WITH SPECIFICATIONS	CANNOT MEET DELIVERY REQUIREMENT
UNABLE TO IDENTIFY THE ITEM(S)	DO NOT REGULARLY MANUFACTURE OR SELL THE TYPE OF ITEMS INVOLVED
OTHER <i>(Specify)</i>	
<input type="checkbox"/> WE DO	<input type="checkbox"/> WE DO NOT, DESIRE TO BE RETAINED ON THE MAILING LIST FOR FUTURE PROCUREMENT OF THE TYPE OF ITEMS INVOLVED
NAME AND ADDRESS OF FIRM <i>(Include Zip Code)</i>	SIGNATURE
	TYPE OR PRINT NAME AND TITLE OF SIGNER
<p>FROM: _____</p> <p style="text-align: center;">TO: _____</p> <p>SOLICITATION NO. _____</p> <p>DATE AND LOCAL TIME _____</p>	

AFFIX
STAMP
HERE

STANDARD FORM 1447 (REV. 2/2012) BACK

■ 22. Revise section 53.301-1449 to read as follows:

53.301-1449 Solicitation/Contract/Order for Commercial Items.

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS				1. REQUISITION NUMBER	PAGE 1 OF
OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30					
2. CONTRACT NO.	3. AWARD/EFFECTIVE DATE	4. ORDER NUMBER	5. SOLICITATION NUMBER	6. SOLICITATION ISSUE DATE	
7. FOR SOLICITATION INFORMATION CALL:		a. NAME		b. TELEPHONE NUMBER (No collect calls)	8. OFFER DUE DATE/ LOCAL TIME
		9. ISSUED BY	CODE	10. THIS ACQUISITION IS <input type="checkbox"/> UNRESTRICTED OR <input type="checkbox"/> SET ASIDE: _____ % FOR: <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> WOMEN-OWNED SMALL BUSINESS (WOSB) ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM NAICS: <input type="checkbox"/> HUBZONE SMALL BUSINESS <input type="checkbox"/> EDWOSB <input type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS <input type="checkbox"/> 8 (A) SIZE STANDARD:	
11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE		12. DISCOUNT TERMS		<input type="checkbox"/> 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)	13b. RATING
15. DELIVER TO		CODE	16. ADMINISTERED BY		
17a. CONTRACTOR/ OFFEROR		CODE	FACILITY CODE	18a. PAYMENT WILL BE MADE BY	
TELEPHONE NO.		18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM			
<input type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER					
19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES			21. QUANTITY	22. UNIT
				23. UNIT PRICE	24. AMOUNT
<i>(Use Reverse and/or Attach Additional Sheets as Necessary)</i>					
25. ACCOUNTING AND APPROPRIATION DATA				26. TOTAL AWARD AMOUNT (For Govt. Use Only)	
<input type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4. FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA		<input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED		<input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED	
<input type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA		<input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED			
<input type="checkbox"/> 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED			<input type="checkbox"/> 29. AWARD OF CONTRACT: REF. _____ OFFER DATED _____ YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:		
30a. SIGNATURE OF OFFEROR/CONTRACTOR			31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)		
30b. NAME AND TITLE OF SIGNER (Type or print)		30c. DATE SIGNED	31b. NAME OF CONTRACTING OFFICER (Type or print)		31c. DATE SIGNED

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STANDARD FORM 1449 (REV. 2/2012)
Prescribed by GSA - FAR (48 CFR) 53.212

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT

32a. QUANTITY IN COLUMN 21 HAS BEEN
 RECEIVED INSPECTED ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED: _____

32b. SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE	32c. DATE	32d. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE
32e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE		32f. TELEPHONE NUMBER OF AUTHORIZED GOVERNMENT REPRESENTATIVE
		32g. E-MAIL OF AUTHORIZED GOVERNMENT REPRESENTATIVE

33. SHIP NUMBER <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	34. VOUCHER NUMBER	35. AMOUNT VERIFIED CORRECT FOR	36. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	37. CHECK NUMBER
38. S/R ACCOUNT NO.	39. S/R VOUCHER NUMBER	40. PAID BY		

41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT	41c. DATE	42a. RECEIVED BY <i>(Print)</i>
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER		42b. RECEIVED AT <i>(Location)</i>
		42c. DATE REC'D <i>(YY/MM/DD)</i> 42d. TOTAL CONTAINERS

STANDARD FORM 1449 (REV. 2/2012) **BACK**

■ 23. Revise section 53.302–347 to read **53.302–347 Order for Supplies or Services.** as follows:

ORDER FOR SUPPLIES OR SERVICES						PAGE	OF	PAGES
IMPORTANT: Mark all packages and papers with contract and/or order numbers.								
1. DATE OF ORDER		2. CONTRACT NO. (If any)		6. SHIP TO:				
3. ORDER NO.		4. REQUISITION/REFERENCE NO.		a. NAME OF CONSIGNEE				
5. ISSUING OFFICE (Address correspondence to)				b. STREET ADDRESS				
7. TO:				c. CITY		d. STATE	e. ZIP CODE	
a. NAME OF CONTRACTOR				f. SHIP VIA				
b. COMPANY NAME				8. TYPE OF ORDER				
c. STREET ADDRESS				<input type="checkbox"/> a. PURCHASE REFERENCE YOUR:		<input type="checkbox"/> b. DELIVERY -- Except for billing instructions on the reverse, this delivery order is subject to instructions contained on this side only of this form and is issued subject to the terms and conditions of the above-numbered contract.		
d. CITY		e. STATE	f. ZIP CODE		Please furnish the following on the terms and conditions specified on both sides of this order and on the attached sheet, if any, including delivery as indicated.			
9. ACCOUNTING AND APPROPRIATION DATA				10. REQUISITIONING OFFICE				
11. BUSINESS CLASSIFICATION (Check appropriate box(es))							12. F.O.B. POINT	
<input type="checkbox"/> a. SMALL <input type="checkbox"/> b. OTHER THAN SMALL <input type="checkbox"/> c. DISADVANTAGED <input type="checkbox"/> d. WOMEN-OWNED <input type="checkbox"/> e. HUBZone <input type="checkbox"/> f. SERVICE-DISABLED VETERAN-OWNED <input type="checkbox"/> g. WOMEN-OWNED SMALL BUSINESS (WOSB) ELIGIBLE UNDER THE WOSB PROGRAM <input type="checkbox"/> h. EDWOSB								
13. PLACE OF			14. GOVERNMENT B/L NO.		15. DELIVER TO F.O.B. POINT ON OR BEFORE (Date)		16. DISCOUNT TERMS	
a. INSPECTION	b. ACCEPTANCE							
17. SCHEDULE (See reverse for Rejections)								
ITEM NO. (a)	SUPPLIES OR SERVICES (b)			QUANTITY ORDERED (c)	UNIT (d)	UNIT PRICE (e)	AMOUNT (f)	QUANTITY ACCEPTED (g)
SEE BILLING INSTRUCTIONS ON REVERSE	18. SHIPPING POINT		19. GROSS SHIPPING WEIGHT		20. INVOICE NO.			
	21. MAIL INVOICE TO:							
	a. NAME							
	b. STREET ADDRESS (or P.O. Box)							
c. CITY				d. STATE	e. ZIP CODE		\$	17(h) TOT. (Cont. pages)
22. UNITED STATES OF AMERICA BY (Signature)						23. NAME (Typed)		
						TITLE: CONTRACTING/ORDERING OFFICER		

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OPTIONAL FORM 347 (REV. 2/2012)
Prescribed by GSA/FAR 48 CFR 53.213(f)

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 1, 2, 7, 16, 32, 42, and 50**

[FAC 2005–56; FAR Case 2008–030; Item II; Docket 2011–0082, Sequence 1]

RIN 9000–AL78

Federal Acquisition Regulation; Proper Use and Management of Cost-Reimbursement Contracts

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

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA have adopted as final, with changes, an interim rule amending the Federal Acquisition Regulation (FAR) to implement a section of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 that addresses the use and management of cost-reimbursement contracts.

DATES: *Effective Date:* April 2, 2012

FOR FURTHER INFORMATION CONTACT: Mr. William Clark, Procurement Analyst, at 202–219–1813, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–56, FAR Case 2008–030.

SUPPLEMENTARY INFORMATION:**I. Background**

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 76 FR 14543 on March 16, 2011, to implement section 864 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (NDAA) (Pub. L. 110–417) enacted on October 14, 2008. This law aligns with the President's goal of reducing high-risk contracting as denoted in the March 4, 2009, Presidential Memorandum on Government Contracting. Section 864 of the law requires amending the FAR to address the use and management of cost-reimbursement contracts in the following three areas:

1. Circumstances when cost-reimbursement contracts are appropriate.
2. Acquisition plan findings to support the selection of a cost-reimbursement contract.
3. Acquisition resources necessary to award and manage a cost-reimbursement contract.

Six respondents submitted comments in response to the interim rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

Comment: One respondent expressed a preference for continued reliance on OMB Circular A–133 Audits of States, Local Governments and Non-Profit Organizations to determine and monitor the adequacy of an educational institution or nonprofit organization's accounting system during the performance of cost-type contracts.

Response: The rule does not prevent reliance on OMB Circular A–133 to determine and monitor the adequacy of an educational institution or nonprofit organization's accounting system during the performance of cost-type contracts.

Comment: A number of respondents asked for clarification of whether the appointment of a contracting officer's representative (COR) is now mandatory for other than firm-fixed-price contracts.

Response: A COR is required on all contracts and orders other than those that are firm-fixed-price, and for firm-fixed-price contracts, as appropriate. The Government applies this requirement to all contract types except firm-fixed-price contracts.

Comment: One respondent referenced FAR 16.103(d)(1) stating "Each contract file shall include documentation to show why the particular contract type was selected. This shall be documented in the acquisition plan, or if a written acquisition plan is not required, in the contract file." The respondent recommended clarifying the circumstances when a formal acquisition plan would not be required.

Response: There are circumstances, such as low dollar thresholds or non-complex contracts, which are set forth in agency procedures, when a formal acquisition plan is not required. However, if a written acquisition plan is not required, the contract type selection must still be documented in the contract file.

Comment: One respondent expressed support for the interim rule and stated an opinion that cost-plus-incentive-fee is the best contract type for the Government and U.S. taxpayer, particularly when in a sole-source environment.

Response: Contracting officers are required to determine the appropriate

contract type that is in the best interests of the Government.

Comment: One respondent recommended that the final rule be written so as to exempt research and development (R&D) contracts from the requirements. The respondent questioned the necessity of the documentation requirements set forth in this rule for R&D contracts. Further, the respondent questioned the necessity of assigning CORs to R&D contracts, since contracting officers generally retain such duties.

Response: Section 864 does not provide for an exception for R&D contracts under this rule. Each contract file shall include documentation to show why the particular contract type was selected, in order to ensure the appropriate contract type is utilized. Specifically for high risk contracts such as R&D contracts it is necessary to discuss the Government's additional risks and the burden to manage the contract type selected. Contracting officers are not precluded under this rule from retaining COR duties.

Comment: One respondent recommended that the Councils reset the effective date of the interim rule to permit training and designation of CORs and revision of internal guidance and templates.

Response: The statute does not provide for a grace period to permit training and designation of CORs and revision of internal guidance and templates.

Comment: One respondent commented that the interim rule interferes with the contracting officer's discretion in selecting the appropriate contract type, and imposes a documentation burden that may not be effective in actually reducing the risk to the Government.

Response: The rule does not interfere with the contracting officer's discretion to select the appropriate contract type. It merely clarifies when cost-reimbursement contracts are appropriate and requires the contracting officer to document the rationale for the decision.

Comment: One respondent questioned the applicability of the rule to other than firm-fixed price contracts, and specifically for supply type contracts. The respondent questioned whether the term "other than firm-fixed price contracts" means only cost-reimbursement, time-and-material, and labor-hour contracts.

Response: The term "other than firm-fixed price contracts" means all contract types other than firm-fixed price contracts, including supply type contracts.

Comment: One respondent recommended the contracting officer be required to make a written determination in order to retain and execute the COR duties. Further the respondent recommended delaying the designation of the COR until the contractor or potential contractor is identified and the terms and conditions of the contract are known.

Response: Contracting officers are not required to make formal written determinations in order to retain their existing duties and responsibilities. However, when the appointment of CORs is necessary, in order to ensure adequate resources are available to monitor and manage other than firm-fixed price contracts, CORs must be nominated as early as practicable. It would not be in the Government's best interest to delay such appointments.

III. Changes in the Final Rule

The following changes were made in the final rule:

(1) FAR 1.602–2(d) was revised to clarify that COR duties may be retained by contracting officers; the language has been revised and moved to the first sentence.

(2) FAR 1.602–2(d)(1), (3), and (6) were modified to make administrative revisions.

(3) At FAR 1.602–2(d)(2), the word “current” has been added and the words “dated November 26, 2007” have been removed. Additionally, the phrase “or for DoD, DoD Regulations as applicable” has been replaced by the phrase “or for DoD, in accordance with the current applicable DoD policy guidance.”

(4) With regard to nomination of a COR, FAR 7.104(e) was modified to delete “and designated and authorized by the contracting officer” because it is redundant to language in the following sentence.

(5) FAR 16.103(d)(1) was revised to make an administrative change. The phrase “in the contract file” was moved from the end of the sentence to the middle of the sentence for clarity. The words “by agency procedures” were also added for clarity.

(6) Because the need to document the contract file with regard to selection of contract type is already adequately addressed in FAR 16.103(d)(1), FAR 16.301–2(b) was revised to remove the next to last sentence, “If a written acquisition plan is not required, the contracting officer shall document the rationale in the contract file.”

(7) FAR 16.301–3(a)(4) has been modified to add at the beginning “Prior to award of the contract or order,” with regard to the requirement for availability of adequate Government resources to

award and manage a contract other than firm-fixed price. FAR 16.301–3(a)(4) is further modified to delete the previous (a)(4)(i) (designation of COR is addressed elsewhere) and make the old (a)(4)(ii) the second sentence of (a)(4). The previous (a)(4)(ii) language has been revised to read, “This includes appropriate Government surveillance during performance in accordance with 1.602–2, to provide reasonable assurance that efficient methods and effective cost controls are used.”

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. 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 section 864 affects only internal Government operations and requires the Government to establish internal guidance on the proper use and management of all contracts especially other than firm-fixed-price contracts (*e.g.*, cost-reimbursement, time-and-material, and labor-hour) and does not impose any additional requirements on small businesses. Therefore, a Final Regulatory Flexibility Analysis has not been performed.

VI. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 1, 2, 7, 16, 32, 42, and 50

Government procurement.

Dated: February 21, 2012.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR parts 1, 2, 7, 16, 32, 42, and 50 which was published in the **Federal Register** at 76 FR 14543 on March 16, 2011, is adopted as final with the following changes:

■ 1. The authority citation for 48 CFR parts 1, 7, and 16 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 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 2. Amend section 1.602–2 by—

■ a. Revising the introductory text of paragraph (d), and paragraphs (d)(1), (d)(2), and (d)(3); and

■ b. Removing from paragraph (d)(6) “Must” and adding “Shall” in its place.

The revised text reads as follows:

1.602–2 Responsibilities.

* * * * *

(d) Unless the contracting officer retains and executes the contracting officer's representative (COR) duties, in accordance with agency procedures, designate and authorize, in writing, a COR on all contracts and orders other than those that are firm-fixed price, and for firm-fixed-price contracts and orders as appropriate. See 7.104(e). A COR—

(1) Shall be a Government employee, unless otherwise authorized in agency regulations;

(2) Shall be certified and maintain certification in accordance with the current Office of Management and Budget memorandum on the Federal Acquisition Certification for Contracting Officer Representatives (FAC-COR) guidance, or for DoD, in accordance with the current applicable DoD policy guidance;

(3) Shall be qualified by training and experience commensurate with the responsibilities to be delegated in accordance with agency procedures;

* * * * *

PART 7—ACQUISITION PLANNING

7.104 [Amended]

■ 3. Amend section 7.104 by removing from paragraph (e) “, and designated

and authorized by the contracting officer.”.

PART 16—TYPES OF CONTRACTS

■ 4. Amend section 16.103 by revising the second sentence of paragraph (d)(1) introductory text to read as follows:

16.103 Negotiating contract type.

* * * * *

(d) * * *

(1) * * * This shall be documented in the acquisition plan, or in the contract file if a written acquisition plan is not required by agency procedures.

* * * * *

16.301–2 [Amended]

■ 5. Amend section 16.301–2 by removing the second sentence from paragraph (b).

■ 6. Amend section 16.301–3 by—

■ a. Removing from paragraph (a)(3) “contract;” and adding “contract or order;” in its place; and

■ b. Revising paragraph (a)(4).

The revised text reads as follows:

16.301–3 Limitations.

(a) * * *

(4) Prior to award of the contract or order, adequate Government resources are available to award and manage a contract other than firm-fixed-priced (see 7.104(e)). This includes appropriate Government surveillance during performance in accordance with 1.602–2, to provide reasonable assurance that efficient methods and effective cost controls are used.

* * * * *

[FR Doc. 2012–4481 Filed 3–1–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 8, 16, 18, and 38

[FAC 2005–56; FAR Case 2007–012; Item III; Docket 2011–0081, Sequence 1]

RIN 9000–AL93

Federal Acquisition Regulation: Requirements for Acquisitions Pursuant to Multiple-Award Contracts

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

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA have adopted as final, with changes, an interim rule amending the Federal Acquisition Regulation (FAR) to implement a section of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 to enhance competition in the purchase of supplies and services by all executive agencies under multiple-award contracts.

DATES: *Effective Date:* April 2, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. William Clark, Procurement Analyst, at 202–219–1813 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–56, FAR Case 2007–012.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 76 FR 14548 on March 16, 2011, to implement section 863 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417), enacted on October 14, 2008.

Section 863 mandated the development and publication of regulations in the FAR to enhance competition for the award of orders placed under multiple-award contracts. Section 863 specified enhancements that include—

- Strengthening competition rules for placing orders under the Federal Supply Schedules (FSS) program and other multiple-award contracts to ensure both the provision of fair notice to contract holders and the opportunity for contract holders to respond (similar to the procedures implemented for section 803 of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107–107)); and

- Providing notice in FedBizOpps of certain orders placed under multiple-award contracts, including FSS.

For each individual purchase of supplies or services in excess of the simplified acquisition threshold (SAT) that is made under a multiple-award contract, section 863 requires the provision of fair notice of intent to make a purchase (including a description of the work to be performed and the basis on which the selection will be made) to all contractors offering such supplies or services under the multiple-award contract. In addition, the statute requires that all contractors responding to the notice be afforded a fair opportunity to make an offer and have that offer fairly considered by the purchasing official. A notice may be provided to fewer than all contractors offering such supplies or services under

a multiple-award contract if the notice is provided to as many contractors as practicable. When notice is provided to fewer than all the contractors, a purchase cannot be made unless—

- Offers were received from at least three qualified contractors; or
- A contracting officer determines in writing that no additional qualified contractors were able to be identified despite reasonable efforts to do so.

These requirements may be waived on the basis of a justification, including a written determination identifying the statutory basis for an exception to fair opportunity, that is prepared and approved at the levels specified in the FAR.

In considering the regulatory changes to strengthen the use of competition in task and delivery-order contracts, DoD, GSA, and NASA made changes consistent with the general competition principles addressed in the President’s March 4, 2009, Memorandum on Government Contracting (available at http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-Subject-Government), while still preserving the efficiencies of these contract vehicles. For this reason, the rule addressed several issues that were not expressly addressed in section 863, such as competition for the establishment and placement of orders under FSS blanket purchase agreements (BPAs).

The FAR changes are applicable to task and delivery orders placed against multiple-award contracts including FSS and BPAs awarded under FSS pursuant to FAR subpart 8.4, and indefinite-delivery/indefinite-quantity contracts awarded pursuant to subpart 16.5. They do not apply to BPAs awarded pursuant to part 13.

Seven respondents submitted comments on the interim rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the comments in the development of the final rule. Respondents submitted comments covering the following nine categories: (1) Conformance with the Small Business Jobs Act; (2) The \$103 million threshold reference; (3) Posting requirements; (4) Eliminate distinctions between single-award and multiple-award BPAs; (5) Competition requirements for establishing BPAs and allowing flexibility in establishing BPA ordering procedures; (6) BPA requirements and health-care programs; (7) Competition above the SAT is a

burden; (8) Seeking price reduction is inconsistent with competition; and (9) Modify FSS contracts to change the Maximum Order Threshold (MOT) to the SAT. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Summary of Significant Changes

- FAR 8.405–3(a)(7)(v) was modified to correct an inadvertent error regarding the threshold amount. The amount should have read \$103 million in the interim rule. The amount has been corrected to read \$103 million in the final rule to reflect inflation.

- FAR 8.405–3(c)(3) has been revised to add at the end of paragraph (3) “The ordering activity is responsible for considering the level of effort and the mix of labor proposed to perform a specific task being ordered, and for determining that the total price is reasonable through appropriate analysis techniques, and documenting the file accordingly.” This was added to ensure the price of an order requiring a statement of work is being evaluated when placed under a BPA with hourly rate services. This language is also consistent with the evaluation of orders requiring a statement of work in FAR 8.405–2(d).

- FAR 8.405–3(e) has been revised to remove paragraph (3), “If a single-award BPA is established, the ordering activity contracting officer’s annual determination must be approved by the ordering activity’s competition advocate prior to the exercise of an option to extend the term of the BPA.” This was determined to be too stringent a requirement for the exercise of an option, which is generally within a contracting officer’s authority.

B. Analysis of Public Comments

1. Conformance With the Small Business Jobs Act

Comment: One respondent asked how the interim rule reconciles with the requirements of the Small Business Jobs Act of 2010, part III, section 1331 (Reservation of Prime Contracts for Small Businesses).

Response: This rule is not impacted by the requirements of section 1331 of the Small Business Jobs Act of 2010.

2. The \$103 Million Threshold

Comment: Two respondents made reference to the \$100 million threshold at FAR 8.405–3(a)(7)(v). They stated that it should be \$103 million to be consistent with FAR 8.405–3(a)(3)(ii).

Response: The threshold should be \$103 million in all places. The

correction has been made to the FAR text.

3. Posting Requirements

Comment: Two respondents submitted comments on the posting requirements. One of the respondents asked what purpose is served by posting fair opportunity exemptions to the FedBizOpps Web site. The respondent noted that fair opportunity exemptions are posted after orders are placed and will be viewed by many parties that do not hold contracts under the relevant multiple-award acquisitions. The respondent suggested that this practice may result in needless challenges and litigation by parties that do not have standing to challenge the exemptions. The other respondent stated that it seemed that the posting requirements provided at FAR 5.301(d) are exactly the same as those provided at FAR 5.406. The respondent suggested that it seemed unnecessary to list the requirement in two different places in the FAR. As such, the respondent recommended removing FAR 5.406.

Response: The requirement to post exceptions to fair opportunity to FedBizOpps is required by section 863 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417). Further, regarding the duplicative posting requirements at FAR 5.301(d) and FAR 5.406, the Councils concluded that the multiple references would provide for clarity in implementation. The Councils also concluded that posting the justifications for exceptions to the competition requirements provides transparency into agency purchases.

4. Eliminate Distinctions Between Single-Award and Multiple-Award BPAs

Comment: One respondent stated that FAR 8.405–3(a) of the interim rule should be revised to place single-award BPAs on par with multiple-award BPAs. The respondent indicated that FAR 8.405–3 does not limit multiple-award BPAs to a one-year base and up to four one-year options, as required for single-award BPAs, nor does it require approval of the competition advocate to extend a multiple-award BPA. The respondent further stated the regulation should be revised to provide that the decision to use a single-award BPA versus a multiple-award BPA be documented and addressed in the acquisition plan for the BPA with the factors to be considered.

Response: The rule includes a preference for multiple-award BPAs, but does not prohibit the establishment of a single-award BPA. A single-award BPA

is appropriate in certain circumstances. The multiple-award preference is intended to facilitate and enhance competition involving orders placed under FSS BPAs. The Councils concluded that the limit on the duration for single-award BPAs supports the preference for multiple-award BPAs and competition. However, the requirement for competition advocate approval at the annual review of a single-award BPA has been removed for the final rule. The contracting officer’s determination whether to establish a single-award BPA or multiple-award BPAs must be documented in the file in accordance with FAR 8.405–3(a)(7).

5. Competition Requirements for Establishing BPAs and Allowing Flexibility in Establishing BPA Ordering Procedures

Comment: One respondent recommended that the interim rule be revised to provide greater flexibility in the establishment of multiple-award BPAs and the placement of orders under BPAs. The respondent noted that the rules previously allowed the agency establishing a BPA to establish its own BPA ordering procedures, and that this allowed agencies such as the Department of Veterans Affairs and the Department of Defense Enterprise Software Initiative to craft flexible ordering procedures that made good business sense under their unique circumstances.

Response: This rule provides flexibility in the establishment of FSS BPAs and the placement of orders under FSS BPAs. The rule includes the flexibility to justify an exception to the competition requirements at either the FSS BPA or order level. The procedures provided in the rule for the establishment of FSS BPAs and placement of the orders thereunder are intended to enhance competition. This is consistent with section 863 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417) and the general competition principles addressed in the President’s March 4, 2009, Memorandum on Government Contracting, while still preserving the efficiencies provided by these contract vehicles.

6. BPA Requirements and Health-Care Programs

Comment: One respondent recommended that Schedules covering drugs and medical supplies be excluded from the rule.

Response: The statute does not allow for an exclusion of FSS covering drugs and medical supplies.

7. Competition Above the SAT Is a Burden

Comment: Two respondents thought that competition above the SAT level is too burdensome. One respondent recommended that the threshold at which formal competition procedures are triggered should be the greater of the MOT or SAT. The respondent also suggested that this rule will increase administrative burden and cost to both the Government and FSS holders. Another respondent noted that multiple-award contracts are designed to offer agencies a streamlined mechanism for acquiring services and supplies. The respondent stated that the procedures set forth in the interim rule would significantly increase the time required for placing orders in situations where a valid reason exists to utilize an exception to the fair opportunity requirement. According to the respondent, it is not clear that adding these requirements will have the intended effect of meaningfully increasing competition under multiple-award contracts.

Response: The use of the SAT as the threshold is required by statute (section 863 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417)).

8. Seeking Price Reduction Is Inconsistent With Competition

Comment: One respondent stated that the requirement that contracting officers seek a price reduction when placing an order over the SAT is inconsistent with the requirement that purchase orders over the SAT be competed. The FAR is built, in part, on the concept that competition drives a fair and reasonable price. As such, it is unclear, from the respondent's perspective, why contracting officers should be required to seek a further price reduction after a competitive procurement is awarded because the successful contractor has already provided its best price in order to win the procurement. The respondent argued that this requirement will likely result in contractors preparing their original price list in anticipation of multiple layers of price negotiation during the competitive procurement process and thereafter.

Response: Pursuant to the Government Accountability Office (GAO) report number GAO-09-792 entitled "Agencies are not Maximizing Opportunities for Competition or Savings Under BPAs Despite Significant Increase in Usage," requesting a price reduction is not inconsistent with competition. A contracting officer can meet this requirement at any time via a

solicitation, or anytime thereafter. This rule does not require the contractor to reduce its prices when asked to do so by the Government.

9. Modify FSS Contracts To Change the MOT to the SAT

Comment: One respondent stated that the old FAR subpart 8.4 ordering procedures and the price reduction clause (PRC) reflected the balance between competition and price reductions above the MOT versus compliance with the PRC. The PRC recognized that the PRC remedies were not necessary above the MOT, where competition and requests for price reductions were required by the old FAR subpart 8.4. According to the respondent, the new FAR subpart 8.4 ordering procedures have replaced the MOT with the simplified acquisition threshold and, as such, there should be a corresponding change in the contracts.

Response: The respondent's suggestion is out of the scope of this rule. The suggestion has been forwarded to the GSA Federal Acquisition Service for consideration.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Department of Defense (DoD), the General Services Administration (GSA), and the 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 this rule does not revise or change existing regulations pertaining specifically to small business concerns seeking Government contracts. DoD, GSA, and NASA believe the final rule should benefit small entities by encouraging and enhancing competition.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 5, 8, 16, 18, and 38

Government procurement.

Dated: February 21, 2012.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Interim Rule Adopted As Final With Changes

Accordingly, the interim rule amending 48 CFR parts 5, 8, 16, 18, and 38 which was published in the **Federal Register** at 76 FR 14548 on March 16, 2011, is adopted as final with the following changes:

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 1. The authority citation for 48 CFR part 8 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 8.405-3 by removing from paragraph (a)(7)(v) "\$100 million" and adding "\$103 million" in its place; adding a new sentence to the end of paragraph (c)(3); and removing paragraph (e)(3). The added text reads as follows:

8.405-3 Blanket purchase agreements (BPAs).

* * * * *

(c) * * *

(3) * * * The ordering activity is responsible for considering the level of effort and the mix of labor proposed to perform a specific task being ordered, and for determining that the total price is reasonable through appropriate analysis techniques, and documenting the file accordingly.

* * * * *

[FR Doc. 2012-4485 Filed 3-1-12; 8:45 am]

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DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 13 and 19**

[FAC 2005–56; FAR Case 2011–004; Item IV; Docket 2011–0004, Sequence 1]

RIN 9000–AL88

**Federal Acquisition Regulation:
Socioeconomic Program Parity**

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

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA have adopted as final, with changes, the interim rule amending the Federal Acquisition Regulation (FAR) to implement a section of the Small Business Jobs Act of 2010 that clarifies that there is no order of precedence among the small business socioeconomic contracting programs. Accordingly, this final rule amends the FAR to clarify the existence of socioeconomic parity and that contracting officers may exercise discretion when determining whether an acquisition will be restricted to small businesses participating in the 8(a) Business Development Program (8(a)), Historically Underutilized Business Zones (HUBZone) Program, Service-Disabled Veteran-Owned Small Business (SDVOSB) Program, or the Women-Owned Small Business (WOSB) Program.

DATES: *Effective Date:* April 2, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Karlos Morgan, Procurement Analyst, at 202–501–2364 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–56, FAR Case 2011–004.

SUPPLEMENTARY INFORMATION:**I. Background**

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 76 FR 14566 on March 16, 2011, to implement section 1347 of the Small Business Jobs Act of 2010 (Pub. L. 111–240). (A correcting amendment was issued in the **Federal Register** at 76 FR 26220 on May 6, 2011, to reinsert text that was inadvertently omitted in the March 16, 2011, publication.) Section 1347(b) clarifies at section 31(b)(2)(B) of

the Small Business Act, 15 U.S.C. 657a(b)(2)(B), that a contract opportunity “may” be awarded on the basis of competition restricted to qualified Historically Underutilized Business Zone (HUBZone) small business concerns if the contracting officer has a reasonable expectation that not less than two qualified HUBZone small business concerns will submit offers and the award can be made at a fair market price. The interim rule clarified that there is no order of precedence among the small business socioeconomic contracting programs (*i.e.*, 8(a), HUBZone, SDVOSB, or the WOSB programs) and clarified the contracting officer’s authority to use discretion when determining whether an acquisition will be restricted to small businesses participating in those programs. Eighteen respondents submitted comments on the interim rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule are provided as follows:

A. Socioeconomic Program Preferences Below the Simplified Acquisition Threshold

Comment: Several respondents submitted comments suggesting that the Councils misinterpreted the intent of section 1347 of the Small Business Jobs Act of 2010 by eliminating the preference for 8(a), HUBZone, SDVOSB, and WOSB programs at or below the simplified acquisition threshold (SAT). These respondents further suggested that FAR 19.203 be amended to include language stating that the small business socioeconomic contracting programs (*i.e.*, 8(a), HUBZone, SDVOSB, and WOSB programs) shall be considered before a general small business set-aside for acquisitions below the SAT.

Response: The interim rule did not change the relationship among the small business socioeconomic contracting programs (*i.e.*, 8(a), HUBZone, SDVOSB and WOSB programs) at or below the SAT. It clarified that the mandatory requirement to reserve each acquisition for supplies or services with an anticipated dollar value at or below the SAT for small businesses does not preclude the contracting officer from making an award under the small business socioeconomic contracting programs. The text provided at FAR 19.203(b) is consistent with the Small

Business Administration’s (SBA) regulations at 13 CFR 125.2(f)(1), 124.503(j)(1), 125.19(b)(1), 126.607(b)(1), and 127.503(d)(1). FAR 19.203(b) is clarified to reflect that the paragraph applies to acquisitions with an anticipated value above the micro-purchase threshold but not exceeding the SAT.

B. Set-Aside Procedures Over the SAT; Omitted Language (FAR 19.502–2(b))

Comment: A few respondents commented that the reference to set-aside procedures over the SAT, commonly referred to as “Rule of Two,” was omitted.

Response: As published in the **Federal Register** at 76 FR 14566 on March 16, 2011, the regulation contained a technical error which accidentally deleted the Rule of Two in the promulgated rule. A correcting amendment was issued in the **Federal Register** at 76 FR 26220 on May 6, 2011, reinstating the Rule of Two.

C. Sole Source Dollar Thresholds Vary Among the Socioeconomic Programs

Comment: One respondent noted that socioeconomic parity could not be implemented until all socioeconomic programs had the same sole source dollar threshold.

Response: The sole source dollar thresholds associated with the small business socioeconomic contracting programs (*i.e.*, 8(a), HUBZone, SDVOSB, and WOSB programs) were established by their applicable statutes and the applicable inflationary adjustments that occur to acquisition-related thresholds (see FAR 1.109). These dollar thresholds have no impact on the ability of a contracting officer to exercise discretion when selecting the type of small business socioeconomic contracting program to utilize.

D. Sole Source Authority Under the SDVOSB Program

Comment: A number of respondents suggested that the omission of the SDVOSB sole source reference at FAR 13.003 and the revisions to FAR 19.1406 suggest that the use of a SDVOSB sole source before considering a small business set-aside is discretionary above and below the SAT. It was further suggested that FAR 19.1405 should be revised to state that the contracting officer shall consider SDVOSB set-asides before considering SDVOSB sole source awards.

Response: For acquisitions above the SAT, the contracting officer shall consider a SDVOSB sole source award before considering a general small business set-aside; however,

competitive SDVOSB set-asides should be considered before a SDVOSB sole source. Below the SAT, the contracting officer has the discretion to award a general small business set-aside or to utilize the SDVOSB program. FAR 13.003(b)(2) is revised to remove the reference to SDVOSB concerns and to add a reference to the SDVOSB program (FAR subpart 19.14). Additionally, FAR 19.1406(a) was revised to remove the discretionary “may” and add “shall consider” to be consistent with FAR 19.203.

E. Discretionary Use of the 8(a) Program

Comment: One respondent commented that revisions to FAR 19.800(e) suggest that the use of the 8(a) program rather than a small business set-aside is discretionary.

Response: For acquisitions above the SAT, the contracting officer shall consider an award under the 8(a) program before considering a general small business set-aside. An acquisition offered under the 8(a) program shall be awarded on the basis of competition when the conditions in FAR 19.805–1 are met. Below the SAT, the contracting officer has the discretion to award a general small business set-aside or to utilize the 8(a) program. FAR 19.800(e) is revised to clarify that the contracting officer shall consider 8(a) set-asides or sole source awards before considering a general small business set-aside.

F. Discretionary Use of the HUBZone Program

Comment: A number of respondents commented that revisions to FAR 19.1306 suggest that the use of HUBZone sole source over a small business set-aside is discretionary. It was further suggested that FAR 19.1305 should be revised to state that the contracting officer shall consider HUBZone set-asides before considering HUBZone sole source awards.

Response: For acquisitions above the SAT, the contracting officer shall consider a HUBZone sole source award before considering a general small business set-aside. However, a competitive HUBZone set-aside should be considered before a HUBZone sole source. Below the SAT, the contracting officer has the discretion to award a general small business set-aside or to utilize the HUBZone program. Additionally, in accordance with FAR 19.1306(a)(4), HUBZone sole source awards are not permitted at or below the simplified acquisition threshold. FAR 13.003(b)(2) is revised to remove the reference to HUBZone small business concerns and to add a reference to FAR 19.1305 and 19.1306(a)(4) for the

HUBZone program. Additionally, FAR 19.1306(a) is revised to remove the discretionary “may” and add “shall consider” to be consistent with FAR 19.203.

G. Definition of Term “Shall First Consider”

Comment: A few respondents commented that the interim rule requires that contracting officers “shall first consider” socioeconomic programs; however, the rule does not define what constitutes consideration.

Response: FAR 19.203(d) was added to include language consistent with 13 CFR 125.2(f)(2)(ii) regarding the minimum elements a contracting officer should examine when choosing a socioeconomic program: The results of market research and progress in fulfilling agency small business goals.

H. Relationship of Small Business Socioeconomic Contracting Programs (8(a), HUBZone, SDVOSB, and WOSB) With Small Businesses

Comment: A number of respondents commented that the parity rule favors the small business socioeconomic contracting programs over general small businesses and that FAR 19.203 could be interpreted to mean a contracting officer is mandated to make an award under one of the small business socioeconomic contracting programs, to the exclusion of other small businesses.

Response: SBA’s regulations require acquisitions above the micro-purchase threshold and at or below the SAT to be reserved for small business. This requirement does not preclude the contracting officer from having the discretion to award under one of the small business socioeconomic contracting programs (8(a), HUBZone, SDVOSB, and WOSB). However, above the SAT, the contracting officer shall consider the small business socioeconomic contracting programs before a general small business set-aside.

I. Other Changes

In addition to the changes made in response to public comments, an introductory statement was added at FAR 19.800(e), 19.1305(a), and 19.1405(a) to clarify that the contracting officer must keep in mind the priorities and considerations set forth in FAR 19.203 when planning an acquisition under the 8(a), HUBZone, or SDVOSB programs.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory

alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

The objective of this final rule is to clarify that there is no order of precedence among the small business socioeconomic programs, and to clarify that the contracting officer’s authority to use discretion when determining whether an acquisition will be restricted to small businesses participating in the 8(a), HUBZone, SDVOSB, or WOSB programs. Small businesses that participate in Federal Government contracting are the specific group of small entities affected by this final rule.

There were no significant issues raised by the public in response to the Initial Regulatory Flexibility Analysis provided in the interim rule. This final rule adopts the interim rule with minor changes.

Generally, this rule is applicable to all current and potential small businesses that wish to participate in Federal procurement. Firms interested in obtaining Federal contract awards must register in the Central Contractor Registration (CCR) to be eligible for contract award and payment. Examination of the CCR reveals there are approximately 349,992 small business firms; 9,303 HUBZone firms, 9,234 8(a) firms, 18,213 SDVOSB concerns, and 80,477 WOSB concerns currently registered that may be affected by this final rule.

This final rule will impose no new reporting or record keeping requirements on large or small entities. There are no relevant Federal rules which duplicate, overlap, or conflict with this rule.

Promulgation of this final rule may have a positive impact on small businesses as it presents the maximum practicable opportunity for small business concerns qualified under the socioeconomic programs to participate in the performance of contracts, and assist Federal agencies in meeting each of the Government’s small business contracting goals.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat. The Regulatory Secretariat has submitted a copy of the FRFA to the

Chief Counsel for Advocacy of the Small Business Administration.

V. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 13 and 19

Government procurement.

Dated: February 21, 2012.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR parts 13 and 19, which was published in the Federal Register at 76 FR 14566, March 16, 2011, is adopted as final with the following changes:

- 1. The authority citation for 48 CFR parts 13 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 13—SIMPLIFIED ACQUISITION PROCEDURES

- 2. Amend section 13.003 by revising paragraph (b) to read as follows:

13.003 Policy.

* * * * *

(b)(1) Acquisitions of supplies or services that have an anticipated dollar value exceeding \$3,000 (\$15,000 for acquisitions as described in 13.201(g)(1)) but not exceeding \$150,000 (\$300,000 for acquisitions described in paragraph (1) of the simplified acquisition threshold definition at 2.101) are reserved exclusively for small business concerns and shall be set aside (see 19.000, 19.203, and subpart 19.5).

(2) The contracting officer may make an award to a small business concern under the—

- (i) 8(a) Program (see subpart 19.8);
(ii) Historically Underutilized Business Zone (HUBZone) Program (but see 19.1305 and 19.1306(a)(4));
(iii) Service-Disabled Veteran-Owned Small Business (SDVOSB) Program (see subpart 19.14); or
(iv) Women-Owned Small Business (WOSB) Program (see subpart 19.15).

(3) The following contracting officer's decisions for acquisitions at or below the simplified acquisition threshold are

not subject to review under subpart 19.4:

(i) A decision not to make an award under the 8(a) Program.

(ii) A decision not to set aside an acquisition for HUBZone small business concerns, service-disabled veteran-owned small business concerns, or EDWOSB concerns and WOSB concerns eligible under the WOSB Program.

(4) Each written solicitation under a set-aside shall contain the appropriate provisions prescribed by part 19. If the solicitation is oral, however, information substantially identical to that in the provision shall be given to potential quoters.

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

- 3. Amend section 19.203 by revising paragraphs (b) and (c); redesignating paragraph (d) as paragraph (e); and adding a new paragraph (d) to read as follows:

19.203 Relationship among small business programs.

* * * * *

(b) At or below the simplified acquisition threshold. For acquisitions of supplies or services that have an anticipated dollar value exceeding \$3,000 (\$15,000 for acquisitions as described in 13.201(g)(1)), but not exceeding \$150,000 (\$300,000 for acquisitions described in paragraph (1) of the simplified acquisition threshold definition at 2.101), the requirement at 19.502-2(a) to exclusively reserve acquisitions for small business concerns does not preclude the contracting officer from awarding a contract to a small business under the 8(a) Program, HUBZone Program, SDVOSB Program, or WOSB Program.

(c) Above the simplified acquisition threshold. For acquisitions of supplies or services that have an anticipated dollar value exceeding the simplified acquisition threshold definition at 2.101, the contracting officer shall first consider an acquisition for the small business socioeconomic contracting programs (i.e., 8(a), HUBZone, SDVOSB, or WOSB programs) before considering a small business set-aside (see 19.502-2(b)). However, if a requirement has been accepted by the SBA under the 8(a) Program, it must remain in the 8(a) Program unless the SBA agrees to its release in accordance with 13 CFR parts 124, 125, and 126.

(d) In determining which socioeconomic program to use for an acquisition, the contracting officer should consider, at a minimum—

(1) Results of market research that was done to determine if there are socioeconomic firms capable of satisfying the agency's requirement; and

(2) Agency progress in fulfilling its small business goals.

* * * * *

- 4. Amend section 19.800 by revising paragraph (e) to read as follows:

19.800 General.

* * * * *

(e) The contracting officer shall comply with 19.203 before deciding to offer an acquisition to a small business concern under the 8(a) Program. For acquisitions above the simplified acquisition threshold, the contracting officer shall consider 8(a) set-asides or sole source awards before considering small business set-asides.

* * * * *

- 5. Amend section 19.1305 by revising paragraph (a) to read as follows:

19.1305 HUBZone set-aside procedures.

(a) The contracting officer—
(1) Shall comply with 19.203 before deciding to set aside an acquisition under the HUBZone Program;
(2) May set aside acquisitions exceeding the micro-purchase threshold for competition restricted to HUBZone small business concerns when the requirements of paragraph (b) of this section can be satisfied; and
(3) Shall consider HUBZone set-asides before considering HUBZone sole source awards (see 19.1306) or small business set-asides (see subpart 19.5).

* * * * *

(3) Shall consider HUBZone set-asides before considering HUBZone sole source awards (see 19.1306) or small business set-asides (see subpart 19.5).

* * * * *

- 6. Amend section 19.1306 by revising the introductory text of paragraph (a) to read as follows:

19.1306 HUBZone sole source awards.

(a) A contracting officer shall consider a contract award to a HUBZone small business concern on a sole source basis (see 6.302-5(b)(5)) before considering a small business set-aside (see 19.203 and subpart 19.5), provided none of the exclusions at 19.1304 apply; and—

* * * * *

- 7. Amend section 19.1405 by revising paragraph (a) to read as follows:

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

(a) The contracting officer—
(1) Shall comply with 19.203 before deciding to set aside an acquisition under the SDVOSB Program;
(2) May set-aside acquisitions exceeding the micro-purchase threshold for competition restricted to SDVOSB concerns when the requirements of paragraph (b) of this section can be satisfied; and

(3) Shall consider SDVOSB set-asides before considering SDVOSB sole source awards (see 19.1406) or small business set-asides (see subpart 19.5).

* * * * *

■ 8. Amend section 19.1406 by revising the introductory text of paragraph (a) to read as follows:

19.1406 Sole source awards to service-disabled veteran-owned small business concerns.

(a) A contracting officer shall consider a contract award to a SDVOSB concern on a sole source basis (see 6.302–5(b)(6)), before considering small business set-asides (see 19.203 and subpart 19.5) provided none of the exclusions of 19.1404 apply and—

* * * * *

[FR Doc. 2012–4488 Filed 3–1–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22, 25, and 52

[FAC 2005–56; FAR Case 2012–002; Item V; Docket 2012–0002, Sequence 1]

RIN 9000–AM17

Federal Acquisition Regulation: Trade Agreements Thresholds

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

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to incorporate adjusted thresholds for

application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements, as determined by the United States Trade Representative.

DATES: *Effective Date:* March 2, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, at 202–219–0202 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–56, FAR Case 2012–002.

SUPPLEMENTARY INFORMATION:

I. Background

Every two years, the trade agreements thresholds are adjusted according to a pre-determined formula set forth in the agreements. The United States Trade Representative has specified the following new thresholds in the **Federal Register** (see 76 FR 76808, published on December 8, 2011):

Trade agreement	Supply contract (equal to or exceeding)	Service contract (equal to or exceeding)	Construction contract (equal to or exceeding)
WTO GPA	\$202,000	\$202,000	\$7,777,000
FTAs:			
Australia FTA	77,494	77,494	7,777,000
Bahrain FTA	202,000	202,000	10,074,262
CAFTA–DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua)	77,494	77,494	7,777,000
Chile FTA	77,494	77,494	7,777,000
Morocco FTA	202,000	202,000	7,777,000
NAFTA:			
—Canada	25,000	77,494	10,074,262
—Mexico	77,494	77,494	10,074,262
Oman FTA	202,000	202,000	10,074,262
Peru FTA	202,000	202,000	7,777,000
Singapore FTA	77,494	77,494	7,777,000
Israeli Trade Act	50,000		

II. Discussion and Analysis

This final rule implements the new thresholds in FAR subpart 25.4, Trade Agreements, and other sections in the FAR that include trade agreements thresholds (*i.e.*, 22.1503, 25.202, 25.603, 25.1101, and 25.1102).

In addition, changes are required to FAR clause 52.204–8, Annual Representations and Certifications, and FAR clause 52.222–19, Child Labor-Cooperation with Authorities and Remedies. Conforming changes are also required to the clause dates in FAR clause 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items, and FAR clause 52.213–4, Terms and Conditions-Simplified Acquisitions (Other Than Commercial Items).

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant FAR revision within the meaning of FAR 1.501–1 and 41 U.S.C. 1707 and does not require publication for public comment.

V. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 22, 25, and 52

Government procurement.

Dated: February 21, 2012.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 22, 25, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 22, 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 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1503 [Amended]

■ 2. Amend section 22.1503 by removing from paragraph (b)(3) “\$70,079” and adding “\$77,494” in its place, and by removing from paragraph (b)(4) “\$203,000” and adding “\$202,000” in its place.

PART 25—FOREIGN ACQUISITION

25.202 [Amended]

■ 3. Amend section 25.202 by removing from paragraph (c) “\$7,804,000” and adding “\$7,777,000” in its place.

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

25.402 General.

* * * * *
(b) * * *

Trade agreement	Supply contract (equal to or exceeding)	Service contract (equal to or exceeding)	Construction contract (equal to or exceeding)
WTO GPA	\$202,000	\$202,000	\$7,777,000
FTAs:			
Australia FTA	77,494	77,494	7,777,000
Bahrain FTA	202,000	202,000	10,074,262
CAFTA–DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua)	77,494	77,494	7,777,000
Chile FTA	77,494	77,494	7,777,000
Morocco FTA	202,000	202,000	7,777,000
NAFTA:			
—Canada	25,000	77,494	10,074,262
—Mexico	77,494	77,494	10,074,262
Oman FTA	202,000	202,000	10,074,262
Peru FTA	202,000	202,000	7,777,000
Singapore FTA	77,494	77,494	7,777,000
Israeli Trade Act	50,000		

25.603 [Amended]

■ 5. Amend section 25.603 by removing from paragraph (c)(1) “\$7,804,000” and adding “\$7,777,000” in its place.

25.1101 [Amended]

■ 6. Amend section 25.1101 by—

■ a. Removing from paragraph (b)(1)(i)(A) “\$203,000” and adding “\$202,000” in its place;

■ b. Removing from paragraphs (b)(1)(iii) and (b)(2)(iii) “\$70,079” and adding “\$77,494” in its place; and

■ c. Removing from paragraphs (c)(1) and (d) “\$203,000” and adding “202,000” in its place.

25.1102 [Amended]

■ 7. Amend section 25.1102 by—

■ a. Removing from the introductory text of paragraph (a) “\$7,804,000” and adding “\$7,777,000” in its place;

■ b. Removing from the introductory text of paragraph (c) “\$7,804,000” and adding “\$7,777,000” in its place;

■ c. Removing from paragraph (c)(3) “\$7,804,000” and “\$9,110,318” and adding “\$7,777,000” and “\$10,074,262” in their place, respectively; and

■ d. Removing from paragraph (d)(3) “\$7,804,000” and “\$9,110,318” and adding “\$7,777,000” and “\$10,074,262” in their place, respectively.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. Amend section 52.204–8 by revising the date of the provision as set forth below, and removing from paragraph (c)(1)(xvii)(C) “\$67,826” and adding “\$77,494” in its place.

52.204–8 Annual Representations and Certifications.

* * * * *

ANNUAL REPRESENTATIONS AND CERTIFICATIONS (MAR 2012)

* * * * *

■ 9. Amend section 52.212–5 by revising the date of the clause and paragraph (b)(27) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL (MAR 2012)

* * * * *

(b) * * *

____(27) 52.222–19, Child Labor-Cooperation with Authorities and Remedies (MAR 2012) (E.O. 13126).

* * * * *

■ 10. Amend section 52.213–4 by revising the date of the clause and paragraph (b)(1)(i) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL ITEMS) (MAR 2012)

* * * * *

(b) * * *

(1) * * *

(i) 52.222–19, Child Labor—Cooperation with Authorities and Remedies (MAR 2012) (E.O. 13126). (Applies to contracts for supplies exceeding the micro-purchase threshold.)

* * * * *

■ 11. Amend section 52.222–19 by revising the date of the clause; removing from paragraph (a)(3) “\$70,079” and adding “\$77,494” in its place; and removing from paragraph (a)(4) “\$203,000” and adding “\$202,000” in

its place. The revised text reads as follows:

52.222-19 Child Labor—Cooperation with Authorities and Remedies.

* * * * *

CHILD LABOR—COOPERATION WITH AUTHORITIES AND REMEDIES (MAR 2012)

* * * * *

[FR Doc. 2012-4492 Filed 3-1-12; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22, 25, and 52

[FAC 2005-56; FAR Case 2011-030; Item VI; Docket 2011-0030, Sequence 1]

RIN 9000-AM16

Federal Acquisition Regulation; New Designated Country (Armenia) and Other Trade Agreements Updates

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

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to add Armenia as a designated country, due to the accession of Armenia to membership in the World Trade Organization Government Procurement Agreement. The rule also updates the FAR lists of countries that are party to the Agreement on Trade in Civil Aircraft.

DATES: *Effective Date:* March 2, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, at 202-219-0202 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite FAC 2005-56, FAR Case 2011-030.

SUPPLEMENTARY INFORMATION:

I. Background

On September 15, 2011, Armenia became a party to the World Trade Organization Government Procurement Agreement (WTO GPA). The Trade Agreements Act (19 U.S.C. 2501 *et seq.*) provides the authority for the President to waive the Buy American Act and

other discriminatory provisions for eligible products from countries that have signed an international trade agreement with the United States (such as the WTO GPA). The President has delegated this waiver authority to the U.S. Trade Representative (see FAR 25.402).

On September 22, 2011, because Armenia became a party to the WTO GPA and because the U.S. Trade Representative has determined that Armenia will provide appropriate reciprocal competitive Government procurement opportunities to United States products and services and suppliers of such products and services, the U.S. Trade Representative published a notice in the **Federal Register** (76 FR 58856) waiving the Buy American Act and other discriminatory provisions for eligible products from Armenia.

In addition, the Office of the U.S. Trade Representative has provided an updated list of countries that are party to the Agreement on Trade in Civil Aircraft. The U.S. Trade Representative has waived the Buy American Act for civil aircraft and related articles from countries that are parties to the Agreement on Trade on Civil Aircraft.

II. Discussion and Analysis

FAR 25.003 defines WTO GPA countries by listing the parties to the WTO GPA, and defines “designated country” as a WTO GPA country, a Free Trade Agreement country, a least designated country, or a Caribbean Basin country (including the lists of countries in each category).

Because Armenia is now a WTO GPA country and therefore also a designated country, as determined by the U.S. Trade Representative, this final rule adds Armenia to the lists of WTO GPA countries and designated countries at FAR 22.1503, 25.003, 52.222-19, 52.225-5, 52.225-11, and 52.225-23.

This final rule also updates the FAR lists of countries that are party to the Agreement on Trade in Civil Aircraft at FAR 25.407 and 52.225-7, Waiver of Buy American Act for Civil Aircraft and Related Articles.

Conforming changes have also been made to the associated clause dates for the revised clauses in the lists at FAR 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, and FAR 52.213-4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

III. Publication of This Final Rule for Public Comment Is Not Required by Statute

“Publication of proposed regulations”, 41 U.S.C. 1707, is the statute which applies to the publication of the Federal Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it recognizes actions taken by the United States Trade Representative that do not have a significant effect on contractors or offerors.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant FAR revision within the meaning of FAR 1.501-1 and 41 U.S.C. 1707 and does not require publication for public comment.

VI. Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) unless the collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. The Paperwork

Reduction Act does apply, because the final rule affects the certification and information collection requirement in the provision at FAR 52.225-11, Buy American Act—Construction Materials Under Trade Agreements, currently approved under OMB clearance 9000-0141, Buy American Act—Construction. The FAR Council has determined that the impact on the approved paperwork burden is negligible. Comments regarding the burden estimates or any other aspect of this collection of information, including suggestions for reducing the burden, in response to approved OMB clearance 9000-0141, should be sent, not later than May 1, 2012 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat Division (MVCB), Attn: Hada Flowers, 1275 First Street, NE., 7th Floor, Washington, DC 20417.

Requesters may obtain a copy of the supporting statement for the burden approved under OMB clearance 9000-0141 from the General Services Administration, Regulatory Secretariat (MVCB), Attn: Hada Flowers, 1275 First Street, NE., 7th Floor, Washington, DC 20417. Please cite OMB Control Number 9000-0141, Buy American Act—Construction, in all correspondence.

List of Subjects in 48 CFR Parts 22, 25, and 52

Government procurement.

Dated: February 21, 2012.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 22, 25, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 22, 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 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1503 [Amended]

■ 2. Amend section 22.1503 by removing from paragraph (b)(4) the word “Aruba,” and adding the words “Armenia, Aruba,” in its place.

PART 25—FOREIGN ACQUISITION

25.003 [Amended]

■ 3. Amend section 25.003 by removing from paragraph (1) of the definition “Designated country”, and the

definition “World Trade Organization Government Procurement Agreement (WTO GPA) country” the word “Aruba,” and adding the words “Armenia, Aruba,” in their place.

■ 4. Revise section 25.407 to read as follows:

25.407 Agreement on Trade in Civil Aircraft.

Under the authority of Section 303 of the Trade Agreements Act, the U.S. Trade Representative has waived the Buy American Act for civil aircraft and related articles that meet the substantial transformation test of the Trade Agreements Act, from countries that are parties to the Agreement on Trade in Civil Aircraft. Those countries are Albania, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Macao China, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Taiwan (Chinese Taipei), and the United Kingdom.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Amend section 52.212-5 by revising the date of the clause, and paragraphs (b)(27) and (b)(41) to read as follows:

52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS APR 2012

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(b) * * *
— (27) 52.222-19, Child Labor—Cooperation with Authorities and Remedies APR 2012 (E.O. 13126).

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— (41) 52.225-5, Trade Agreements APR 2012 (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).

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■ 6. Amend section 52.213-4 by revising the date of the clause and paragraph (b)(1)(i) to read as follows:

52.213-4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

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TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL ITEMS) APR 2012

* * * * *

(b) * * *
(1) * * *

(i) 52.222-19, Child Labor—Cooperation with Authorities and Remedies APR 2012 (E.O. 13126). (Applies to contracts for supplies exceeding the micro-purchase threshold.)

* * * * *

■ 7. Amend section 52.222-19 by revising the date of the clause to read as set forth below; and removing from paragraph (a)(4) the word “Aruba,” and adding the words “Armenia, Aruba,” in its place.

52.222-19 Child Labor—Cooperation With Authorities and Remedies.

* * * * *

CHILD LABOR—COOPERATION WITH AUTHORITIES AND REMEDIES APR 2012

* * * * *

■ 8. Amend section 52.225-5 by revising the date of the clause to read as set forth below; and in paragraph (a) removing from paragraph (1) of the definition “Designated country” the word “Aruba,” and adding the words “Armenia, Aruba,” in its place.

52.225-5 Trade Agreements.

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TRADE AGREEMENTS APR 2012

* * * * *

■ 9. Amend section 52.225-7 by revising the date of the provision, and the second sentence of paragraph (b) to read as follows:

52.225-7 Waiver of Buy American Act for Civil Aircraft and Related Articles.

* * * * *

WAIVER OF BUY AMERICAN ACT FOR CIVIL AIRCRAFT AND RELATED ARTICLES APR 2012

* * * * *

(b) * * * Those countries are Albania, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Macao China, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Taiwan (Chinese Taipei), and the United Kingdom.

* * * * *

■ 10. Amend section 52.225-11 by revising the date of the clause to read as set forth below; and in paragraph (a) removing from paragraph (1) of the definition “Designated country” the

word “Aruba,” and adding the words “Armenia, Aruba,” in its place.

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

* * * * *

BUY AMERICAN ACT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS APR 2012

* * * * *

■ 11. Amend section 52.225–23 by revising the date of the clause to read as set forth below; and in paragraph (a) removing from paragraph (1) of the definition “Designated country” and paragraph (1) of the definition “Recovery Act designated country” the word “(Aruba,” and adding the words “(Armenia, Aruba,” in its place.

52.225–23 Required Use of American Iron, Steel, and Manufactured Goods—Buy American Act—Construction Materials Under Trade Agreements.

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REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS—BUY AMERICAN ACT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS APR 2012

* * * * *

[FR Doc. 2012–4495 Filed 3–1–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 31, 32, 45, 49, 51, 52, and 53

[FAC 2005–56; FAR Case 2010–009; Item VII; Docket 2010–0009, Sequence 1]

RIN 9000–AL95

Federal Acquisition Regulation; Government Property

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

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to clarify reporting, reutilization, and disposal of Government property.

DATES: *Effective Date:* April 2, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis E. Glover, Sr., Procurement

Analyst, at 202–501–1448 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–56, FAR Case 2010–009.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the *Federal Register* at 76 FR 18497 on April 4, 2011. Eight respondents submitted comments on the proposed rule. The comments received were grouped by topic area.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Summary of Significant Changes

1. A definition of “surplus property” is added at FAR 2.101 to apply throughout the FAR.

2. Terminology used is updated and used consistently throughout the FAR, e.g., “loss of Government property” is defined at FAR 45.101, and “loss” is used consistently in lieu of “loss, damage, destruction, or theft.”

3. Clarified, and distinguished among, the responsibilities and authorities of the contracting officer, property administrator, plant clearance officer, and contractor.

4. Reorganized and clarified procedures and responsibilities for Government property disposal (see FAR subpart 45.6).

5. Reorganized, clarified, and updated the Government property clause at FAR 52.245–1 to conform with revisions to FAR part 45.

B. Government Responsibilities

Comments: A respondent recommended a number of revisions to the Government responsibilities, primarily those in FAR subpart 45.6, Reporting, Reutilization, and Disposal. The respondent recommended revising FAR 45.606–1(a) to require that the property administrator work in coordination with the plant clearance officer to ensure that contractor scrap disposal processes are effective and properly documented. Another recommendation was to revert to the current regulation’s use of “should” in lieu of “may” at FAR 45.602–1(c)(1) in order to ensure the Government’s agreement before Government property

is removed from a contractor’s inventory schedule. The respondent recommended modifying FAR 45.606–1(b) to require that any deviation from the contractor’s standard property plan and processes be identified as early as possible in the procurement process.

Response: The first two recommendations are adopted in this final rule. The final recommendation is not adopted because the Property Administrator can make that determination at any time.

Comments: The same respondent recommended a number of other revisions to the Government responsibilities, also primarily in FAR subpart 45.6, Reporting, Reutilization, and Disposal. The respondent proposed to revise FAR 45.600, Scope of subpart (which was not included in the proposed rule) to allow for either the contracting officer or the plant clearance officer to perform plant clearance officer duties. The respondent recommended removing the proposed rule’s requirement, at FAR 45.603(b), for the plant clearance officer to obtain approval at one level higher than the contracting officer before allowing the abandonment of sensitive property that does not require demilitarization. The respondent requested the addition of more examples of items considered to be incidental to the place of performance (see FAR 45.000).

Response: The above recommendations are not incorporated into the final rule because (1) contracting officers generally rely on the Government property expertise of plant clearance officers, (2) additional review and approval requirements can provide a broader perspective, and (3) too often, lists of examples are treated inappropriately as exhaustive lists.

C. Contractor Property Management Systems

Comments: Two respondents recommended revisions to FAR subpart 45.1, General. One recommendation was to revise FAR 45.105(b) to prevent the Government from notifying a contractor of deficiencies in its property management system unless the deficiencies were “material.” The other recommendation was to modify FAR 45.104(b) to add the following: “When determining noncompliance, FAR part 1 concepts apply, e.g., risk management, materiality, best value, and benefits of changes must justify their cost”.

Response: FAR part 1 is always applicable to all parts of the FAR. There is no need to repeat the statement in FAR part 45. “Materiality” is not defined in FAR part 2. If the Government determines that

deficiencies in a contractor's property management system are significant enough to warrant a correction letter, then the contractor should treat those deficiencies as material.

Comments: A number of respondents proposed changes to the clause at FAR 52.245-1 that were associated with contractors' property management systems. These included the following:

- FAR 52.245-1(b)(1): Add "internal controls," "efficient," and "a new;" and delete "except where inconsistent with law or regulation."

- FAR 52.245-1(b)(4): Change "property" to "asset."

- FAR 52.245-1(f)(1)(iii)(A):

Substitute "as appropriate to the circumstances" in place of "auditable."

- FAR 52.245-1(f)(1)(iii)(A)(1): Do not use "description;" instead, retain "manufacturer and model number (if applicable) for Equipment, ST, and STE."

- FAR 52.245-1(f)(1)(v)(A): Change "assets" to "items" and revise to read "shall have a process to manage Government property in the possession of subcontractors including identification and reporting of reportable items, as required in the contract as Government furnished or contractor acquired items."

- FAR 52.245-1(f)(1)(vii)(C)(1): Clarify what is included in "consumed" and that the property administrator is the official determining the reasonableness of adjustments.

- FAR 52.245-1(g): Change "analysis" to "audit."

- FAR 52.245-1(j): Delete, at FAR 52.245-1(j)(1)(i), "in consultation with the Property Administrator," and retain existing language at (j)(2). Add "in accordance with agency procedures if included in the contract."

- FAR 52.245-1(j): Delete (j)(3)(i)(B) and replace it with (j)(3)(i)(C). Revise the time allotted for contractor submission from "30 days" to "60 days or such other time frame agreed to by the PLCO."

- FAR 52.245-1: Add a dollar threshold for the contractor's reporting and tracking, *i.e.*, "* * * property in excess of \$5,000 or in accordance with risk levels in voluntary consensus standards or industry leading practices." The respondent suggested allowing contractors to defer any reporting of certain low-risk or low-value items until contract termination.

Response:

- FAR 52.245-1(b)(1): Two of the recommended additions to FAR 52.245-1(b)(1) are incorporated into the final rule because they better explain the Government's requirements for the contractor's property management

system. However, "a new" was not added because of the associated element related to "time." The phrase "except where inconsistent with law or regulation" is not deleted because contractors are never authorized to employ commercial practices, voluntary consensus standards, or industry-leading practices if the former do not comply with law or regulation.

- FAR 52.245-1(b)(4): The term "property" is retained to maintain consistency in terminology.

- FAR 52.245-1(f)(1)(iii)(A) and (A)(1): The Councils did not revise "auditable" to "as appropriate for the circumstances" because the proposed change is too vague and does not provide an understandable or consistent standard. The final rule does not revert back to the use of "manufacturer and model number * * *" because this is a reasonable number of data elements at the Federal level.

- FAR 52.245-1(f)(1)(v)(A): Applying the same principle as is used at the beginning of this response results in revising "assets" to "items" at FAR 52.245-1(f)(1)(v)(A). The language regarding the management of Government property in subcontractors' possession is not added to paragraph (f)(1)(v)(A) because it would be redundant to the requirement already at FAR 52.245-1(f)(1)(v)(B).

- FAR 52.245-1(f)(1)(vii)(C)(1): It is not necessary to revise FAR 52.245-1(f)(1)(vii)(C)(1) because the text already clearly designates the property administrator as the deciding official, and the use of the term "consumed" is clear in the context of (C)(1) ("Such property is consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the contract, including reasonable inventory adjustments of material as determined by the Property Administrator").

- FAR 52.245-1(g): "Analysis," not "audit," is the proper term.

- FAR 52.245-1(j): Paragraph (j) of the clause addresses contractor inventory disposal. The lead-in to paragraph (j) makes all contractor inventory disposal decisions subject to the authorization of the plant clearance officer; therefore, it is unnecessary to restate the qualifier in subordinate paragraphs of paragraph (j). Paragraph (j)(2) of the clause addresses inventory disposal schedules. The existing text had elicited many questions over time, so a revision was determined necessary to provide additional clarity; reverting to the current paragraph (j)(2) would be a step backward.

The authority to revise a contractor's use and receipt system for Government material (see FAR 52.245-1(f)(1)(iii)(B))

"in accordance with agency procedures * * *" is not included in the final rule because it would result in inconsistencies in treatment and problems when more than one Government agency had authorized the use of Government property in a single contractor facility.

- FAR 52.245-1(j): Effectively, the request to delete 52.245-1(j)(3)(i)(B) and replace it with (C) of the same paragraph would eliminate a 60-day period for submission of the contractor's inventory disposal schedule and replace it with a 120-day submission schedule. Allowing an extra two months for the contractor's submission is unnecessary if the contractor has an acceptable property management system. For the same reasons, the extension of the submission period from 30 days to 60 days is not made.

- FAR 52.245-1: The final recommendation would have established a dollar threshold and allowed contractors to defer any reporting of low-dollar items during contract performance. However, the Government property management principles have departed from the use of dollar thresholds and recognized that some low-dollar items may be sensitive and require closer management.

D. Disposal

Comment: One respondent recommended adding, at FAR 45.201, a requirement that the solicitation indicate how the contractor's property management system plan would be utilized for disposal.

Response: FAR 45.201(c)(4) requires that the solicitation include a description of the offeror's property management system, plan, and practices and standards used by the offeror in managing Government property. In addition, the clause at 52.245-1, Government Property, which is required to be included in solicitations, thoroughly addresses the Government's uses of contractors' property management systems.

Comment: One respondent suggested that any additional instructions to offerors on management of Government property, currently allowed only in the statement of work, could also be included in a special provision of the contract.

Response: The allowance for including this information in a special provision is added at FAR 45.201(d).

Comment: One respondent suggested that it was not clear at FAR 52.245-1(j)(1)(i) that, in disposing of certain property, the contractor is limited to transferring the property to another

Government contract, as opposed to any contract.

Response: The referenced section of the clause is revised to add “Government” in front of “contract” in two places.

Comment: One respondent suggested adding “with contractor’s consent” at FAR 45.603(a)(2).

Response: The proposed change would require the Government to obtain the contractor’s consent prior to abandoning non-sensitive property at the contractor’s or subcontractor’s premises. In order to minimize administrative burden, contractor consent is required only prior to abandoning sensitive property.

Comment: One respondent suggested revising FAR 45.604–1 to differentiate between formal and informal sales and “scrap” sales.

Response: The recommended change would require the creation of additional definitions. Any such distinctions are more appropriately located in the contractor’s property management procedures.

Comment: One respondent suggested revising FAR 45.606–1(c) to ensure that the disposition of scrap items is addressed in the contractor’s standard scrap processes and procedures.

Response: The decision on whether to abandon scrap (the subject of FAR 45.606–1) is a Government decision; it is not a subject to be included in the contractor’s scrap procedures.

E. Exceptions and applicability

Comment: One respondent suggested that FAR 45.102(b) be clarified to demonstrate when cost-reimbursement contracts are used.

Response: There is no need to revise FAR 45.102, Policy, because that section addresses the circumstances under which it is appropriate to provide property to contractors. The limitations and requirements for contract types, e.g., cost-reimbursement contracts, are found in FAR part 16 and are not related to whether Government property is provided.

Comment: The proposed rule included a new paragraph FAR 45.102(e) that would prohibit the installation, with certain exceptions, of Government property in such fashion as to become nonseverable, “unless the head of the contracting activity determines that such installation or construction is necessary and in the Government’s interest.” One respondent recommended deleting the exception and creating a flat prohibition.

Response: Because there are instances when nonseverable installation of Government property may be

appropriate, a flat prohibition is not adopted. The bar to nonseverable installation of Government property is set sufficiently high, requiring the head of the contracting activity to make a determination to waive the requirement, that it is unlikely to become a common occurrence.

F. Crediting Monies Received

Comment: One respondent suggested adding a paragraph on crediting disposal proceeds to the clause at FAR 52.245–1, as follows: “Disposal proceeds. If the contractor’s practice is to comingle scrap from a variety of contract sources and ownership, the Contractor may credit net scrap proceeds to a contractor overhead account.”

Response: FAR 45.604–3 (formerly 45.604–4), Proceeds from sales of surplus property, requires that such monies be credited to the U.S. Treasury as miscellaneous receipts. Deposit of sales proceeds is already covered under FAR 45.604–3. No further regulatory amplification is needed.

Comment: Three respondents suggested various ways of crediting financial restitution to the contract, not back to the Treasury, as is required at FAR 45.104(e).

Response: With few statutory exceptions, monies received for the use of the United States, from whatever source, must be paid into the U.S. Treasury without deduction. The statute is the authoritative source.

G. Definitions

Comment: One respondent suggested revising the definition of “production scrap,” changing the term to “material scrap,” and including scrap from non-production activities in the definition at FAR 45.101 and 52.245–1(a).

Response: The term “production scrap” is the recognized and consistent term used throughout the FAR, but the additional text is added to clarify what is included in the term.

Comment: Two respondents suggested changing the term “unit acquisition cost” to “item acquisition cost” at FAR 45.101 and 52.245–1(a). One of these respondents also suggested adding “fair value at the time of loss” to the definition.

Response: The Councils prefer the term “unit acquisition cost” versus “item acquisition cost.” The unit acquisition cost, provided by the Government, is the actual cost at the time of purchase and is the proper measure of value.

Comments: Four recommendations were received for revising the definition of “loss of Government property.” Two

of these suggested adding “in the possession of a contractor under terms of a contract” to the definition. Another recommended adding “material” prior to “harm” to denote that damage should not include ordinary repairs due to normal wear and tear. A third recommendation was to add “occurrences such as” to the definition in order to make it consistent with Defense Federal Acquisition Regulation Supplement 252.245–7002.

Response: The first change is not made as it would be superfluous; i.e., the entire FAR part 45 refers to Government Property in contractor’s possession. “Material” is not added to the definition because the definition already excludes normal wear and tear. The phrase “occurrences such as” is added to the definition for additional clarity.

Comment: One respondent suggested adding a definition for “repair, maintenance, and overhaul scrap” at FAR 45.606–1.

Response: The essence of the proposed definition is included in the authority given to the contracting officer at FAR 45.603. There is no need to include a separate definition.

H. Contractor Use of Government Supply Sources

Comment: One respondent recommended revising the second sentence of the clause at FAR 52.251–1, Government Supply Sources, to state that title to such purchases vested in the Government “except when the transaction is based upon a cash sale to the Contractor.”

Response: There is no need to make distinctions in title vesting in this clause as long as the clause contains the phrase “unless otherwise specified in the contract.” Every contract must contain a payment clause, and it is the payment clause that determines when, and with whom, title vests.

I. Editorial Comments

The editorial comments are grouped by the FAR section they address.

Comments on FAR 45.104(d): This paragraph addresses contractor liability and the appropriate form of restitution once a loss of property has been established. One respondent recommended changing “lost property” to “property loss,” and another respondent suggested adding “fair value” and replacing “restitution” with “compensation.”

Response: The final rule uses “property loss” in lieu of “lost property.” The other recommendations are not incorporated in the final rule because (1) substituting “compensation”

for “restitution” does not add clarity, and (2) the use of “fair value” would introduce a new concept of valuation.

Comments on FAR 45.105: Three comments were received on this section. One recommended substituting “liability” for “and liability;” another suggested deleting either “and” or “or” in paragraph (b)(1); and a third recommended adding “under the Government property clause” in paragraph (d).

Response: These edits are not incorporated in the final rule because they do not further clarify the coverage.

Comments on FAR 45.201: One respondent suggested deleting either “and” or “or” at FAR 45.201(a)(1). Another respondent suggested adding the contractor’s property management “plan” to the list at FAR 45.201(c)(4), because the plan depicts the standard way a contractor does business.

Response: The final rule incorporates the recommended revisions because they increase clarity.

Comment on FAR 45.202: A respondent suggested that the rules for evaluating offers when one offeror possessed Government property, and other offerors did not, would be improved by adding the phrase “using the FAR 52.245–9 Rental Calculation process” in this section.

Response: FAR 45.202(a) is revised to read “a rental equivalent evaluation factor as specified in FAR 52.245–9.”

Comment on FAR 45.602: One respondent suggested changing “may entitle” to “entitles” at FAR 45.602–1(b)(4).

Response: This change, had it been incorporated in the final rule, would have been a policy change that effectively gave a contractor an absolute entitlement to an equitable adjustment if the Government did not provide timely disposition instructions. Contracting officers require discretion and flexibility in determining whether an equitable adjustment is warranted.

Comments on FAR 45.603: One respondent recommended relocating FAR 45.603(c) to 45.603(a)(1). A respondent recommended inserting “recipients” at FAR 45.603(c), and another respondent suggested adding “as applicable” to FAR 45.603(b).

Response: None of the recommendations is incorporated into the final rule. The Councils elected not to relocate FAR 45.603(c) because it would distort the proper sequence of events. “Recipient’s” was not added to paragraph (c) because the Government will not bear any of the costs incident to such donations, regardless of who incurred them. “As applicable” is not added to paragraph (b) because review

at a level higher than the plant clearance officer is required in cases of other contractor inventory.

Comment on FAR 45.606: One respondent suggested inserting “in coordination with the plant clearance officer” at FAR 45.606(a).

Response: The revision is incorporated in the final rule.

Comments on FAR 52.245–1(b): Several editorial revisions were recommended for this paragraph. One respondent suggested revising FAR 52.245–1(b)(4) by adding “surveillance, self-assessments, or” and deleting “and” in “and/or.”

Response: The final rule incorporates these edits, such that the contractor must perform periodic internal reviews, surveillances, self assessments, or audits.

Comments on FAR 52.245–1(f)(1)(vii): Five editorial recommendations were proposed for this paragraph of the Government Property clause, which addresses “Relief of stewardship responsibilities.” One recommendation was to revise 52.245–1(f)(1)(vii)(A) from “necessary” corrective actions to “any necessary,” and another was to delete “all” at paragraph 52.245–1(f)(1)(vii)(B)(10). Other recommendations were to amend paragraph 52.245–1(f)(1)(vii)(B)(8) to add “and preventive actions,” change “reimbursement” to “compensation,” insert “export controlled” and “and authorities” and delete “if so,” and amend paragraph 52.245–1(f)(1)(vii)(C)(3) so as not to unnecessarily limit the contractor’s discretion to dispose of property in accordance with other paragraphs of the Government Property clause.

Response: The first two recommendations are not incorporated in the final rule because they would have introduced ambiguity and unintentionally introduced a lower standard. The next two recommendations starting at “other recommendations” are incorporated in the final rule. The last recommendation is not incorporated in the final rule because the proposed language does not limit the contractor’s discretion.

Comments on FAR 52.245–1(h): One respondent suggested deleting “and/or” at paragraph (h)(1). A respondent suggested that paragraph (h)(3) should be revised to be more consistent with the policy intent. Another respondent recommended changing “directed” to “determined” at paragraph (h)(4).

Response: Paragraph (h)(1) is not changed because the intent is clear—either one or the other or both is acceptable. Paragraph (h)(3) is not revised because it is consistent with the

policy. Paragraph (h)(4) was revised to adopt “determined” as a more consistent use of terminology.

Comment on FAR 52.245–1(k): One respondent recommended adding “non-sensitive.”

Response: The applicability of this paragraph is clear without the addition.

J. Out of Scope

Comment: One respondent suggested that small businesses should use Systems Applications Products to track scrap material as large businesses do.

Response: The Government does not recommend any particular commercial product.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD, GSA, and NASA prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The FRFA is summarized as follows:

DoD, GSA, and NASA are revising FAR parts 45 and 52. The focus of this effort is to clarify FAR subpart 45.6, Reporting, Reutilization, and Disposal, and the contractor requirements under the clause at FAR 52.245–1, Government Property.

The revisions include technical corrections to align the FAR with the requirements of the Federal Management Regulation. Also included is new and expanded policy language on the disposal of scrap, new language for contracting officers and contract specialists on depositing of monies received from contractors for property that is lost, damaged, destroyed, or stolen, and new language prohibiting personal property from being installed or constructed on contractor-owned real property in such fashion as to become nonseverable.

DoD, GSA, and NASA published a proposed rule at 76 FR 18497 on April 4, 2011. The rule does not place new requirements on contractors; rather, it clarifies existing policies and procedures and should simplify compliance for contractors and enable consistent Government oversight.

No comments were received on the initial regulatory flexibility analysis in the proposed rule.

Approximately 5,000 contractors have Federal property in their possession. DoD has approximately 3,000 contractors with potential contract-property reporting requirements. Approximately 60 percent of all DoD contractors are small businesses. Given that property in the possession of contractors is over-whelmingly DoD property, it is estimated the DoD ratio of small businesses to total businesses having such property is a reasonable approximation for all Government contractors. Therefore, approximately 3,000 small businesses have Government property in their possession.

FAR Case 2004-025 streamlined the requirements concerning property management in FAR part 45. FAR Case 2008-011 continued that philosophy. This final rule provides continuous improvement to property management by streamlining and clarifying the policies for the disposition of contractor inventory.

It should be noted that these recommended changes are consistent with the Office of the Under Secretary of Defense, Acquisition, Technology and Logistics, recent statements emphasizing the need to improve the productivity of the defense industry and remove Government impediments to efficiency.

There are four reports currently required to assure appropriate use and disposition of contract property (SF 1423, Inventory Verification Survey; SF 1424, Inventory Disposal Report; SF 1428, Inventory Disposal Schedule; and SF 1429, Inventory Disposal Schedule Continuation Sheet). All of these forms are available online and may be submitted by the contractor using electronic means. It should be noted that DoD no longer requires the use of the SF 1428 and 1429 forms and instead uses the Web-enabled Plant Clearance Automated Reutilization and Reporting System (PCARRS). NASA and other Federal agency contractors use PCARRS when their contracts are delegated to Defense Contract Management Agency (DCMA) for plant clearance. Use of PCARRS reduces burdens on small businesses as well as other businesses by providing an easily accessible Web-based reporting mechanism.

This rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known alternatives that would meet the objectives of this rule. However, this rule is not expected to have a significant economic impact on a substantial number of small entities. In fact, the current impact to both large and small contractors will be reduced. For example, the current FAR requires Government approval of contractor scrap procedures prior to allowing the contractor to dispose of ordinary production scrap. In addition, the current practice of requiring contractors (without approved scrap procedures) to submit inventory schedules or scrap lists for production scrap assumes that such practice is in all cases economically or otherwise justified. This practice unnecessarily burdens small contractors that generate only small amounts of scrap.

The final rule removes the requirement for Government approvals of contractor scrap

procedures and submission of inventory schedules and scrap lists, thus easing the burden on large and small contractors alike. It should be noted that contractor procedures would still be required and evaluated by the agency responsible for contract administration, as a normal part of contract property administration. The new rule will also result in more consistent levels of Government oversight, further easing the burden on small entities.

The collection of information required by this rule has been reduced to the minimum necessary to assure compliance with the Government's statutory accountability requirements.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat. The Regulatory Secretariat has submitted a copy of the Final Regulatory Flexibility Analysis (FRFA) to the Chief Counsel for Advocacy of the Small Business Administration.

V. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies. The rule contains information collection requirements. OMB has cleared this information collection requirement under OMB Control Number 9000-0075, titled: Government Property.

List of Subjects in 48 CFR Parts 2, 31, 32, 45, 49, 51, 52, and 53

Government procurement.

Dated: February 21, 2012.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 31, 32, 45, 49, 51, 52, and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 31, 32, 45, 49, 51, 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 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 in paragraph (b) by adding, in alphabetical order, the definition "Surplus property" to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

Surplus property means excess personal property not required by any Federal agency as determined by the Administrator of the General Services Administration (GSA). (See 41 CFR 102-36.40).

* * * * *

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 3. Amend section 31.205-19 by revising paragraphs (e)(2)(iv) introductory text, (e)(2)(iv)(A), and (e)(2)(iv)(C) to read as follows:

31.205-19 Insurance and indemnification.

* * * * *

(e) * * *

(2) * * *

(iv) Costs of insurance for the risk of loss of Government property are allowable to the extent that—

(A) The contractor is liable for such loss;

* * * * *

(C) Such insurance does not cover loss of Government property that results from willful misconduct or lack of good faith on the part of any of the contractor's managerial personnel (as described in FAR 52.245-1 (h)(1)(ii)).

* * * * *

PART 32—CONTRACT FINANCING

■ 4. Amend section 32.503-16 by revising the first sentence of paragraph (a) to read as follows:

32.503-16 Risk of loss.

(a) Under the Progress Payments clause, and except for normal spoilage, the contractor bears the risk of loss for Government property under the clause, even though title is vested in the Government, unless the Government has expressly assumed this risk. * * *

* * * * *

■ 5. Amend section 32.1010 by revising the first sentence of paragraph (a) to read as follows:

32.1010 Risk of loss.

(a) Under the clause at 52.232-32, Performance-Based Payments, and except for normal spoilage, the contractor bears the risk of loss for Government property, even though title is vested in the Government, unless the Government has expressly assumed this risk. * * *

* * * * *

PART 45—GOVERNMENT PROPERTY

■ 6. Revise section 45.000 to read as follows:

45.000 Scope of part.

(a) This part prescribes policies and procedures for providing Government property to contractors; contractors' management and use of Government property; and reporting, redistributing, and disposing of contractor inventory.

(b) It does not apply to—

(1) Government property provided under any statutory leasing authority, except as to non-Government use of property under 45.301(f);

(2) Property to which the Government has acquired a lien or title solely because of partial, advance, progress, or performance based payments;

(3) Disposal of real property;

(4) Software and intellectual property; or

(5) Government property that is incidental to the place of performance, when the contract requires contractor personnel to be located on a Government site or installation, and when the property used by the contractor within the location remains accountable to the Government. Items considered to be incidental to the place of performance include, for example, office space, desks, chairs, telephones, computers, and fax machines.

■ 7. Amend section 45.101 by—

■ a. Removing the definition “Acquisition cost”;

■ b. Adding, in alphabetical order, the definitions “Loss of Government property” and “Production scrap”;

■ c. Removing the definition “Surplus property”; and

■ d. Adding, in alphabetical order, the definition “Unit acquisition cost”. The added text reads as follows:

45.101 Definitions.

* * * * *

Loss of Government property means unintended, unforeseen or accidental loss, damage, or destruction of Government property that reduces the Government’s expected economic benefits of the property. Loss of Government property does not include occurrences such as purposeful destructive testing, obsolescence, normal wear and tear, or manufacturing defects. Loss of Government property includes, but is not limited to—

(1) Items that cannot be found after a reasonable search;

(2) Theft;

(3) Damage resulting in unexpected harm to property requiring repair to restore the item to usable condition; or

(4) Destruction resulting from incidents that render the item useless for its intended purpose or beyond economical repair.

* * * * *

Production scrap means unusable material resulting from production, engineering, operations and maintenance, repair, and research and development contract activities. Production scrap may have value when re-melted or reprocessed, e.g., textile

and metal clippings, borings, and faulty castings and forgings.

* * * * *

Unit acquisition cost means—

(1) For Government-furnished property, the dollar value assigned by the Government and identified in the contract; and

(2) For contractor-acquired property, the cost derived from the contractor’s records that reflect consistently applied generally accepted accounting principles.

■ 8. Amend section 45.102 by adding paragraph (e) to read as follows:

45.102 Policy.

* * * * *

(e) Government property, other than foundations and similar improvements necessary for installing special tooling, special test equipment, or equipment, shall not be installed or constructed on contractor-owned real property in such fashion as to become nonseverable, unless the head of the contracting activity determines that such installation or construction is necessary and in the Government’s interest.

■ 9. Amend section 45.104 by—

■ a. Revising the introductory text of paragraph (a);

■ b. Revising paragraph (b); and

■ c. Adding paragraphs (d) and (e).

The revised and added text reads as follows:

45.104 Responsibility and liability for Government property.

(a) Generally, contractors are not held liable for loss of Government property under the following types of contracts:

* * * * *

(b) The contracting officer may revoke the Government’s assumption of risk when the property administrator determines that the contractor’s property management practices are noncompliant with contract requirements.

* * * * *

(d) With respect to loss of Government property, the contracting officer, in consultation with the property administrator, shall determine—

(1) The extent, if any, of contractor liability based upon the amount of damages corresponding to the associated property loss; and

(2) The appropriate form and method of Government recovery (may include repair, replacement, or other restitution).

(e) Any monies received as financial restitution shall be credited to the Treasury of the United States as miscellaneous receipts, unless

otherwise authorized by statute (31 U.S.C. 3302(b)).

■ 10. Amend section 45.105, by revising the first sentence of the introductory text of paragraph (b), and paragraphs (b)(1) and (d) to read as follows:

45.105 Contractor’s property management system compliance.

* * * * *

(b) The property administrator shall notify the contractor in writing when the contractor’s property management system does not comply with contractual requirements, shall request prompt correction of deficiencies, and shall request from the contractor a corrective action plan, including a schedule for correction of the deficiencies. * * *

(1) Revocation of the Government’s assumption of risk for loss of Government property; and/or

* * * * *

(d) When the property administrator determines that a reported case of loss of Government property is a risk assumed by the Government, the property administrator shall notify the contractor in writing that it is granted relief of stewardship responsibility and liability in accordance with 52.245–1(f)(1)(vii). Where the property administrator determines that the risk of loss of Government property is not assumed by the Government, the property administrator shall request that the contracting officer hold the contractor responsible and liable.

■ 11. Amend section 45.107 by—

■ a. Revising paragraph (a)(1)(i);

■ b. Removing from paragraph (b) “service contracts” and adding “fixed-price service contracts” in its place; and

■ c. Removing from paragraph (d) “acquisition cost” and adding “unit acquisition cost” in its place.

The revised text reads as follows:

45.107 Contract clauses.

(a)(1) * * *

(i) All cost-reimbursement and time-and-material type solicitations and contracts, and labor-hour solicitations when property is expected to be furnished for the labor-hour contracts.

* * * * *

■ 12. Amend section 45.201 by—

■ a. Removing from paragraph (a)(1) “tracking and/or” and adding “tracking and management, and” in its place;

■ b. Removing from paragraph (a)(4) “tracking); and” and adding “tracking and management); and” in its place;

■ c. Revising paragraph (c)(4); and

■ d. Removing from paragraph (d) “providing property.” and adding “providing property or in a special provision.” in its place.

The revised text reads as follows:

45.201 Solicitation.

* * * * *

(c) * * *

(4) A description of the offeror's property management system, plan, and any customary commercial practices, voluntary consensus standards, or industry-leading practices and standards to be used by the offeror in managing Government property.

* * * * *

■ 13. Amend section 45.202 by revising paragraph (a) to read as follows:

45.202 Evaluation procedures.

(a) The contracting officer shall consider any potentially unfair competitive advantage that may result from an offeror or contractor possessing Government property. This shall be done by adjusting the offers by applying, for evaluation purposes only, a rental equivalent evaluation factor as specified in FAR 52.245-9.

* * * * *

■ 14. Amend section 45.602-1 by—

■ a. Removing from paragraphs (b)(2) and (b)(3) "Require a contractor" and adding "Require the contractor" in its place;

■ b. Removing from paragraph (b)(4) "might entitle" and adding "may entitle" in its place;

■ c. Revising the introductory text of paragraph (c) and the introductory text of paragraph (c)(1);

■ d. Removing from paragraph (c)(1)(i) "acquisition cost" and adding "unit acquisition cost" in its place; and

■ e. Revising paragraph (c)(1)(iv).

The revised text reads as follows:

45.602-1 Inventory disposal schedules.

* * * * *

(c) The contractor may request the plant clearance officer's approval to remove the Government property from an inventory schedule.

(1) Plant clearance officers should approve removal of Government property from an inventory schedule when—

* * * * *

(iv) The contractor has requested continued use of the Government property, and the contracting officer has authorized its retention and further use.

* * * * *

■ 15. Revise section 45.602-2 to read as follows:

45.602-2 Reutilization priorities.

Plant clearance officers shall initiate reutilization actions for all property not meeting the abandonment or destruction criteria of 45.603(b). Authorized

methods, listed in descending order from highest to lowest priority, are—

(a) Reuse within the owning agency;

(b) Transfer of educationally useful equipment to schools and nonprofit organizations (see Executive Order 12999, Educational Technology: Ensuring Opportunity For All Children In The Next Century, April 17, 1996, and 15 U.S.C. 3710(i));

(c) Report to GSA for reuse within the Federal Government or donation as surplus property;

(d) Dispose of the following property in accordance with agency procedures without reporting to GSA:

(1) Property determined appropriate for abandonment or destruction (see Federal Management Regulation (FMR) 102-36.305, 41 CFR 102-36.305).

(2) Property furnished to nonappropriated fund activities (see FMR 102-36.165, 41 CFR 102-36.165).

(3) Foreign excess personal property (see FMR 102-36.380, 41 CFR 102-36.380).

(4) Scrap, except aircraft in scrap condition.

(5) Perishables, defined for the purposes of this section as any personal property subject to spoilage or decay.

(6) Trading stamps and bonus goods.

(7) Hazardous waste or toxic and hazardous materials.

(8) Controlled substances.

(9) Property dangerous to public health and safety.

(10) Classified items or property determined to be sensitive for reasons of national security; and

(e) Dispose of nuclear materials (see 45.603-3(b)(5)) in accordance with the Nuclear Regulatory Commission, applicable state licenses, applicable Federal regulations, and agency regulations.

■ 16. Revise section 45.603 to read as follows:

45.603 Abandonment or destruction of personal property.

(a) When contractor inventory is processed through the reutilization screening process prescribed in 45.602-2 without success, and provided the property has no commercial value, does not require demilitarization, and does not constitute a danger to public health or welfare, plant clearance officers or other authorized officials may without further approval—

(1) Direct the contractor to destroy the property;

(2) Abandon non-sensitive property at the contractor's or subcontractor's premises; or

(3) Abandon sensitive property at the contractor's or subcontractor's premises, with contractor consent.

(b) Provided a Government reviewing official at least one level higher than the plant clearance officer or other agency authorized official approves, plant clearance officers or other agency authorized officials may authorize the abandonment, or order the destruction of other contractor inventory at the contractor's or subcontractor's premises, in accordance with FMR 102-36.305 through 325 (41 CFR 102-36.305-325) and consistent with the following:

(1) The property is not considered sensitive, does not require demilitarization, has no commercial value or reutilization, transfer or donation potential, and does not constitute a danger to public health or welfare.

(2) The estimated cost of continued care and handling of the property (including advertising, storage and other costs associated with making the sale), exceed the estimated proceeds from its sale.

(c) In lieu of abandonment or its authorized destruction, the plant clearance officer or authorized official may authorize the donation of property including unsold surplus property to public bodies, provided that the property is not sensitive property, does not require demilitarization, and it does not constitute a danger to public health or welfare. The Government will not bear any of the costs incident to such donations.

(d) Unless the property qualifies for one of the exceptions under FMR 102-36.330 (41 CFR 102-36.330), the plant clearance officer or requesting official will ensure prior public notice of such actions of abandonment or destruction consistent with FMR 102-36.325 (41 CFR 102-36.325).

■ 17. Revise the section heading of 45.604 to read as follows:

45.604 Sale of surplus personal property.

* * * * *

■ 18. Revise section 45.604-1 to read as follows:

45.604-1 Sales procedures.

Surplus personal property that has completed screening in accordance with 45.602-3(a) shall be sold in accordance with the policy for the sale of surplus personal property contained in the Federal Management Regulation, at part 102-38 (41 CFR part 102-38). Agencies may specify implementing procedures.

45.604-2 [Removed]

■ 19. Remove section 45.604-2.

45.604-3 and 45.604-4 [Redesignated as 45.604-2 and 45.604-3]

■ 20. Redesignate sections 45.604-3 and 45.604-4 as sections 45.604-2 and 45.604-3, respectively.

■ 21. Revise the newly redesignated section 45.604-2 to read as follows:

45.604-2 Use of GSA sponsored sales centers.

Agencies may use sales center services. Use of such centers for sale of surplus property is authorized when in the best interest of the Government, consistent with contract terms and conditions.

■ 22. Add section 45.604-4 to read as follows:

45.604-4 Sale of property pursuant to the exchange/sale authority.

Agencies should consider the sale of property pursuant to the exchange/sale authority in FMR 102-39 (41 CFR part 102-39) when agencies are acquiring or plan to acquire similar products and other requirements of the authority are satisfied.

■ 23. Revise section 45.605 to read as follows:

45.605 Inventory disposal reports.

The plant clearance officer shall promptly prepare an SF 1424, Inventory Disposal Report, following disposition of the property identified on an inventory disposal schedule and the crediting of any related proceeds. The report shall identify any lost or otherwise unaccounted for property and any changes in quantity or value of the property made by the contractor after submission of the initial inventory disposal schedule. The report shall be provided to the administrative contracting officer or, for termination inventory, to the termination contracting officer, with a copy to the property administrator.

45.606 [Removed]

■ 24. Remove section 45.606.

■ 25. Redesignate section 45.606-1 as section 45.606; and revise the newly designated section 45.606 to read as follows:

45.606 Contractor scrap procedures.

(a) The property administrator should, in coordination with the plant clearance officer, ensure that contractor scrap disposal processes, methods, and practices allow for effective, efficient, and proper disposition and are properly documented in the contractor's property management procedures.

(b) The property administrator should determine the extent to which separate disposal processing or physical

segregation for different scrap types is or may be required. Such scrap may require physical segregation, unique disposal processing, or separate plant clearance reporting. For example, the scope of work may create scrap—

- (1) Consisting of sensitive items;
- (2) Containing hazardous materials or wastes;
- (3) Contaminated with hazardous materials or wastes;
- (4) That is classified or otherwise controlled;
- (5) Containing precious or strategic metals; or
- (6) That is dangerous to public health or safety.

(c) Absent contract terms and conditions to the contrary, the Government may abandon parts removed and replaced from property as a result of normal maintenance actions or removed from property as a result of the repair, maintenance, overhaul, or modification process.

45.606-2 and 45.606-3 [Removed]

■ 26. Remove sections 45.606-2 and 45.606-3.

PART 49—TERMINATION OF CONTRACTS

49.204 [Amended]

■ 27. Amend section 49.204 by removing from paragraph (b) “destroyed, lost, stolen, or” and adding “lost or” in its place.

PART 51—USE OF GOVERNMENT SOURCES BY CONTRACTORS

51.106 [Amended]

■ 28. Amend section 51.106 by removing from paragraph (b) “having an” and adding “having a unit” in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 29. Amend section 52.232-16 by revising the date of the clause, and the last sentence of paragraph (e) to read as follows:

52.232-16 Progress Payments.

* * * * *

PROGRESS PAYMENTS (APR 2012)

* * * * *

(e) * * * The Contractor shall repay the Government an amount equal to the unliquidated progress payments that are based on costs allocable to property that is lost (see 45.101).

* * * * *

■ 30. Amend section 52.232-32 by revising the date of the clause, and the last sentence of paragraph (g) to read as follows:

52.232-32 Performance-Based Payments.

* * * * *

PERFORMANCE-BASED PAYMENTS (APR 2012)

* * * * *

(g) * * * If any property is lost (see 45.101), the basis of payment (the events or performance criteria) to which the property is related shall be deemed to be not in compliance with the terms of the contract and not payable (if the property is part of or needed for performance), and the Contractor shall refund the related performance-based payments in accordance with paragraph (d) of this clause.

* * * * *

- 31. Amend section 52.245-1 by—
- a. Revising the date of the clause;
- b. In paragraph (a) by—
- i. Removing the definition “Acquisition cost”;
- ii. Adding, in alphabetical order, the definitions, “Loss of Government property”, and “Production scrap”;
- iii. Removing the definition “Surplus property”; and
- iv. Adding, in alphabetical order, the definition “Unit acquisition cost”.
- c. Revising paragraph (b)(1);
- d. Removing from paragraph (b)(2) “, stolen, damaged, or destroyed”;
- e. Adding paragraph (b)(4);
- f. Revising paragraph (e);
- g. Removing from the introductory text of paragraph (f)(1)(ii) “property (document the receipt)” and adding “property and document the receipt” in its place;
- h. Revising paragraphs (f)(1)(iii)(A)(1), (f)(1)(iii)(A)(10), (f)(1)(v)(A), (f)(1)(vi), and (f)(1)(vii);
- i. Removing from paragraph (f)(1)(x) “loss, theft, damage, or destruction” and adding “loss of Government property” in its place;
- j. Removing from paragraph (f)(2) “acquisitions and dispositions of” and adding “acquisitions, loss of Government property, and disposition of” in its place;
- k. Removing paragraph (f)(3);
- l. Removing from the introductory text of paragraph (h)(1) “loss, theft, damage or destruction to the” and adding “loss of” in its place;
- m. Revising paragraphs (h)(1)(ii), (h)(1)(iii), (h)(2), and (h)(3);
- n. Redesignating paragraph (h)(4) as paragraph (h)(5);
- o. Adding a new paragraph (h)(4);
- p. Adding the words “or authorizing official” to the end of the introductory text of paragraph (j);
- q. Removing paragraph (j)(1);
- r. Redesignating paragraphs (j)(2) through (j)(10) as paragraphs (j)(1) through (j)(9), respectively;
- s. Revising the newly redesignated paragraph (j)(1), the introductory text of

paragraph (j)(2)(i), (j)(2)(i)(A), (j)(2)(ii), (j)(2)(iii), (j)(2)(iv)(C), and (j)(3);

■ t. Removing from the first sentence of the newly redesignated paragraph (j)(6)(ii) the words “Government property” and adding “property” in its place;

■ u. Removing the newly redesignated paragraph (j)(7)(i);

■ v. Further redesignating newly redesignated paragraphs (j)(7)(ii) and (j)(7)(iii) as (j)(7)(i) and (j)(7)(ii), respectively;

■ w. Removing from the newly redesignated paragraph (j)(9) “paragraph (j)(4)” and adding “paragraph (j)(3)” in its place;

■ x. Removing from paragraphs (k)(1) and (k)(2) “Government property”, and adding “property” in its place;

■ y. Redesignating paragraph (k)(3) as paragraph (k)(4); and adding a new paragraph (k)(3);

■ z. Removing from Alternate I “(AUG 2010)” and adding “(APR 2012)” in its place; and removing from paragraph (h)(1) of Alternate I “loss, theft, damage, or destruction” and adding “loss” in its place; and

■ aa. Removing from Alternate II “(JUN 2007)” and adding “(APR 2012)” in its place; and removing from the first and second sentences of paragraph (e)(3) of Alternate II “having an” and adding “having a unit” in its place (two times).

The added and revised text reads as follows:

52.245-1 Government Property.

* * * * *

GOVERNMENT PROPERTY (APR 2012)

(a) * * *

Loss of Government property means unintended, unforeseen or accidental loss, damage or destruction to Government property that reduces the Government’s expected economic benefits of the property. Loss of Government property does not include purposeful destructive testing, obsolescence, normal wear and tear or manufacturing defects. Loss of Government property includes, but is not limited to—

- (1) Items that cannot be found after a reasonable search;
- (2) Theft;
- (3) Damage resulting in unexpected harm to property requiring repair to restore the item to usable condition; or
- (4) Destruction resulting from incidents that render the item useless for its intended purpose or beyond economical repair.

* * * * *

Production scrap means unusable material resulting from production, engineering, operations and maintenance, repair, and research and development contract activities. Production scrap may have value when remelted or reprocessed, e.g., textile and metal clippings, borings, and faulty castings and forgings.

* * * * *

Unit acquisition cost means—

(1) For Government-furnished property, the dollar value assigned by the Government and identified in the contract; and

(2) For contractor-acquired property, the cost derived from the Contractor’s records that reflect consistently applied generally accepted accounting principles.

* * * * *

(b) * * *

(1) The Contractor shall have a system of internal controls to manage (control, use, preserve, protect, repair, and maintain) Government property in its possession. The system shall be adequate to satisfy the requirements of this clause. In doing so, the Contractor shall initiate and maintain the processes, systems, procedures, records, and methodologies necessary for effective and efficient control of Government property. The Contractor shall disclose any significant changes to its property management system to the Property Administrator prior to implementation of the changes. The Contractor may employ customary commercial practices, voluntary consensus standards, or industry-leading practices and standards that provide effective and efficient Government property management that are necessary and appropriate for the performance of this contract (except where inconsistent with law or regulation).

* * * * *

(4) The Contractor shall establish and maintain procedures necessary to assess its property management system effectiveness and shall perform periodic internal reviews, surveillances, self assessments, or audits. Significant findings or results of such reviews and audits pertaining to Government property shall be made available to the Property Administrator.

* * * * *

(e) *Title to Government property.* (1) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as “Government property”), is subject to the provisions of this clause. The Government shall retain title to all Government-furnished property. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(2) Title vests in the Government for all property acquired or fabricated by the Contractor in accordance with the financing provisions or other specific requirements for passage of title in the contract. Under fixed price type contracts, in the absence of financing provisions or other specific requirements for passage of title in the contract, the Contractor retains title to all property acquired by the Contractor for use on the contract, except for property identified as a deliverable end item. If a deliverable item is to be retained by the Contractor for use after inspection and acceptance by the Government, it shall be made accountable to the contract through a contract modification listing the item as Government-furnished property.

(3) *Title under Cost-Reimbursement or Time-and-Material Contracts or Cost-Reimbursable contract line items under Fixed-Price contracts.* (i) Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in the Government upon the vendor’s delivery of such property.

(ii) Title to all other property, the cost of which is reimbursable to the Contractor, shall pass to and vest in the Government upon—

- (A) Issuance of the property for use in contract performance;
- (B) Commencement of processing of the property for use in contract performance; or
- (C) Reimbursement of the cost of the property by the Government, whichever occurs first.

(f) * * *
 (1) * * *
 (iii) * * *
 (A) * * *

(1) The name, part number and description, National Stock Number (if needed for additional item identification tracking and/or disposition), and other data elements as necessary and required in accordance with the terms and conditions of the contract.

* * * * *

(10) Date placed in service (if required in accordance with the terms and conditions of the contract).

* * * * *

(v) * * *
 (A) The Contractor shall award subcontracts that clearly identify items to be provided and the extent of any restrictions or limitations on their use. The Contractor shall ensure appropriate flow down of contract terms and conditions (e.g., extent of liability for loss of Government property).

* * * * *

(vi) *Reports.* The Contractor shall have a process to create and provide reports of discrepancies, loss of Government property, physical inventory results, audits and self-assessments, corrective actions, and other property-related reports as directed by the Contracting Officer.

(vii) *Relief of stewardship responsibility and liability.* The Contractor shall have a process to enable the prompt recognition, investigation, disclosure and reporting of loss of Government property, including losses that occur at subcontractor or alternate site locations.

(A) This process shall include the corrective actions necessary to prevent recurrence.

(B) Unless otherwise directed by the Property Administrator, the Contractor shall investigate and report to the Government all incidents of property loss as soon as the facts become known. Such reports shall, at a minimum, contain the following information:

- (1) Date of incident (if known).
- (2) The data elements required under paragraph (f)(1)(iii)(A) of this clause.
- (3) Quantity.
- (4) Accountable contract number.
- (5) A statement indicating current or future need.

(6) Unit acquisition cost, or if applicable, estimated sales proceeds, estimated repair or replacement costs.

(7) All known interests in commingled material of which includes Government material.

(8) Cause and corrective action taken or to be taken to prevent recurrence.

(9) A statement that the Government will receive compensation covering the loss of Government property, in the event the Contractor was or will be reimbursed or compensated.

(10) Copies of all supporting documentation.

(11) Last known location.

(12) A statement that the property did or did not contain sensitive, export controlled, hazardous, or toxic material, and that the appropriate agencies and authorities were notified.

(C) Unless the contract provides otherwise, the Contractor shall be relieved of stewardship responsibility and liability for property when—

(1) Such property is consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the contract, including reasonable inventory adjustments of material as determined by the Property Administrator;

(2) Property Administrator grants relief of responsibility and liability for loss of Government property;

(3) Property is delivered or shipped from the Contractor's plant, under Government instructions, except when shipment is to a subcontractor or other location of the Contractor; or

(4) Property is disposed of in accordance with paragraphs (j) and (k) of this clause.

* * * * *

(h) * * *

(1) * * *

(ii) Loss of Government property that is the result of willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(iii) The Contracting Officer has, in writing, revoked the Government's assumption of risk for loss of Government property due to a determination under paragraph (g) of this clause that the Contractor's property management practices are inadequate, and/or present an undue risk to the Government, and the Contractor failed to take timely corrective action. If the Contractor can establish by clear and convincing evidence that the loss of Government property occurred while the Contractor had adequate property management practices or the loss did not result from the Contractor's failure to maintain adequate property management practices, the Contractor shall not be held liable.

(2) The Contractor shall take all reasonable actions necessary to protect the property from further loss. The Contractor shall separate the damaged and undamaged property, place all the affected property in the best possible order, and take such other action as the Property Administrator directs.

(3) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss of Government property.

(4) The Contractor shall reimburse the Government for loss of Government property, to the extent that the Contractor is financially liable for such loss, as directed by the Contracting Officer.

* * * * *

(j) * * *

(1) *Predisposal requirements.* (i) If the Contractor determines that the property has the potential to fulfill requirements under other contracts, the Contractor, in consultation with the Property Administrator, shall request that the Contracting Officer transfer the property to the contract in question, or provide authorization for use, as appropriate. In lieu of transferring the property, the Contracting Officer may authorize the Contractor to credit the costs of Contractor-acquired property (material only) to the losing contract, and debit the gaining contract with the corresponding cost, when such material is needed for use on another contract. Property no longer needed shall be considered contractor inventory.

(ii) For any remaining Contractor-acquired property, the Contractor may purchase the property at the unit acquisition cost if desired or make reasonable efforts to return unused property to the appropriate supplier at fair market value (less, if applicable, a reasonable restocking fee that is consistent with the supplier's customary practices.)

(2) *Inventory disposal schedules.* (i) Absent separate contract terms and conditions for property disposition, and provided the property was not reutilized, transferred, or otherwise disposed of, the Contractor, as directed by the Plant Clearance Officer or authorizing official, shall use Standard Form 1428, Inventory Disposal Schedule or electronic equivalent, to identify and report—

(A) Government-furnished property that is no longer required for performance of this contract;

* * * * *

(ii) The Contractor may annotate inventory disposal schedules to identify property the Contractor wishes to purchase from the Government, in the event that the property is offered for sale.

(iii) Separate inventory disposal schedules are required for aircraft in any condition, flight safety critical aircraft parts, and other items as directed by the Plant Clearance Officer.

(iv) * * *

(C) For precious metals in raw or bulk form, the type of metal and estimated weight.

* * * * *

(3) *Submission requirements.* (i) The Contractor shall submit inventory disposal schedules to the Plant Clearance Officer no later than—

(A) 30 days following the Contractor's determination that a property item is no longer required for performance of this contract;

(B) 60 days, or such longer period as may be approved by the Plant Clearance Officer, following completion of contract deliveries or performance; or

(C) 120 days, or such longer period as may be approved by the Termination Contracting

Officer, following contract termination in whole or in part.

(ii) Unless the Plant Clearance Officer determines otherwise, the Contractor need not identify or report production scrap on inventory disposal schedules, and may process and dispose of production scrap in accordance with its own internal scrap procedures. The processing and disposal of other types of Government-owned scrap will be conducted in accordance with the terms and conditions of the contract or Plant Clearance Officer direction, as appropriate.

* * * * *

(k) * * *

(3) Absent contract terms and conditions to the contrary, the Government may abandon parts removed and replaced from property as a result of normal maintenance actions, or removed from property as a result of the repair, maintenance, overhaul, or modification process.

* * * * *

■ 32. Amend section 52.245–2 by revising the date of the clause and paragraph (b) to read as follows:

52.245–2 Government Property Installation Operation Services.

* * * * *

GOVERNMENT PROPERTY INSTALLATION OPERATION SERVICES (APR 2012)

* * * * *

(b) The Government bears no responsibility for repair or replacement of any lost Government property. If any or all of the Government property is lost or becomes no longer usable, the Contractor shall be responsible for replacement of the property at Contractor expense. The Contractor shall have title to all replacement property and shall continue to be responsible for contract performance.

* * * * *

■ 33. Amend section 52.245–9 by revising the date of the clause; and removing from paragraph (e)(2) “The rental charge is” and adding “The hourly rental charge is” in its place.

52.245–9 Use and Charges.

* * * * *

USE AND CHARGES (APR 2012)

* * * * *

■ 34. Amend section 52.249–2 by revising the date of the clause and paragraph (h) to read as follows:

52.249–2 Termination for Convenience of the Government (Fixed-Price).

* * * * *

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (APR 2012)

* * * * *

(h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting

Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value as determined by the Contracting Officer, for the loss of the Government property.

* * * * *

■ 35. Amend section 52.249–3 by revising the date of the clause and paragraph (h) to read as follows:

52.249–3 Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements).

* * * * *

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (DISMANTLING, DEMOLITION, OR REMOVAL OF IMPROVEMENTS) (APR 2012)

* * * * *

(h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value, as determined by the Contracting Officer, for the loss of the Government property.

* * * * *

■ 36. Revise section 52.251–1 to read as follows:

52.251–1 Government Supply Sources.

As prescribed in 51.107, insert the following clause:

GOVERNMENT SUPPLY SOURCES (APR 2012)

The Contracting Officer may issue the Contractor an authorization to use

Government supply sources in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government unless otherwise specified in the contract. The provisions of the clause at FAR 52.245–1, Government Property, apply to all property acquired under such authorization. (End of clause)

PART 53—FORMS

■ 37. Amend section 53.245 by revising paragraph (c) to read as follows:

53.245 Government property.

* * * * *

(c) *SF 1423 (Rev. 5/04), Inventory Verification Survey.* (See 45.602–1(b)(1).)

* * * * *

[FR Doc. 2012–4499 Filed 3–1–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2011–0081, Sequence 1]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–56; 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 DOD, GSA, and NASA. 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 the rule appearing in Federal Acquisition Circular (FAC) 2005–56, which amends the Federal Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding this rule by referring to FAC 2005–56, which precedes this document. These documents are also available via the Internet at <http://www.regulations.gov>.

DATES: March 2, 2012.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2005–56 and the FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755.

LIST OF RULES IN FAC 2005–56

Item	Subject	FAR Case	Analyst
*I	Women-Owned Small Business (WOSB) Program	2010–015	Morgan.
II	Proper Use and Management of Cost-Reimbursement Contracts	2008–030	Clark.
III	Requirements for Acquisitions Pursuant to Multiple-Award Contracts	2007–012	Clark.
*IV	Socioeconomic Program Parity	2011–004	Morgan.
V	Trade Agreements Thresholds	2012–002	Davis.
VI	New Designated Country (Armenia) and Other Trade Agreements Updates	2011–030	Davis.
*VII	Government Property	2010–009	Glover.
VIII	Technical Amendments.		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item numbers and subject set forth in the documents following these item summaries. FAC 2005–56 amends the FAR as specified below:

Item I—Women-Owned Small Business (WOSB) Program (FAR Case 2010–015)

This rule adopts as final, with changes, an interim rule published in the **Federal Register** at 76 FR 18304 on April 1, 2011, which provides a tool to assist Federal agencies in achieving the 5 percent statutory goal for contracting with women-owned small businesses. This case is based on the Small Business Administration’s (SBA) regulations establishing the Women-Owned Small

Business (WOSB) Program, authorized under section 8(m) of the Small Business Act (15 U.S.C. 637(m)).

Agencies may restrict competition to Economically Disadvantaged Women-Owned Small Business (EDWOSB) concerns, for contracts assigned a North American Industry Classification Systems (NAICS) code in an industry in which SBA has determined that WOSBs are underrepresented in Federal procurement. For NAICS code industries where WOSBs are not just

underrepresented, but substantially underrepresented, agencies may restrict competition to either EDWOSB concerns or to WOSB concerns eligible under the WOSB Program.

EDWOSB concerns and WOSB concerns eligible under the WOSB Program must be owned and controlled by one or more women who are citizens of the United States. An EDWOSB concern is automatically a WOSB concern eligible under the WOSB Program.

This rule may positively affect EDWOSBs that participate in Federal procurement in industries where SBA determines that WOSBs are underrepresented and may positively affect WOSBs that participate in Federal procurement in industries where SBA determines that WOSBs are substantially underrepresented.

Item II—Proper Use and Management of Cost-Reimbursement Contracts (FAR Case 2008–030)

This final rule amends the FAR to implement section 864 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417), enacted on October 14, 2008. This law aligns with the President's goal of reducing high-risk contracting as denoted in the March 4, 2009, Presidential Memorandum on Government Contracting. Section 864 of the law requires amending the FAR to address the use and management of cost-reimbursement contracts in the following three areas:

1. Circumstances when cost-reimbursement contracts are appropriate.
2. Acquisition plan findings to support the selection of a cost-reimbursement contract.
3. Acquisition resources necessary to award and manage a cost-reimbursement contract.

This rule does not impose any information collection requirements on small business. There is no significant impact on small businesses because this rule is only applicable to internal operating procedures of the Government.

Item III—Requirements for Acquisitions Pursuant to Multiple-Award Contracts (FAR Case 2007–012)

This final rule adopts, with changes, an interim rule published in the **Federal Register** at 76 FR 14548 on March 16, 2011, that amended the FAR to implement section 863 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417). Section 863 requires the FAR to be amended to enhance competition in the

purchase of property and services by all executive agencies pursuant to multiple-award contracts (including Federal Supply Schedules (FSS)). This final rule requires an FSS ordering activity to conduct appropriate analysis and document the file to determine price reasonableness when placing an order under a blanket purchase agreement (BPA) with hourly rate services. The final rule also removes the requirement for an ordering activity's competition advocate to approve a contracting officer's annual review of a single-award BPA prior to exercise of an option to extend the term of the BPA. This should benefit contractors because it removes a requirement that is considered to be a restriction on the use of FSS single-award BPAs.

Item IV—Socioeconomic Program Parity (FAR Case 2011–004)

This rule adopts as final, with changes, an interim rule published in the **Federal Register** at 76 FR 14566 on March 16, 2011, which implemented section 1347 of the Small Business Jobs Act of 2010 (Pub. L. 111–240). Section 1347(b) clarifies that there is no order of precedence among the small business socioeconomic programs. The FAR interim rule clarified the existence of socioeconomic parity and that contracting officers may exercise discretion when determining whether an acquisition will be restricted to small businesses participating in the 8(a) Business Development Program (8(a)), Historically Underutilized Business Zones (HUBZone) Program, Service-Disabled Veteran-Owned Small Business (SDVOSB) Program, or the Women-Owned Small Business (WOSB) Program. This final rule may have a positive impact on small businesses as it presents the maximum practicable opportunity for small business concerns qualified under the socioeconomic programs to participate in the performance of contracts, and assist Federal agencies in meeting each of the Government's small business contracting goals.

Item V—Trade Agreements Thresholds (FAR Case 2012–002)

This final rule adjusts the thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements as determined by the United States Trade Representative, according to a formula set forth in the agreements. The threshold changes do not have significant cost or administrative impact, because they maintain the status quo by keeping pace with inflation.

Item VI—New Designated Country (Armenia) and Other Trade Agreements Updates (FAR Case 2011–030)

This final rule allows contracting officers to purchase the goods and services of Armenia without application of the Buy American Act if the acquisition is covered by the World Trade Organization Government Procurement Agreement. It also updates the lists of countries that are party to the Agreement on Trade in Civil Aircraft. This rule has no significant impact on small business concerns.

Item VII—Government Property (FAR Case 2010–009)

This final rule amends the FAR to clarify reporting, reutilization, and disposal of Government property and the contractor requirements under the Government property clause. The proposed rule was published on April 4, 2011 (76 FR 18497).

The rule specifically impacts contracting officers and contractors by clarifying disposal of Government property. The rule does not have a significant economic impact on small entities because the rule does not impose any additional requirements on small business.

Item VIII—Technical Amendments

Editorial changes are made at FAR 19.812, 42.203, and 52.209–9.

Dated: February 21, 2012.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2012–4502 Filed 3–1–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 19, 42, and 52

[FAC 2005–56; Item VIII; Docket 2012–0079; Sequence 1]

Federal Acquisition Regulation; Technical Amendments

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

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition

Regulation (FAR) in order to make editorial changes.

DATES: *Effective Date:* March 2, 2012.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, 1275 First Street NE., 7th Floor, Washington, DC 20417, 202-501-4755, for information pertaining to status or publication schedules. Please cite FAC 2005-56, Technical Amendments.

SUPPLEMENTARY INFORMATION: In order to update certain elements in 48 CFR parts 19, 42, and 52, this document makes editorial changes to the FAR.

List of Subjects in 48 CFR Parts 19, 42, and 52

Government procurement.

Dated: February 21, 2012.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 19, 42, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 19, 42, 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 19—SMALL BUSINESS PROGRAMS

19.812 [Amended]

■ 2. Amend section 19.812 by removing from paragraph (a) “*http://www.dcmamail.com/casbook/casbook.htm*”

and adding “*https://pubapp.dcmamail.com/CASD/main.jsp*” in its place.

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

42.203 [Amended]

■ 3. Amend section 42.203 by removing “*http://www.dcmamail.com*” and adding “*https://pubapp.dcmamail.com/CASD/main.jsp*” in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.209-9 [Amended]

■ 4. Amend 52.209-9 by removing Alternate I.

[FR Doc. 2012-4504 Filed 3-1-12; 8:45 am]

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