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Part V

## Department of Defense
## General Services Administration
## National Aeronautics and Space Administration

48 CFR Chapter 1
Federal Acquisition Regulation; Final Rules

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

**[Docket FAR 2012–0080, Sequence 5]**

## Federal Acquisition Regulation; Federal Acquisition Circular 2005–60; Introduction

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

**ACTION:** Summary presentation of final and interim rules.

**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) 2005–60. 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 2005–60 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 2005–60

| Item | Subject | FAR Case | Analyst |
|---|---|---|---|
| I | Reporting Executive Compensation and First-Tier Subcontract Awards | 2008–039 | Clark. |
| II | Payments Under Time-and-Materials and Labor-Hour Contracts | 2011–003 | Chambers. |
| III | Extension of Sunset Date for Protests of Task and Delivery Orders (Interim) | 2012–007 | Lague. |
| IV | DARPA–New Mexico Tax Agreement | 2012–019 | Chambers. |
| V | Clarification of Standards for Computer Generation of Forms | 2011–022 | Lague. |
| VI | 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 subjects set forth in the documents following these item summaries. FAC 2005–60 amends the FAR as specified below:

### Item I—Reporting Executive Compensation and First-Tier Subcontract Awards (FAR Case 2008–039)

The interim rule published in the **Federal Register** at 75 FR 39414 on July 8, 2010, is adopted as final with changes. This rule implements section 2 of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282), which requires the Office of Management and Budget to establish a free, public, Web site containing full disclosure of all Federal contract award information.

The interim rule required contractors to report executive compensation and first-tier subcontract awards on contracts expected to be $25,000 or more. This information is available to the public.

The final rule removes the exception for inserting the clause in classified solicitations and contracts, or solicitations or contracts with individuals. Classified information is not required to be disclosed. The clause is not prescribed for contracts unless they are required to be reported in the Federal Procurement Data System (FPDS). The final rule clarifies the responsibility of contracting officers to correct data originating from FPDS found by the contractor to be in error when the contractor completes the subcontract report. The definition of first-tier subcontractor is revised to allow contractors greater flexibility to determine their first-tier subcontractors. The rule also clarifies that a contractor must enter Transparency Act data when registering in the Central Contractor Registration (CCR) database and the contractor is required to report its executive compensation in CCR as a part of its annual registration requirement in CCR.

### Item II—Payments Under Time-and-Materials and Labor-Hour Contracts (FAR Case 2011–003)

This final rule amends the FAR with regard to payments under time-and-materials and labor-hour contracts. First, the rule harmonizes payment provisions under commercial time-and-materials and labor-hour contracts and non-commercial time-and-materials and labor-hour contracts, largely by having commercial time-and-materials and labor-hour contracts adopt the payment provisions of non-commercial time-and-materials and labor-hour contracts. Second, the rule harmonizes conflicting provisions of the ''Allowable Cost and Payment'' and ''Payments Under Time-and-Materials'' and ''Labor-Hour Contracts'' clauses, which are both prescribed under non-commercial time-and-materials contracts and labor-hour contracts, by using the same periods for invoicing, and submission of the completion voucher as those set forth in the ''Allowable Cost and Payment'' clause. This harmonization will serve to benefit small businesses under time-and-materials and labor-hour contracts by permitting bi-weekly rather than monthly invoicing, and providing contracting officers with the discretion to authorize even more frequent payments.

### Item III—Extension of Sunset Dates for Protests of Task and Delivery Orders (FAR Case 2012–007) (Interim)

This interim rule amends the FAR to implement section 825 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383) and section 813 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81). These statutes extend the sunset date for protests against awards of task or delivery orders to September 30, 2016. There is no effect on Government automated systems.

### Item IV—DARPA–New Mexico Tax Agreement (FAR Case 2012–019)

This final rule amends the FAR to add the United States Defense Advanced Research Projects Agency (DARPA) to the list of agencies that have entered into an agreement with the State of New Mexico. The agreement eliminates the

double taxation of Government cost-reimbursement contracts when contractors and their subcontractors purchase tangible personal property to be used in performing services in whole or in part in the State of New Mexico, and for which title to such property will pass to the United States upon delivery of the property to the contractor and its subcontractors by the vendor. Small businesses benefit from this agreement because they will no longer have the administrative effort and cost associated with collecting this tax.

**Item V—Clarification of Standards for Computer Generation of Forms (FAR Case 2011–022)**

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 76 FR 79609 on December 22, 2011, to implement the removal of Federal Information Processing Standard (FIPS) 161. FIPS 161 is being removed based on the notice posted in the **Federal Register** at 73 FR 51276 on September 2, 2008, by the Department of Commerce. This is a technical change acknowledging the removal by the Department of Commerce of FIPS 161 and replacement with the American National Standards Institute (ANSI) X12 set of standards. There is no impact to the Government or contractors in establishing ANSI X12 as the new standard. Small businesses will continue to be able to generate forms by computer. No public comments were received on the proposed rule, therefore, the final rule will be published with no changes.

**Item VI—Technical Amendments**

Editorial changes are made at FAR 1.105–2, 16.301–3, 22.1801, 22.1802, 52.212–5, 52.215–20, 52.222–54, and 52.223–2.

Dated: July 16, 2012.

**Laura Auletta,**

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

Federal Acquisition Circular (FAC) 2005–60 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 2005–60 is effective July 26, 2012, except for Item I, II, and IV which are effective August 27, 2012.

Dated: July 11, 2012.

**Richard Ginman,**

*Director, Defense Procurement and Acquisition Policy.*

Dated: July 12, 2012.

**Laura Auletta,**

*Acting Senior Procurement Executive, Office of Acquisition Policy, U.S. General Services Administration.*

Dated: July 10, 2012.

**Ronald A. Poussard,**

*Director, Contract Management Division, National Aeronautics and Space Administration.*

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Parts 1, 2, 4, and 52

**[FAC 2005–60; FAR Case 2008–039; Item I; Docket 2010–0093, Sequence 2]**

**RIN 9000–AL66**

## Federal Acquisition Regulation; Reporting Executive Compensation and First-Tier Subcontract Awards

**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 adopting as final, with changes, the interim rule amending the Federal Acquisition Regulation (FAR) to implement a section of the Federal Funding Accountability and Transparency Act of 2006 as amended by a section of the Government Funding Transparency Act of 2008, which requires the Office of Management and Budget (OMB) to establish a free, public Web site containing full disclosure of all Federal contract award information. This rule requires contractors to report executive compensation, and first-tier subcontractor awards on contracts of $25,000 or more.

**DATES:** *Effective Date:* August 27, 2012.

*Applicability:* Contracting officers shall include the FAR clause at 52.204–10, Reporting Executive Compensation and First-Tier Subcontract Awards, in accordance with FAR 4.1403, in solicitations issued on or after the effective date of this rule, and resultant contracts.

Contracting officers shall modify, on a bilateral basis, in accordance with FAR 1.108(d)(3), existing contracts that include the FAR clause implemented in the interim rule dated July 2010, to require contactors to comply with the requirements of this final rule FAR clause, if the contractor will be required to provide another annual report. If the contracting officer is unable to negotiate this modification, the contracting officer shall obtain approval at least one level above the contracting officer to negotiate an alternate resolution.

**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 2005–60, FAR Case 2008–039.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On September 26, 2006, the Federal Funding Accountability and Transparency Act (hereafter referred to as the Transparency Act) (Pub. L. 109–282, 31 U.S.C. 6101 note), was enacted to reduce ''wasteful and unnecessary spending,'' by requiring that OMB establish a free, public Web site containing full disclosure of all Federal award information, for awards of $25,000 or more. The Transparency Act required, by January 1, 2009, reporting on subcontract awards by Federal Government contractors and subcontractors. The Transparency Act's initial phase was conducted as a Pilot Program (Pilot), to test the collection and accessibility of the subcontract data. In order to implement the Pilot, a proposed rule was published in the **Federal Register** at 72 FR 13234, on March 21, 2007, under FAR Case 2006–029.

A final rule implementing the Pilot was published in the **Federal Register** at 72 FR 51306, on September 6, 2007. Exempted from the Pilot were solicitations and contracts for commercial items issued under FAR part 12 and classified solicitations and contracts. To minimize the burden on Federal prime contractors and small businesses, the Pilot applied to contracts with a value greater than $500 million and required the awardees to report all subcontract awards exceeding $1 million to the Transparency Act database at *www.esrs.gov.* The Pilot terminated January 1, 2009.

On June 30, 2008, section 6202 of Public Law 110–252 amended the Transparency Act to require the Director of OMB to include an additional

reporting element requiring contractors and subcontractors to disclose information on the names and total compensation of their five most highly compensated executives.

DoD, GSA, and NASA published in the **Federal Register** at 74 FR 14639, on March 31, 2009, FAR case 2009–009, American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Reporting Requirements, which required contractors receiving a Recovery Act funded contract award to provide detailed information on subcontracts, including the data elements required to comply with the Transparency Act. Although the Transparency Act reporting requirements flow down to all subcontracts, regardless of tier, the Recovery Act limited the reporting on subcontract awards to the contractor's first-tier subcontractors.

DoD, GSA, and NASA published an interim rule for public comment in the **Federal Register** at 75 FR 39414, on July 8, 2010, under FAR Case 2008–039 with the following criteria:

- Subcontract reporting would apply only to first-tier subcontracts.
- The rule would phase-in the reporting of subcontracts of $25,000 or more—
  - Until September 30, 2010, any newly awarded subcontract must be reported if the prime contract award amount was $20 million or more;
  - From October 1, 2010, until February 28, 2011, any newly awarded subcontract must be reported if the prime contract award amount was $550,000 or more; and
  - Starting March 1, 2011, any newly awarded subcontract must be reported if the prime contract award amount was $25,000 or more.
- By the end of the month following the month of award of a contract, and annually thereafter, the contractor shall report the names and total compensation of each of the five most highly compensated executives for the contractor's preceding completed fiscal year.
- Unless otherwise directed by the contracting officer, by the end of the month following the month of award of a first-tier subcontract, and annually thereafter, the contractor shall report the names and total compensation of each of the five most highly compensated executives for the first-tier subcontractor's preceding completed fiscal year.
- There would be a $300,000 gross income exception for prime contractors and subcontractors.
- Data quality requirements would apply to agencies and contractors.

The interim rule required contractors to report subcontracts of $25,000 or more, and any modifications made to those subcontracts which changed previously reported data. The reporting requirements of the Transparency Act are sweeping in their breadth, and are intended to empower the American taxpayer with information that may be used to demand greater fiscal discipline from both executive and legislative branches of Government. The Transparency Act reporting requirements apply to all businesses, regardless of business size or ownership.

Contractors provide these subcontract reports to the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS) at *http://www.fsrs.gov.* FSRS is a module of the Electronic Subcontracting Reporting System (eSRS) designed specifically to collect the Transparency Act required data.

Contracting officers will be required to modify existing contracts to cover future orders—see the Applicability section above.

## II. Discussion and Analysis

DoD, GSA, and NASA published an interim rule for public comment in the **Federal Register** at 75 FR 39414, on July 8, 2010. The comments, as categorized and summarized below, were considered by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (''the Councils'') in the formation of a final rule.

A. Disclosure of Executive Compensation
B. Definitions
C. Thresholds
D. Paperwork Burden
E. Applicability
F. Subcontract Award Data
G. Impact on Small Businesses
H. Reporting System
I. Other Concerns About the Rule

### *A. Disclosure of Executive Compensation*

*Comment:* A number of respondents objected to the reporting of total compensation, as required by the rule, for several reasons including that total compensation is generally not allowable under FAR 31.205–6 or cost-reimbursement contracts, such information is outside the scope of the taxpayer's interest, and the information will have no practical utility. Another respondent believed that the rule should be updated with a provision that subcontractors who submit executive compensation information to the Defense Contract Audit Agency (DCAA) need not provide it to prime contractors. A respondent requested that the rule be clarified to provide that only the allowable portion of an officer's salary is reported. Several respondents stated that total executive compensation is already being reported to the Government annually through an incurred cost submission (see FAR 52.216–7(d)).

*Response:* The public disclosure of executive compensation information implemented under this rule is a statutory requirement. The law does not limit reporting to the amount funded or reimbursed by Federal funds, nor does the law make an exception for situations in which a contractor or subcontractor is already reporting executive compensation through an incurred cost submission. Therefore, the Councils cannot create such an exception. Moreover, information reported to DCAA is not public information, and DCAA is not authorized to release that information. No change to the rule is required.

*Comment:* A number of respondents were concerned that publishing executive compensation information will create discord, envy, and turnover.

*Response:* The public disclosure of executive compensation information implemented under this rule is a statutory requirement. Contractors have publicly disclosed executive compensation through the Securities Exchange Act (SEC) of 1934 15 U.S.C. 78m(a), 78o(d) or section 6104 of the Internal Revenue Code of 1986 for years through periodic reports, prior to the advent of the Transparency Act.

*Comment:* A respondent stated that most commercial companies lack the required systems to track, monitor, and calculate the required compensation information requested for prime contractors and their first-tier subcontractors. Two respondents thought that the requirements will be burdensome because small businesses, including first-tier subcontractors, are unaccustomed to such requirements and do not have infrastructure in place to comply.

*Response:* There may be some burden (*i.e.,* one-time start-up cost for the infrastructure to collect or report the information should be a one-time cost) associated with the reporting required by this rule. Additionally, the Councils have revised the rule at FAR 52.204–10(a) to lessen the potential burden by clarifying the definition of ''first-tier subcontractor.''

*Comment:* A number of respondents believed that executive compensation information is proprietary. They suggested that this type of information is not currently disclosed to the public,

even pursuant to Freedom of Information Act (FOIA) requests.

*Response:* The public disclosure of executive compensation information implemented under this rule is a statutory requirement mandated by Congress. This statute has created an exception to the usual practices for handling contractor proprietary information. The FOIA exemption for contractor proprietary information does not forbid release of this information.

*Comment:* A respondent stated that making the amount of an employee's compensation available to their Government counterparts may have a significantly detrimental impact on these critical working relationships.

*Response:* This rule implements a statutory requirement for the disclosure of executive compensation.

*Comment:* A number of respondents stated that disclosure of executive compensation may translate into safety issues for the executives, their families, and potentially, U.S. Government personnel outside the United States. The respondents opined that executives or their families could be subject to extortion, blackmail, or kidnap as a result of these disclosures.

*Response:* The public disclosure of executive compensation information implemented under this rule is a statutory requirement. This rule does not require contractors to disclose the home addresses of executives or U.S. Government personnel.

*Comment:* A number of respondents stated that disclosing compensation information will create risk that a company may lose its key personnel to raiding by competitors. According to the respondents, this potential outcome will drive some contractors and subcontractors out of the Government contracting arena and, by implication, deprive the Federal Government of access to cutting edge technologies and ideas, and increase the Government's costs by reducing competition. These respondents also suggested that competitors may be able to use compensation data for executives who serve multiple roles to determine their pricing strategies. These respondents further opined that competitors who fall below the reporting threshold set forth in the rule will have an unfair advantage.

*Response:* Disclosure of executive compensation could have some anti-competitive aspects, which may ultimately result in increased contract costs for the Government and the taxpayer. However, the public disclosure of executive compensation information implemented under this rule is a statutory requirement mandated by Congress. The disclosure of such information was established in order to increase transparency in Government contracting. The exceptions to the disclosure requirement implemented in the rule such as the 80 percent/$25 million exception, the $300,000 gross income exception, and the definition of ''first-tier subcontract,'' will substantially reduce the number of contractors that would otherwise be required to report such information.

*Comment:* A number of respondents expressed the view that ''providing this information or any other type of proprietary data to prime contractors could jeopardize a contractor's competitive position''. Those respondents stated that it is not unusual for a subcontractor to be a prime contractor on one effort, and competing with that same contractor on another effort. The respondents further opined that the Government has typically not asked that subcontractors provide such proprietary information to prime contractors. Another respondent noted that ''* * * currently this data is being requested and stored on a public facing Web site'' (*www.ccr.gov*), and questioned how the Government would ensure that the data is protected from hackers or inadvertently disclosed by a contracting officer.

*Response:* The correct interpretation of the nature of the statute and rule is that prime contractors will not hold the information to themselves, but instead must enter the information into a database; the compensation information will be available on the internet to everyone as public information.

*Comment:* A number of respondents recommended revising the rule to require a flowdown clause to allow subcontractors to report executive compensation directly to the Government. They indicated that flowing down the requirement would reduce the administrative burden on the prime. One respondent recommended a ''safe harbor'' for prime contractors to address situations in which subcontractors fail to provide the information, so that any failure does not reflect negatively on the prime contractor's performance evaluation. A respondent recommended revision of the rule expressly permitting prime contractors to rely on their subcontractors' determinations as to whether they must disclose compensation data under the rule.

*Response:* The Federal Government has no privity of contract with subcontractors and is therefore reluctant to establish communication channels that could potentially be construed as creating a contractual relationship. The Federal Government has privity of contract only with the prime contractor. Therefore, the prime contractor will be held accountable for ensuring that their subcontractors provide the necessary information for contract compliance. Because Transparency Act reporting is statutorily required, compliance with reporting should remain a consideration as a past performance evaluation element.

*Comment:* A respondent indicated that no process exists to ensure accuracy in reporting executive compensation, either to verify or monitor the accuracy of reported information. Several respondents requested clarification of the contractor's obligation to verify the accuracy of its subcontractor's information. One stated that the prime cannot guarantee the accuracy of the disclosures and should not be responsible for their accuracy.

*Response:* The law requires a searchable Web site for reporting, and FSRS at *www.fsrs.gov,* is the reporting tool used by the Federal Government to reduce contractor burden. One of the features of FSRS that will mitigate the burden of prime contractor reporting of first-tier subcontractor executive compensation is the capability of the FSRS system to pre-populate FSRS entries with information from other Government systems including the Central Contractor Registration (CCR). Furthermore, the clause at FAR 52.204–10(d)(3) indicates that the prime contractor is required to report the names and total compensation of the five most highly compensated executives for each first-tier subcontractor. The prime contractor should (1) hold first-tier subcontractors responsible for complying with this contractual reporting requirement under its contract with the Federal Government; and (2) hold the first-tier subcontractor responsible for guaranteeing the accuracy of the compensation information.

*Comment:* A respondent recommended that the rule end the prime contractor's obligation to report first-tier subcontractor information upon completion of the subcontract.

*Response:* The final rule was revised at FAR 52.204–10(f) and requires reporting first-tier subcontractor's information (including executive compensation) at least once, but further reporting is not required upon the completion of the first-tier subcontract.

*Comment:* Several respondents noted that all contractors, whether large or small, are required to provide the requested compensation data on the CCR. They opined that it is redundant to ask prime contractors to submit data

on their first-tier subcontractors in *www.fsrs.gov* when such information already resides in the CCR. Those respondents also stated that since all contractors are required to furnish compensation data on the CCR, the Government should consider eliminating the requirement for the prime contractor to report its subcontractor's compensation data on *http://www.fsrs.gov.*

*Response:* The Transparency Act requires that information on Federal awards (Federal financial assistance and expenditures) be made available to the public via a single, searchable Web site, which is *www.USASpending.gov.* FSRS is the reporting tool Federal prime awardees (*i.e.,* prime contractors and prime grants recipients) use to capture and report subaward and executive compensation data regarding their first-tier subawards to meet the Transparency Act reporting requirements. To ensure consistency between the *FSRS.gov* system and other Government systems, the *FSRS.gov* system is designed to pull in data from other feeder systems (*e.g.,* CCR). There is no requirement for subcontractors to be in CCR. Thus, it is not the case that all subcontractors will be in CCR. So, eliminating the requirement for the prime contractor to report its subcontractor's compensation data on *http://www.fsrs.gov* would not allow the Government to meet the intent of the Transparency Act. The prime needs to report the first-tier subcontractor information at *http://www.fsrs.gov.* However, if a first-tier subcontractor is otherwise registered in CCR, the first-tier subcontractor's executive compensation information from their CCR record may be pulled into the prime contractor's FSRS report when the prime contractor enters the first-tier subcontractor's information as it appears in the CCR record. The Councils added clarification language at FAR 52.204–7 to make contractors aware that data may be required by the Transparency Act when registering in CCR. Also, a corresponding change was made at FAR subpart 2.1.

*Comment:* Several respondents believed that the rule and CCR guidance conflict when it comes to defining the public company exemption, and recommended that the final rule and CCR guidance be reissued to define the contractor's executive compensation to include ''all affiliates''. A respondent recommended that the rule be revised to state that reporting is not required if the total compensation of the contractor's executives or the executives of its parent company (in the case of wholly owned subsidiaries) is already available to the public, regardless of whether it was filed with the U.S. Government, a State government, or a foreign government. One respondent believed that the rule appropriately places the disclosure requirement with the entity that receives the contracts.

*Response:* The rule and CCR guidance do not conflict. CCR requires reporting of executive compensation, under certain circumstances, by the legal entity to which this specific CCR record, represented by a Data Universal Numbering System (DUNS) number, belongs. The rule requires reporting by the contractor. The contractor is the legal entity that signed the contract. The contractor, except in certain circumstances as specified in FAR 4.605(b), has to have a DUNS number to be a Government contractor and receive a contract award. There may be legal entities that are not publicly traded but are wholly owned by public companies. However, the statute did not make an exception for reporting of a legal entity at lower levels of a publicly traded company if the parent company already discloses the executive compensation through the Securities and Exchange Commission (SEC) reporting. The exceptions for reporting executive compensation are based in the statute. Therefore, the Councils cannot create an exception for information already available through other sources. No change to the rule is required.

*Comment:* A respondent indicated that in order to keep total compensation information confidential within the company, the rule forces the company to limit internal access to the CCR system. This will require the respondent to modify its existing business practices, and to restrict access away from individuals whose job responsibilities normally include accessing and updating the CCR system.

*Response:* The respondent's possible internal adjustments to comply with reporting requirements of the rule are noted. However, even though the information will not be viewable in CCR by the general public, the executive compensation will be made public (including to contractor employees), if not already as a result of SEC filings, through other Government systems (*e.g., USASpending.gov*) when matched with a Federal award to that company.

*Comments:* Several respondents requested that the subsidiaries of a parent company limit the executive compensation reporting to the parent company. A respondent had a concern with the reporting requirement, and its effect on joint ventures since there are no officers in a joint venture. Several respondents requested modification to the reporting requirements to exempt from reporting institutions of higher education, hospitals, other non-profit organizations and organizations that do not have salaries or other compensation as defined in the rule. A respondent requested changes in the exemption for reporting the percentage and amounts of annual gross revenue, and potential for disparities in reporting between companies. The respondent also requested clarification on an exemption when the executive compensation was provided in the last completed fiscal year.

*Response:* The thresholds and exemptions in the rule at FAR 52.204–10(d)(1), (d)(3), and (g) are based in the statute. The Transparency Act reporting requirements apply to all businesses, regardless of business size or ownership, and the Act did not make exceptions for subsidiaries of a parent company, joint ventures, institutions of higher education, hospitals, and other non-profit organizations. The disclosure of executive compensation is required annually for individuals who manage the contractor entity. Thus, the reporting requirement includes officers, executives, and other individuals who perform management functions for the contractor even though they may not have a formal title. Additionally, the Transparency Act established the gross revenue amounts that are reflected in the rule.

*Comment:* A number of respondents submitted general comments regarding the rule's executive compensation reporting requirements. A respondent was concerned about the rationale behind the rule and believed that it is ''pure politics.'' Several respondents had concerns about the rule's impact on acquisitions under the Recovery Act, and the rule's disclosure requirements. A respondent was concerned that the Recovery Act procurement contracting officers required the disclosure information with an offeror's response to a request for proposal, but noted that neither the interim rule nor the Transparency Act provides for such disclosure. The respondent requested that the Councils issue guidance stating that the disclosure information is only required postaward. A respondent was concerned that the rule overestimates the degree to which contractors are already reporting the disclosure requirements under the Recovery Act, and believed that the Councils' reliance upon the Recovery Act as a substitute for rulemaking required by the Transparency Act, and the Government Funding Transparency Act is improper. The respondent believed that the Councils obscured the application of the reporting requirements, and negatively

impacted contractors' understanding of their application to other Federal procurements by imposing the disclosure requirements for the first time under the Recovery Act. The respondent suggested that the rule be amended to allow the Councils additional time to fully consider important comments, and contractors' time to prepare and assess the implication of the reporting requirements.

*Response:* The impetus for the rule is the Federal Funding Accountability and Transparency Act of 2006 (Transparency Act), which is intended to empower every American with the ability to hold the Government accountable for each spending decision. With respect to the respondent requesting guidance stating that the disclosure information is only required postaward, FAR 52.204–10(c)(2) and (c)(3) (now (d)(1) and (d)(3)) provide disclosure requirements. FAR 52.204–10(d)(1) requires a prime contractor as a part of its annual registration requirement in the CCR database to report the names and total compensation of each of its five most highly compensated executives for its preceding completed fiscal year. FAR 52.204–10(d)(3) requires that the prime contractor disclose first-tier subcontract information by the end of the month which follows the month of award of a first-tier subcontract award with a value of $25,000 or more, and annually thereafter. The decision to proceed with implementation of this rule is not based on an overestimate of the degree to which contractors are already reporting the disclosure requirements under the Recovery Act. After publication of FAR Case 2006–029, and implementation of the Recovery Act (inclusive of reporting prime and first-tier subcontractors' total compensation for the five most highly compensated executives), published under FAR case 2009–009, there was a reasonable basis for implementation of the Transparency Act. Additionally, as stated in the interim rule, the Councils implemented the Transparency Act in a phased-in approach to allow for a more manageable Transparency Act implementation.

*B. Definitions*

*Comments:* Several respondents were concerned with the rule's use of the term ''executive.'' Generally, the respondents believed that the rule's definition could cause non-executive employees to face public disclosure of their compensation. The respondents pointed out that the statute is limited to ''officers,'' and urged the Councils to narrow the definition to ''corporate officers'' or ''partners'' of the company.

*Response:* The statute used both terms ''officer'' and ''executive.'' To avoid any ambiguity, the FAR only uses ''executive''. The disclosure requirement is for the compensation of individuals who manage the contractor entity. Thus, the reporting requirement includes officers, executives, and other individuals who perform management functions for the contractor even though they may not have a formal title. By defining ''executive'' to mean officers, managing partners, or any other employees in management positions, the rule provides the contractor with the maximum flexibility to determine its executives for the purposes of the reporting requirements.

*Comment:* Several respondents requested that the Councils define ''subaward'' in a manner consistent with OMB Circular A–110 for an organization that receives Federal grants and contracts. A respondent preferred that the FAR follow the grants guidance, which would require incorporating into the FAR the definition of ''subawards'' in paragraph (ff) of section 2 of Appendix A to OMB Circular A–110, found at 2 CFR 215.2(ff).

*Response:* The term ''subaward'' does not require definition in the rule for the purpose of consistency with OMB Circular A–110(ff)/2 CFR 215.2(ff), which provides guidance to Federal agencies on the administration of grants to and agreements with institutions of higher education, hospitals, and other non-profit organizations. The term ''subaward'' is not used in the rule, and providing a definition for the term without using it as a function of the rule would not be prudent and could cause confusion.

*Comment:* A respondent requested that the Councils define the term ''subcontract.'' The respondent stated that the term is only defined in FAR part 44. Another respondent was concerned that the definition of ''first-tier subcontractor'' differs from the definition used in the September 2007 clause, and noted the definition excluded contracts that provide supplies or services benefiting two or more contracts. The respondent recommended revising the definition of ''first-tier subcontract'' to mean ''a subcontract awarded by a contractor solely and directly to furnish supplies or services (including construction) for the performance of a prime contract, but exclude supplier agreements that benefit two or more contracts.'' Another respondent believed that the definition for ''first-tier subcontract'' is unclear, overly broad, and requested that the definition be revised to emphasize that all vendor supply and service agreements are excluded from the rule.

*Response:* The term ''subcontract'' does not need to be defined, as the definition of ''first-tier subcontract'' is sufficient to meet the intended purpose of the Transparency Act. The specific changes of the definition of ''first-tier subcontract'' recommended by the respondents are not necessary, as the recommended changes may restrict the reporting of relevant first-tier subcontracts that should be reported. However, the Councils have made changes at 52.204–10(a) to ensure clarity, and to eliminate the potential that contractors may report long term vendor agreements for material or supplies, which are outside the scope of the core functions of a contractor's contract with the Government.

*Comment:* A respondent suggested that a definition of ''month of award'' be added to the rule.

*Response:* The Councils have added a definition of ''month of award'' at 52.204–10(a).

*Comment:* A respondent was concerned with how contracting officers are interpreting the rule's exclusion of classified contracts. The respondent indicated that contracting officers are interpreting the term to mean contracts where the document itself is classified. To ensure proper implementation of the exemption, the respondent recommended that the rule, in FAR 1.1401 and 1.1403, reference the FAR 2.101 definition for ''classified contract.''

*Response:* The Councils have revised the rule at FAR 4.1401, 4.1403 and 52.204–10(c) for consistency with the statute, which indicates that nothing in the statute requires disclosure of classified information.

*C. Thresholds*

*Comment:* A number of respondents requested that the threshold for including the clause in contracts be increased. One respondent recommended that this clause only apply to sole source contracts over $1 million and competitively awarded contracts over $50 million. Another respondent thought that the Government could report 80 percent of all contract activity by selecting only 20 percent of the largest contracts. A respondent recommended that the Government conduct another pilot program to assess the true cost to report contracts at $25,000, and above to assess the true extent to which reporting such low dollar value subcontracts is useful to the public in reducing wasteful and unnecessary spending.

*Response:* The Transparency Act requires the full disclosure of all Federal award information for awards of $25,000 or more.

*Comment:* A respondent wanted to see all the applicability details laid out in a concise flow chart so that all contractors can easily decipher the rule.

*Response:* The applicability of FAR 52.204–10, Reporting Executive Compensation and First-Tier Subcontract Awards, is clear on its face. Also, additional information is available at *https://www.fsrs.gov/,* which provides responses to frequently asked questions, a user guide, and gives an explanation of FSRS.

*Comment:* A respondent thought that the rule does not provide sufficient guidance concerning its applicability to indefinite-delivery indefinite-quantity (IDIQ) contracts, and that the rule should be revised to state that the thresholds are to be applied at the order level.

*Response:* The applicability section of the interim rule published in the **Federal Register** on July 8, 2010, at 75 FR 39414, required that contracting officers modify existing IDIQ contracts on a bilateral basis in accordance with FAR 1.108(d)(3) to include the clause for future orders. This includes modifying blanket purchase agreements under IDIQ contracts. IDIQ contracts include Federal Supply Schedule contracts and task and delivery-order contracts such as Governmentwide acquisition contracts.

*D. Paperwork Burden*

*Comments:* A respondent was concerned about the potential unintended and unnecessary burden the rule will have on wholesale distributors who distribute products for hundreds of vendors who will independently report the same information. The respondent believed that the rule will impose additional burdens and costs that will affect the healthcare system in general, as the information required to be reported by prime contractors is duplicative of information separately required of first-tier subcontractors. A respondent was concerned with the rule's assumption that the executive compensation is an annual reporting requirement. The respondent suggested that the Councils' estimate does not take into account time required to provide information from privately held companies, and that the estimated cost is based on the number of firms that may have to report, not the actual number of reports required because of contract awards. The respondent believed that using contract awards is clearly a better basis for estimating the reporting requirements. The respondent also believed that some executive compensation data will need reporting multiple times, and that the rule does not exempt firms that have previously disclosed in the current fiscal year from reporting a second, third, or hundredth time.

*Response:* The time required to conduct research and obtain information specifically for the disclosure of compensation information, especially from first-tier subcontractors, was not considered in the public reporting burden published with the interim rule. FAR 52.204–10(d) provides that the contractor is required to report the five most highly compensated executives for each first-tier subcontractor. Many of the required subcontract award data elements will be pre-populated by the Government. Information not pre-populated (*e.g.,* first-tier subcontractor name, address, primary place of performance subcontract number, subcontract amount, description of product or service, etc.), should be readily known or available to the contractor to permit ease in reporting. Disclosing compensation and the first-tier subcontract award information may require updating, but such updating will be infrequent and, at best, not more than once a year. The rule will have an impact on all Government contractors including healthcare wholesale distributors. However, because the reporting system is designed to pre-populate disclosures from CCR into FSRS, wholesale distributors will not necessarily independently report the same information for hundreds of vendors that will also disclose the required compensation information. The revisions to the definition of ''first-tier subcontractor'' allow some flexibility for the contractor to determine its first-tier subcontractors. FAR 52.204–10(a) eliminates the potential for contractors reporting vendor agreements that benefit multiple contracts and/or are generally considered a part of a contractor's general and administrative expenses or indirect cost. The reporting requirements are not necessarily new, and were first introduced to Government contractors on September 6, 2007, under FAR case 2006–029, and later on March 31, 2009, as part of the reporting requirements for the American Recovery and Reinvestment Act of 2009, under FAR case 2009–009. The reporting requirements in these FAR cases provided Government contractors, first-tier subcontractors, and those wishing to do business with the Government ample time to anticipate implementation of the statutory reporting requirements, and the ability to comply with the requirements once they became mandatory.

*E. Applicability*

1. Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

*Comment:* A number of respondents requested that the requirement to disclose executive compensation not apply to commercial item and COTS contracts. The respondents provided various reasons for the request including that the disclosure requirement—

- Conflicts with the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355);
- Should not apply to privately held contracts; and
- Is not supported by any evidence of a meaningful nexus between the amount a contractor pays in executive compensation and the likelihood the procuring agency is paying fair and reasonable prices for that contractor's goods and services.

A respondent indicated that FAR 52.204–10, Reporting Executive Compensation and First-Tier Subcontract Awards, is not an applicable commercial item clause as shown in FAR 52.301.

*Response:* The Transparency Act makes no exception for contracts involving the acquisition of commercial or COTS items, nor does it specifically state applicability to commercial items. The clause is shown as applicable to commercial items in FAR 52.301.

Pursuant to the requirements of 41 U.S.C 1906 (formerly 41 U.S.C. 430), the FAR Council has determined that it is not in the best interest of the Federal Government to exempt commercial item contracts from coverage under this rule, given that the Transparency Act was enacted to reduce ''wasteful and unnecessary spending''. Further, pursuant to the requirements of 41 U.S.C. 1907 (formerly 41 U.S.C. 431(a), and (b)), and 41 U.S.C. 104 (formerly 41 U.S.C. 431(c)) OFPP has determined that it is not in the best interest of the Government to exempt COTS items contracts from coverage under this rule (see 75 FR 39414). The Act required that OMB establish a free, public, Web site containing full disclosure of all Federal contract award information. Therefore, contracts for commercial items and COTS items must be reported.

FAR 52.204–10 is included in 52.212–5, Contract Terms and Conditions Required to Implement Statute or Executive Orders—Commercial Items, which is prescribed at 12.301(a)(4).

*Comment:* A respondent believed that not exempting commercial items conflicts with the Council's prior interpretation of the Transparency Act. The respondent stated that when establishing the Transparency Act Pilot program (FAR Case 2006–029), the Councils added Transparency Act to the list of laws not applicable to commercial item contracts. The respondent felt that the interim rule should have explained this reversal.

*Response:* There were decisions made for the purposes of implementing the Pilot on a limited basis that did not establish permanent policy for the implementation of the Transparency Act.

2. Outside the United States

*Comment:* Some respondents recommended that FAR clause 52.204–10 should be inapplicable to contracts/subcontracts that will be awarded to a company located outside the United States for performance that will take place entirely outside the United States, or for the contracting officer to exempt a class of subcontracts from the reporting requirement to ensure force protection of U.S. Government personnel outside the United States.

Other respondents questioned what can be done if a foreign contractor refuses to sign a modification to incorporate the required clause or foreign subcontractor refuses to comply. In the event that a contractor refuses to accept such a modification, will the contractor be ineligible for award of any work that uses Federal funds?

*Response:* The Transparency Act reporting requirements apply to all businesses, regardless of business size or ownership. If a business/contractor enters into a contract with the U.S. Government, then the business/contractor is required to abide by the terms and conditions of the U.S. Government contract including this contract reporting requirement.

In the event that a contractor, foreign or otherwise, refuses to accept such a modification, and the contracting officer is unable to negotiate this modification, the contracting officer shall obtain approval at least one level above the contracting officer to negotiate an alternate resolution, as stated in the Applicability section of the preamble.

3. Classified Contracts

*Comment:* A respondent stated that merely exempting classified contracts from this interim rule is, by itself, inadequate protection of our nation's security interests and needs. The respondent opined that the reporting requirement created by the Transparency Act conflicts with the significant and ongoing efforts throughout the Government to protect sensitive but unclassified information. At a minimum, the respondent recommended that Transparency Act data reporting should exclude any contract that has restrictions on the disclosure of information to foreign nationals.

*Response:* Congress mandated that the information required by the Transparency Act be made publicly available. This requirement was published as part of the interim rule for comment on July 8, 2010 (75 FR 39414). There appears to be no conflict with the intent of the statute and any ongoing efforts throughout the Government to protect sensitive but unclassified information. Notably, much of the information required for reporting under this rule is already publically available.

4. Other Applicability

*Comment:* Some respondents questioned the applicability of the rule to commodity IDIQ contracts or firm-fixed-price contracts that are awarded competitively without cost or pricing data.

*Response:* The Transparency Act did not make an exception to the reporting requirements for commodity IDIQ contracts (including GSA Schedule contracts), or firm-fixed price contracts that are awarded competitively without cost or pricing data.

*F. Subcontract Award Data*

*Comment:* A respondent was concerned about the reporting of information, FAR 52.204–10(c)(1)(ix) (now (d)(2)(ix)), which requires the prime to report by prime contract number and order number. The respondent wanted to know if they should provide the subcontractor data not only by prime contract, but by prime contract task/delivery order, as well. A respondent stated that per FAR 52.204–10(c)(1)(xi) (now (d)(2)(xi)), the contractor must provide first-tier subcontract information, including the funding agency name and code. Since many contracts are Governmentwide contract vehicles used by multiple funding agencies, and the respondent wanted to know if they are required to report by prime contract, by task/delivery order, and funding entity as well.

*Response:* The clause requires the contractor, by the end of the month of award of a first-tier subcontract with a value of $25,000 or more, to report information for the first-tier subcontract. Reporting of the information is required at whatever level the first-tier subcontract is awarded. If the prime signs separate first-tier subcontracts with the same subcontractor valued at $25,000 or more, at both the contract level and the order level, then the information should be reported at both the contract and order level, regardless of funding entity. The clause requires reporting of a separate subcontract number.

*Comment:* A respondent indicated that it is unfamiliar with the term ''Treasury Account Symbol'' used in FAR 52.204–10(c)(1)(xiii) (now (d)(2)(xiii)). The respondent questioned whether or not the Treasury Account Symbol is the fund cite.

*Response:* The Treasury Account Symbol reporting element will be pre-populated from FPDS. The fund cite is not captured at the FPDS level, or at FSRS.

*Comment:* A respondent stated that FAR 52.204–10(c)(1)(xiv) (now (d)(2)(xiv)) requires the North American Industry Classification System (NAICS) code of the prime contract. Furthermore, subparagraph (c)(1)(v) (now (d)(2)(v)) requires a description of the product or services the subcontractor provides under the subcontract, and the NAICS of the prime contract would not necessarily be descriptive enough to provide complete information on the subcontract. The respondent noted that the narrative description alone without a standardized method for reporting the industry/products/services under the subcontract will make it difficult for large and small businesses and industry groups to use the data to find opportunities to perform as subcontractors.

*Response:* The purpose of the Act is to reduce ''wasteful and unnecessary spending'' by establishing a free, public, online database containing full disclosure of all Federal contract award information. In regard to business opportunities, the primary purpose of notices through the Governmentwide Point of Entry at *http://www.fedbizopps.gov* is to provide large and small businesses access to contracting opportunities.

*Comment:* A respondent recommended that the rule clarify that the required NAICS code is the code applicable to the prime contract rather than the NAICS code for the subcontract, which may differ.

*Response:* The NAICS code is pre-populated based on the input of the FPDS information for the contract award. The prime's NAICS code is used for reporting purposes.

*Comment:* One respondent recommends that every entity receiving Federal funds above some de minimus

amount, regardless of how many degrees removed from the prime contractor, report directly to a centralized Web site, giving the public a full picture of who is receiving Federal contracting dollars.

*Response:* Although the Transparency Act reporting requirements flow down to all subcontracts, regardless of tier, OMB Memorandum, ''Open Government Directive-Federal Spending Transparency,'' April 6, 2010, directed that the FAR be amended to limit the reporting of subcontract awards to the contractor's first-tier subcontractors.

*Comment:* Several respondents recommended that the rule be revised to identify what data, if any, in the reporting forms will be pre-populated by the Government and ensure that it is consistently available across the board. Inconsistent pre-population of data fields will greatly burden contractors in designing reports to support the reporting obligation. Another respondent suggested a way to reduce the administrative burden of compliance could include an assurance that all awarding agencies in the Government will provide the appropriate codes necessary for complete reporting, *e.g.* the awarding agency code, the funding agency code, and the Treasury account symbol.

*Response:* When contracting officers report the contract action to the FPDS in accordance with FAR subpart 4.6, certain data will then pre-populate from FPDS, to assist contractors in completing and submitting their reports. Information on the Web site at *https://www.fsrs.gov/documents/data_definitions_contracts.pdf* specifies which items are pre-populated. In addition, the rule has been revised to indicate that if data originating from FPDS is found to be in error when the contractor completes the subcontract report, the Government contracting officer is responsible for correcting that data in FPDS. However, the contractor is responsible for correcting all other information.

*Comment:* A respondent recommended that the rule at FAR 52.204–10(c)(1)(v) (now (d)(2)(v)) be revised to modify the reporting requirement to delete the words ''including the overall purpose and expected outcomes or results of the subcontract'' from the information that must be reported. Contractor procurement systems typically contain a brief description of the work required by the contract. The respondent further opined that if a contractor must manually supplement what is captured in its automated system, compliance with the reporting requirement on a timely basis will be virtually impossible.

*Response:* The Government expects only a brief description of the requirement to comply with this reporting element. In addition, there is a capability in FSRS to allow contractors to connect their system directly to FSRS for electronic system-to-system reporting.

*Comment:* A respondent recommended that the rule be revised to modify the reporting requirement to avoid the release to the public of proprietary information, such as the aggregate value of all first-tier subcontracts issued under each prime contract. Some respondents stated that the disclosure of subcontracts conflicts with the Federal Trade Secrets Act, 18 U.S.C. 1905, with the FOIA exemption for trade secrets and privileged and confidential commercial, and financial information, 5 U.S.C. 552(b)(4), and with the intent of the Procurement Integrity Act, 41 U.S.C. 423 and implementing regulations at FAR 3.104–4 and 24.202. Several respondents believed that there is no equivalent commercial practice by which such information is collected or reported internally.

*Response:* Congress mandated that the executive compensation of Government prime contractors and subcontractors be public information under the Transparency Act. The Transparency Act created an exception to the usual handling of contractor proprietary information. The FOIA exemption for contractor proprietary information does not forbid release of this information. The rule does not require the contractor to report any trade secrets, export controlled information, or proprietary information.

*Comment:* One respondent stated that double reporting under the Recovery Act and the Transparency Act is unnecessary. The respondent recommended that the Councils amend the rule to exempt contractors already reporting under the Recovery Act rules, which would reduce the burden without sacrificing transparency.

*Response:* Double reporting as required by the Recovery Act and Transparency Act may be necessary under certain circumstances. For American Recovery and Reinvestment Act (ARRA)-funded Federal contracts that are subject to the Transparency Act reporting requirements, the prime recipient will be required to report the ARRA-funded Federal contracts to both *FederalReporting.gov,* and FSRS if the contract so requires.

*Comment:* A respondent recommended that the follow-on subcontract reporting requirement be amended to provide for a report whenever a modification increases the subcontract to a value of $25,000 or more.

*Response:* The respondent's recommendation would increase the burden on the public and the Government. However, the Councils revised FAR 52.204–10 to state that the contractor shall not split or break down first-tier subcontract awards to a value less than $25,000 to avoid the reporting requirements.

*Comment:* One respondent recommended clarification of the reporting responsibilities that apply to prime contractors versus first-tier subcontractors. Another respondent saw the interim rule as unreasonably placing the burden of ensuring subcontractor compliance on prime contractors, and recommends that the information is reported directly to the Government by first-tier subcontractors.

*Response:* The requirements in the clause apply to the prime contractor. The Federal Government has privity of contract only with the prime contractor. Therefore, the contractor will be held accountable for ensuring their subcontractors provide the necessary information for contract compliance. The prime contractor could encourage its first-tier subcontractor to register in CCR because information in FSRS is pre-populated from CCR. However, the prime contractor should also make the first-tier subcontractor aware that the same data will have to be completed (including criminal proceedings information for the Federal Awardee Performance and Integrity Information System (FAPIIS)), taxpayer identification number, and electronic funds transfer information, as any other registrant.

*Comment:* A respondent thought that the interim rule could force a prime contractor to breach the terms of a subcontract if the subcontract includes a requirement for nondisclosure agreements and/or ''release of information to the public''. The respondent recommended that the requirement to include the clause only be applied to new solicitations first issued at least 60 days after the effective date of any subsequently issued new rule, so that companies will be able to structure their business transactions with full knowledge of this disclosure requirement.

*Response:* The interim rule implements a statute. The statute was originally passed in 2006, and amended in 2008 to require reporting of executive compensation. There was a previous FAR case implementing the statute on a

pilot basis. There has been sufficient notice to the public of the requirements that would be implemented in this FAR case (2008–039). The clause as implemented included a phased-in approach to mitigate the impact on the contractor (*e.g.,* business arrangements between prime contractors and subcontractors).

*Comment:* Some respondents indicated that many reporting elements of the rule conflict with non-disclosure requirements in certain clauses (*e.g.,* 52.227–17(d), DFARS 252.204–7000, etc.). According to the respondents, most agencies require written contracting officer approval before disclosing to the public. The FAR rule must clarify if such preapproval requirement applies, and if it does, provide additional time to obtain such clearance prior to reporting, or provide that any limitation is over-ridden and no longer applicable.

*Response:* The majority of the information required for reporting in accordance with this rule is publicly available through other Government systems (*e.g.,* CCR, FPDS, etc.), and will be pre-populated by the Government. Information not pre-populated (*e.g.,* first-tier subcontractor name, address, primary place of performance, subcontract number, subcontract amount, description of product or service, etc.), should not conflict with non-disclosure requirements appearing in agency contracts. However, contractors should consult with the contracting officer of the agency contract.

*Comment:* Two respondents recommended splitting the reporting requirement into two clauses, one for subcontractor reporting and the other for executive compensation.

*Response:* There is no need to separate the requirements into two clauses, because the requirements are related and the prescription for use of each clause would be the same. The Councils revised the clause to more clearly distinguish the prime contractor's requirements for reporting first-tier subcontractor information and reporting the names and total compensation of each of the five most highly compensated executives for the prime contractor's preceding completed fiscal year in CCR.

*Comment:* A respondent stated that public disclosure of subcontracts serves no useful purpose. The disclosure of subcontracts on a Government Web site implies the Government plays a role in the selection of subs. The requirement for the prime to list each sub's ''congressional district'' is pernicious, as it implies and invites politicization of the subcontractor selection process.

*Response:* The disclosure of subcontract information on a Government Web site and reporting the subcontractor's ''congressional district'' is required by the Transparency Act. Such disclosure does not imply a Government role in the selection of subcontractors. However, consent to subcontract is required by the Government in certain circumstances in accordance with FAR subpart 44.2.

*Comment:* A respondent suggested that a way to reduce the administrative burden of compliance is to automate the reporting process, through an XML upload, as was originally conceived and implemented under section 1512 of the American Recovery and Reinvestment Act.

*Response:* The FSRS reporting system currently has the capability for an XML upload. Details on this process are at *https://www.fsrs.gov/resources.*

*Comment:* A respondent suggested that a way to reduce the administrative burden of compliance would be to use a single deadline, such as the anniversary date of the prime award, for the annual update of subcontractor information, as opposed to an update annually from the issue date of each subcontract.

*Response:* FAR 52.204–10 has been revised to require reporting of the names and total compensation of each of the five most highly compensated executives of the first-tier subcontractor, for the first-tier subcontractor's preceding completed fiscal year, annually based on the prime contract award date.

*Comment:* A respondent was concerned about the potential penalties concerning violations of the reporting requirements, and how they will be assumed by or imposed on the prime contractor.

*Response:* Generally, the model for Federal contracts is that the Government will hold prime contractors responsible for performance, and prime contractors hold their subcontractors responsible for performance. Standard contractual remedies apply for failure to perform contractual requirements, as with any other contractual performance requirement in a Federal contract. In accordance with FAR 1.602–2, contracting officers are responsible for ensuring performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract, and ensuring that contractors receive impartial, fair, and equitable treatment.

*G. Impact on Small Businesses*

*Comment:* Several respondents were concerned that the rule puts small businesses and private companies at a competitive disadvantage. A respondent believed that this rule requires that small and private businesses divulge competitive and proprietary information to customers and competitors alike. According to the respondent, these mandatory disclosures and additional new administrative burdens will have a particularly adverse impact on small businesses. A respondent believed that the increased general, administrative, and overhead costs could make it difficult for smaller businesses to vie for Government contracts by reducing the overall competition pool in Government contracting. Another respondent questioned the purpose of the directive. Several respondents thought that the requirements are burdensome because small businesses, including first-tier subcontractors, are unaccustomed to such requirements and do not have infrastructure in place to comply.

*Response:* The requirements may have some potential impact on small privately held businesses; however, the public disclosure of executive compensation information implemented under this rule is statutory. There are exceptions which will eliminate some companies which would otherwise be covered, such as the 80 percent/$25 million exception, the $300,000 gross income exception, and the definition of ''first-tier subcontract.'' Additionally, changes to the rule summarized at section III. of this preamble may lessen the burden on small businesses.

*Comment:* Given the unintended yet far-reaching effect the requirements may have upon similarly situated small businesses, a respondent encouraged the Councils to work closely with the Small Business Administration (SBA) in addressing such concerns, or consider the impact the executive compensation reporting requirements rule may have on small business and small business supply chains.

*Response:* During the FAR rulemaking process, the SBA and the Chief Counsel for Advocacy of the SBA (see Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*) are afforded an opportunity to review and comment on each FAR rule prior to publication, with the focus of limiting burden on small businesses as much as possible. The Councils consider the comments by SBA and the Chief Counsel for Advocacy of the SBA in the formulation of a FAR rule.

*H. Reporting System*

*Comment:* Several respondents expressed concerns about reporting in FSRS. A respondent was concerned that the FSRS system does not automatically notify contracting officers when a report is submitted for review. According to the respondent, with contracting personnel already overburdened, daily checking of the system will be time consuming. The respondent recommended adding an automatic notification process to FSRS. A respondent recommended the use of *Federalreporting.gov,* since contractors are already familiar with that system.

*Response:* FAR 4.1402 requires the agency to ensure that contractors comply with the reporting requirements of 52.204–10. This allows the agency maximum flexibility to establish the most efficient process to ensure compliance. Additionally, FSRS is not equipped to provide for an automatic notification. In regard to the recommendation to use *Federalreporting.gov,* the reporting requirements of the Transparency Act and the Recovery Act are separate and distinct requirements. Therefore, a decision was made not to use this system.

*I. Other Concerns About the Rule*

*Comment:* A number of respondents expressed concern that the rule is costly to the taxpayer and businesses, and questioned how the rule could accomplish the objective of deterring wasteful and unnecessary spending or empower the taxpayer with information that may be used to demand greater fiscal discipline from the executive and legislative branches of Government. The respondents were also concerned with the rule's overall impact on their practice of doing business with the Government.

*Response:* The requirements are statutory. The changes to the rule summarized at section III. of this preamble may lessen the burden on businesses.

*Comment:* A respondent believed that complete transparency requires the prime contractors to list their first-tier subcontracts when submitting their bid. The respondent believed the list of first-tier subcontractors needs to be made available to the taxpayers at the time of bid submission. Furthermore, according to the respondent, delaying the reporting of this information until a month after the award allows time for prime and subcontractors in the construction industry to participate in unethical practices.

*Response:* The Transparency Act, which is the impetus for the rule, contains no requirement for bid information to be made available to the public unless an award is made.

*Comment:* A respondent believed since the majority of first-tier subcontractors in the health care industry are also prime contractors, they should not have to supply the same information multiple times. The respondent believed that is unduly burdensome for multiple distributers to gather and submit information identical to that which the Government has already received directly from that source. To the extent that the data is not already being collected under the Act, the respondent would incur the costs to provide the needed information.

*Response:* The Transparency Act may unavoidably require some duplicate data collection. The rule has been revised to the extent possible, in response to public comments, to lessen the burden on contractors. The revisions are summarized later in this preamble. There are also exceptions which will eliminate some companies, which would otherwise be covered, such as the 80 percent/$25 million exception and the $300,000 gross income exception.

*Comment:* A respondent believed that the preamble to the interim rule was incorrect in stating that FAR clause 52.204–10 flows down to subcontracts. Inclusion of this clause in subcontracts would result in flowing down the subcontract reporting requirement to the second-tier of subcontractors. The respondent felt that the preamble should clarify that the only part of the clause which 'flows' down is the requirement to report executive compensation.

*Response:* The interim rule preamble stated that OMB directed that the FAR be amended to initiate subcontract award reporting under the Transparency Act. However, OMB Memorandum, ''Open Government Directive-Federal Spending Transparency,'' April 6, 2010, limited the subcontract reporting only to first-tier subcontracts.

*Comment:* A respondent believed that the final FAR rule should allow contracts awarded under the interim rule to be modified, without consideration, to incorporate the final rule. The respondent believed that this will be less burdensome on the contractors than having two different reporting schemes.

*Response:* The Applicability section of this preamble provides the direction for modifying existing contracts. This should avoid having two different reporting schemes.

*Comment:* A respondent believed that the reporting requirements should be extended beyond the first-tier of subcontracts to fully realize transparency in Government contracting.

*Response:* Extending the reporting requirements beyond the first-tier would significantly increase the burden on subcontractors. OMB directed the implementation of the Transparency Act at the first-tier subcontract level.

**III. Summary of FAR Changes**

This FAR rule revises 2.101, subpart 4.14, 52.204–7 and 52.204–10 for Transparency Act reporting requirements. A summary of the FAR changes are as follows:

*A. FAR 2.101*

○ Clarifies that prime contractors must enter Transparency Act data when registering in CCR.

*B. FAR Subpart 4.14*

○ Revises 4.1401 of the rule for consistency with the statute which exempts ''classified information,'' not ''classified contracts''. The Councils have deleted the exception for ''individuals'', which is not used in the statute for contracts. These changes are required to ensure consistency with the implementation of the statute. The paragraph regarding the phase-in schedule was deleted since all phase-in dates have passed, and this final rule is after that period.

○ Revises 4.1402(b) to clarify the responsibility for correcting any pre-populated data in FSRS.

○ Revises 4.1403 to remove the exception for inserting the clause in classified solicitations and contracts, or solicitations or contracts with individuals. However, the Councils added that the clause is not prescribed for contracts that are not required to be reported in the FPDS.

*C. FAR 52.204–7*

○ Revises FAR 52.204–7, Central Contractor Registration, to conform to the change at FAR 2.101.

*D. FAR 52.204–10*

○ Revises the definition of ''first-tier subcontract'' to allow contractors greater flexibility to determine their first-tier subcontractors.

○ Adds a definition of ''month of award''.

○ Adds a paragraph to remind contractors that nothing in this clause requires the disclosure of classified information.

○ Moves text previously at FAR 52.204–10(c)(2) to FAR 52.204–10(d)(1) to ensure the prime contractor's reporting requirements of its executive compensation are discussed in the

clause before the reporting requirements for the first-tier subcontract. In addition, FAR 52.204–10(d)(1) includes a change to conform to the change made at FAR 52.204–7. The prime contractor is required to report its executive compensation in the CCR database as a part of its annual registration requirement in the CCR.

○ Clarifies the 80 percent and $25 million language now at FAR 52.204–10(d)(1)(i) and (d)(3)(i) by adding wording derived from the statute: ''and other forms of Federal financial assistance.''

○ Adds FAR 52.204–10(e) to state that the contractor shall not split or break down first-tier subcontract awards to a value less than $25,000 to avoid the first-tier subcontract reporting requirements.

○ Adds FAR 52.204–10(f), to state that the contractor is required to report information on a first-tier subcontract when the subcontract is awarded. However, continued reporting on the same subcontract is not required unless one of the reported data elements changes during the performance of the subcontract. The Contractor is not required to make further reports after the first-tier subcontract expires. FAR 52.204–10(f) requirements replace and clarify a parenthetical requirement in the interim rule at FAR 52.204–10(c)(1) for the contractor to report on any modification to the first-tier subcontract that changed previously reported data.

○ Relocates text previously at paragraph 52.204–10(d) to paragraph 52.204–10(g).

○ Deletes reference to a phase-in schedule previously at 52.204–10(e), since the phase-in schedule has been completed.

○ Adds a paragraph (h) to clarify responsibility for correcting incorrect data.

## 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

DoD, GSA, and NASA prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with 5 U.S.C. 604, *et seq.* The FRFA is summarized as follows:

The Transparency Act was enacted to reduce ''wasteful and unnecessary spending'' by requiring that OMB establish a free, public, online database containing full disclosure of all Federal contract award information. The objective of the rule is to empower the American taxpayer with information that may be used to demand greater fiscal discipline from both executive and legislative branches of Government. According to the sponsors of the Transparency Act, the new database will deter ''wasteful and unnecessary'' spending, since Government officials will be less likely to earmark funds for special projects if they know the public could identify how much money was awarded to which organizations, and for what purposes.

Comments were received that indicated the rule would impact small businesses. The comments covered a number of issues including: The rule disproportionately damages the competitive position of small and medium-sized contractors, and the increased general, administrative, overhead costs could make it difficult for smaller businesses to vie for Government contracts. Other issues are cited in this preamble.

The responses in the preamble point out a number of aspects of the rule that may lessen the impact of the rule on small businesses, including: The lessons learned from issuance of FAR case 2006–029, familiarization from the Recovery Act reporting rule, the exceptions in the rule that exclude some contractors, the revisions to the rule listed in section III. of this preamble, and pre-population of data in FSRS from other Government systems.

The rule applies to all contracts and subcontracts, of $25,000 or more. The clause does not require the disclosure of classified information. The rule requires contractors to report first-tier subcontract award information and annually report the contractor's and first-tier subcontractors' five most highly compensated executives for the contractor and subcontractor's preceding completed fiscal year. To arrive at an estimate of the number of small businesses to which the rule would apply, the Councils queried the FDPS for FY 10 contract award information. DoD, NASA and GSA believe 233,623 is a reasonable estimate of the total number of small businesses, both as prime and first-tier subcontractors to whom the rule will apply.

The rule applies to all, regardless of business size or ownership. The professional skills necessary for the preparation of the report would probably be a company officer or division manager or a company subcontract administrator.

DoD, NASA and GSA considered a number of alternatives that may have lessened the impact on small businesses, but the alternatives would have prevented the full disclosure of all Federal award information for awards of $25,000 or more, as required by the Transparency Act. One alternative of excluding small businesses entirely from the rule would not be feasible, given the objectives of the rule.

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.

## VI. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies because this final rule contains information collection requirements. OMB has cleared this information collection requirement under OMB Control Number 9000–0177, titled: Reporting Executive Compensation and First-tier Subcontract Awards in the amount of 75,117 burden hours. Comments on the interim rule as well as the information collection requirement were received and considered in the revisions to both the rule and the collection. DoD, GSA, and NASA published in the **Federal Register** at 77 FR 22766 on April 17, 2012 a revised paperwork burden analysis by increasing the total overall public burden, as a result of analysis of the public comments received. In addition, analysis of public burden comments and changes required to the rule is summarized in this preamble in section II, Discussion and Analysis, under various comment categories, but especially comment category D.

## List of Subjects in 48 CFR Parts 1, 2, 4, and 52

Government procurement.

Dated: July 16, 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 4, 12, 42, and 52, which was published in the **Federal Register** at 75 FR 39414 on July 8, 2010, is adopted as final with the following changes:

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

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

## PART 1—FEDERAL ACQUISTION REGULATIONS SYSTEM

**1.106 [Amended]**

■ 2. Amend section 1.106 in the table following the introductory text, by adding in numerical sequence, FAR segment ''4.14'' and its corresponding OMB Control Number ''9000–0177'', and FAR segment ''52.204–10'' and its corresponding OMB Control Number ''9000–0177''.

## PART 2—DEFINITIONS OF WORDS AND TERMS

■ 3. Amend section 2.101, in paragraph (b)(2), in the definition ''Registered in the CCR database'' by revising paragraph (1) to read as follows:

**2.101 Definitions.**

* * * * *

(b) * * *

(2) * * *

*Registered in the CCR database* * * *

(1) The contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see subpart 4.14), into the CCR database; and

* * * * *

## PART 4—ADMINSTRATIVE MATTERS

■ 4. Revise section 4.1401 to read as follows:

**4.1401 Applicability.**

(a) This subpart applies to all contracts with a value of $25,000 or more. Nothing in this subpart requires the disclosure of classified information.

(b) Reporting of subcontract information will be limited to the first-tier subcontractor.

■ 5. Amend section 4.1402 by revising paragraph (b); and removing from paragraph (d) ''52.204–10(d)'' and adding ''52.204–10(g)'' in its place.

The revised text reads as follows:

**4.1402 Procedures.**

* * * * *

(b) When contracting officers report the contract action to the Federal Procurement Data System (FPDS) in accordance with FAR subpart 4.6, certain data will then pre-populate from FPDS, to assist contractors in completing and submitting their reports. If data originating from FPDS is found by the contractor to be in error when the contractor completes the subcontract report, the contractor should notify the Government contracting officer, who is responsible for correcting the data in FPDS. Contracts reported using the generic DUNS number allowed at FAR 4.605(b)(2) will interfere with the contractor's ability to comply with this reporting requirement, because the data will not pre-populate from FPDS.

* * * * *

■ 6. Revise section 4.1403 to read as follows:

**4.1403 Contract clause.**

(a) The contracting officer shall insert the clause at 52.204–10, Reporting Executive Compensation and First-Tier Subcontract Awards, in all solicitations and contracts of $25,000 or more.

(b) The clause is not prescribed for contracts that are not required to be reported in the Federal Procurement Data System (FPDS) (see subpart 4.6).

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 7. Amend section 52.204–7 by—

■ a. Revising the date of the clause; and

■ b. In paragraph (a), in the definition ''Registered in the CCR database'' revising paragraph (1) to read as follows:

**52.204–7 Central Contractor Registration.**

* * * * *

**Central Contractor Registration (Aug 2012)**

(a) *Definitions.* * * *

*Registered in the CCR database* * * *

(1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see subpart 4.14), into the CCR database; and

* * * * *

■ 8. Revise section 52.204–10 to read as follows:

**52.204–10 Reporting Executive Compensation and First-Tier Subcontract Awards.**

As prescribed in 4.1403(a), insert the following clause:

**Reporting Executive Compensation and First-Tier Subcontract Awards (AUG 2012)**

(a) *Definitions.* As used in this clause:

*Executive* means officers, managing partners, or any other employees in management positions.

*First-tier subcontract* means a subcontract awarded directly by the Contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the Contractor's supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to a Contractor's general and administrative expenses or indirect costs.

*Month of award* means the month in which a contract is signed by the Contracting Officer or the month in which a first-tier subcontract is signed by the Contractor.

*Total compensation* means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

(1) *Salary and bonus.*

(2) *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Financial Accounting Standards Board's Accounting Standards Codification (FASB ASC) 718, Compensation-Stock Compensation.

(3) *Earnings for services under non-equity incentive plans.* This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

(4) *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.

(5) *Above-market earnings on deferred compensation which is not tax-qualified.*

(6) Other compensation, if the aggregate value of all such other compensation (*e.g.,* severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

(b) Section 2(d)(2) of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110–252), requires the Contractor to report information on subcontract awards. The law requires all reported information be made public, therefore, the Contractor is responsible for notifying its subcontractors that the required information will be made public.

(c) Nothing in this clause requires the disclosure of classified information.

(d)(1) *Executive compensation of the prime contractor.* As a part of its annual registration requirement in the Central Contractor Registration (CCR) database (FAR clause 52.204–7), the Contractor shall report the names and total compensation of each of the five most highly compensated executives for its preceding completed fiscal year, if—

(i) In the Contractor's preceding fiscal year, the Contractor received—

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

(B) $25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at *http://www.sec.gov/answers/execomp.htm.).*

(2) *First-tier subcontract information.* Unless otherwise directed by the contracting officer, or as provided in paragraph (g) of this clause, by the end of the month following the month of award of a first-tier subcontract with a value of $25,000 or more, the Contractor shall report the following information at *http://www.fsrs.gov* for that first-tier subcontract. (The Contractor shall follow the instructions at *http://www.fsrs.gov* to report the data.)

(i) Unique identifier (DUNS Number) for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company.

(ii) Name of the subcontractor.

(iii) Amount of the subcontract award.

(iv) Date of the subcontract award.

(v) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.

(vi) Subcontract number (the subcontract number assigned by the Contractor).

(vii) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district.

(viii) Subcontractor's primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district.

(ix) The prime contract number, and order number if applicable.

(x) Awarding agency name and code.

(xi) Funding agency name and code.

(xii) Government contracting office code.

(xiii) Treasury account symbol (TAS) as reported in FPDS.

(xiv) The applicable North American Industry Classification System code (NAICS).

(3) *Executive compensation of the first-tier subcontractor.* Unless otherwise directed by the Contracting Officer, by the end of the month following the month of award of a first-tier subcontract with a value of $25,000 or more, and annually thereafter (calculated from the prime contract award date), the Contractor shall report the names and total compensation of each of the five most highly compensated executives for that first-tier subcontractor for the first-tier subcontractor's preceding completed fiscal year at *http://www.fsrs.gov,* if—

(i) In the subcontractor's preceding fiscal year, the subcontractor received—

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

(B) $25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at *http://www.sec.gov/answers/execomp.htm.*)

(e) The Contractor shall not split or break down first-tier subcontract awards to a value less than $25,000 to avoid the reporting requirements in paragraph (d).

(f) The Contractor is required to report information on a first-tier subcontract covered by paragraph (d) when the subcontract is awarded. Continued reporting on the same subcontract is not required unless one of the reported data elements changes during the performance of the subcontract. The Contractor is not required to make further reports after the first-tier subcontract expires.

(g)(1) If the Contractor in the previous tax year had gross income, from all sources, under $300,000, the Contractor is exempt from the requirement to report subcontractor awards.

(2) If a subcontractor in the previous tax year had gross income from all sources under $300,000, the Contractor does not need to report awards for that subcontractor.

(h) The FSRS database at *http://www.fsrs.gov* will be prepopulated with some information from CCR and FPDS databases. If FPDS information is incorrect, the contractor should notify the contracting officer. If the CCR database information is incorrect, the contractor is responsible for correcting this information.

(End of clause)

■ 9. Amend section 52.212–5 by revising the date of the clause, and paragraph (b)(4) 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. (Aug 2012)**

* * * * *

(b) * * *

(4) 52.204–10, Reporting Executive Compensation and First-Tier Subcontract Awards (Aug 2012) (Pub. L. 109–282) (31 U.S.C. 6101 note).

* * * * *

■ 10. Amend section 52.213–4 by—

■ a. Revise the date of the clause;

■ b. Remove paragraph (a)(2)(i);

■ c. Redesignate paragraphs (a)(2)(ii) through paragraphs (a)(2)(viii) as paragraphs (a)(2)(i) through paragraphs (a)(2)(vii), respectively;

■ d. Redesignate paragraphs (b)(1)(i) through paragraphs (b)(1)(xii) as paragraphs (b)(1)(ii) through paragraphs (b)(1)(xiii), respectively; and

■ e. Add a new paragraph (b)(1)(i).

The revised and added text reads as follows:

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

* * * * *

**Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (Aug 2012)**

* * * * *

(b) * * *

(1) * * *

(i) 52.204–10, Reporting Executive Compensation and First-Tier Subcontract Awards (Aug 2012) (Pub. L. 109–282) (31 U.S.C. 6101 note) (Applies to contracts valued at $25,000 or more).

* * * * *

[FR Doc. 2012–17724 Filed 7–25–12; 8:45 am]

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Parts 16, 32, and 52

**[FAC 2005–60; FAR Case 2011–003; Item II; Docket 2011–0003, Sequence 1]**

**RIN 9000–AM01**

## Federal Acquisition Regulation; Payments Under Time-and-Materials and Labor-Hour Contracts

**AGENCY:** 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 make necessary revisions to accommodate the authorization to use time-and-materials and labor-hour contract payment requirements.

**DATES:** *Effective Date:* August 27, 2012.

**FOR FURTHER INFORMATION CONTACT:** Mr. Edward N. Chambers, Procurement Analyst, at 202–501–3221 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–60, FAR Case 2011–003.

**SUPPLEMENTARY INFORMATION:**

### I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 76 FR 44884 on July 27, 2011, to make the necessary regulatory revisions to enable the use of the appropriate payment provisions for time-and-materials and labor-hour contracts. These revisions supplement the following previously issued revisions to the FAR addressing time-and-materials contracts:

(1) FAR Case 2003–027, Additional Commercial Contract Types (71 FR 74667 dated December 12, 2006), implemented section 1432 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136). Title XIV of the Act, referred to as the Services Acquisition Reform Act of 2003 (SARA), amended section 8002(d) of the Federal Acquisition Streamlining Act of 1994 (FASA) (Pub. L. 103–355, 41 U.S.C. 3307) to expressly authorize the use of time-and-materials and labor-hour contracts for commercial services under specified conditions.

(2) FAR Case 2004–015, Payments Under Time-and-Materials and Labor-Hour Contracts (71 FR 74656 dated December 12, 2006), revised and clarified policies related to the award and administration of noncommercial time-and-materials and labor-hour contracts and the policies regarding payments made under those contracts.

**II. Discussion and Analysis of the Public Comments**

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*

The proposed rule sought to harmonize the provisions for invoicing and submission of the final invoice between FAR clauses 52.216–7, Allowable Cost and Payment, and 52.232–7, Payments under Time-and Materials and Labor-Hour Contracts, when a time-and-materials contract is being used. Currently, under a time-and-materials contract, FAR clause 52.232–7 provides for monthly invoicing and submission of the completion voucher no later than one year from the date of work completion. These provisions are in conflict with the corresponding provisions of FAR clause 52.216–7, which is invoked under a time-and-materials contract. FAR clause 52.216–7 provides for invoicing on a bi-weekly basis for large businesses, and more frequent invoicing for small businesses, and the submission of the completion voucher no later than 120 days after completion of work.

Consequently, the final rule amends the basic FAR clause 52.232–7 to reflect the provisions for invoicing and submission of the completion voucher at FAR clause 52.216–7. This final rule deletes Alternate I along with its prescription for use at FAR 32.111(a)(7)(i).

Alternate I of FAR 52.232–7 provided for the addition of paragraph (j) in labor-hour contracts which deleted the terms of the basic clause governing the reimbursement of furnished materials. Alternate I, paragraph (j), is superfluous and is deleted since the terms of the basic clause governing the reimbursement of furnished materials are in effect self-deleting.

*B. Analysis of Public Comments*

Three respondents submitted comments in response to the proposed rule. A discussion of these comments and the changes made to the rule as a result of these comments are provided as follows:

1. Time-and-Materials Contracts and Ceiling Prices

*Comment:* A respondent recommended changing the way time-and-materials contracts are managed to align more closely with how the Canadian procurement regulations manage time-and-materials contracts. Specifically, U.S. Government regulations should include language requiring a ceiling price on time-and-materials contracts within which the contractor must complete the prescribed work.

*Response:* This comment is outside the scope of this case, which was limited to simply clarifying the existing prescriptions and clauses relating to appropriate payment provisions for use in time-and-materials and labor-hour contracts. FAR 16.601 delineates that time and materials contracts must include a ceiling price that the contractor exceeds at its own risk.

2. Inclusion of FAR 52.246–6(f) Provision

*Comment:* A respondent stated that the proposed rule should include consideration of the provision found at FAR 52.246–6(f), Inspection—Time-and-Material and Labor-Hour, paragraph (f) (requirement to replace or correct services or materials that failed to meet contract requirements).

*Response:* This comment is outside the scope of this case, which was limited to simply clarifying the existing prescriptions and clauses relating to appropriate payment provisions for use in time-and-materials and labor-hour contracts. Inclusion of FAR provision 52.246–6(f) language into the payment provisions at FAR 52.212–4, 52.216–7, or 52.232–7 is unnecessary.

3. Consistency Between Revised Clauses

*Comment:* A respondent cited several instances where language was inconsistent between the clauses under the proposed rule. Specifically, the proposed rule aligned the frequency of invoicing and the period for submission of the completion voucher provisions for time-and-materials contracts at FAR 52.232–7 with that currently set forth in the ''Allowable Cost and Payment'' clause at FAR 52.216–7. However, for labor-hour contracts, under Alternate I to 52.232–7, the proposed rule left the invoicing and period for submission of the completion voucher provisions, which were different from the requirements set forth in FAR 52.216–7 and 52.232–7, unchanged. The respondent questioned this inconsistency regarding these provisions.

*Response:* The invoicing and submission of the completion voucher provisions in time-and-materials contracts and labor-hour contracts should align. Consequently, the final rule does not include the proposed rule language regarding invoicing and the period for submission of completion vouchers for labor-hour contracts in Alternate I to FAR clause 52.232–7.

**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 Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because it merely clarifies the existing prescriptions and clauses relating to services contracts. No comments from

small entities were submitted in response to the Regulatory Flexibility Act request under the proposed rule.

**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 16, 32, and 52**

Government procurement.

Dated: July 16, 2012.

**Laura Auletta,**

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

Therefore, DoD, GSA, and NASA amend 48 CFR parts 16, 32, and 52 as follows:

■ 1. The authority citation for 48 CFR parts 16, 32, and 52 is revised to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

## PART 16—TYPES OF CONTRACTS

■ 2. Amend section 16.307 by revising paragraph (a)(1); and adding paragraphs (a)(3) through (5) to read as follows:

**§ 16.307 Contract clauses.**

(a)(1) The contracting officer shall insert the clause at 52.216–7, Allowable Cost and Payment, in solicitations and contracts when a cost-reimbursement contract or a time-and-materials contract (other than a contract for a commercial item) is contemplated. If the contract is a time-and-materials contract, the clause at 52.216–7 applies in conjunction with the clause at 52.232–7, but only to the portion of the contract that provides for reimbursement of materials (as defined in the clause at 52.232–7) at actual cost. Further, the clause at 52.216–7 does not apply to labor-hour contracts.

* * * * *

(3) If the contract is with an educational institution, the contracting officer shall use the clause at 52.216–7 with its Alternate II.

(4) If the contract is with a State or local government, the contracting officer shall use the clause at 52.216–7 with its Alternate III.

(5) If the contract is with a nonprofit organization other than an educational institution, a State or local government, or a nonprofit organization exempted under OMB Circular No. A–122, the contracting officer shall use the clause at 52.216–7 with its Alternate IV.

* * * * *

## PART 32—CONTRACT FINANCING

■ 3. Amend section 32.111 by revising paragraph (a)(7) to read as follows:

**§ 32.111 Contract clauses for non-commercial purchases.**

(a) * * *

(7) The clause at 52.232–7, Payments under Time-and-Materials and Labor-Hour Contracts, in solicitations and contracts when a time-and-materials or labor-hour contract is contemplated. If the contracting officer determines that it is necessary to withhold payment to protect the Government's interests, paragraph (a)(7) of the clause permits the contracting officer to unilaterally issue a modification requiring the contractor to withhold 5 percent of amounts due, up to a maximum of $50,000 under the contract. The contracting officer shall ensure that the modification specifies the percentage and total amount of the withheld payment. Normally, there should be no need to withhold payment for a contractor with a record of timely submittal of the release discharging the Government from all liabilities, obligations, and claims, as required by paragraph (g) of the clause.

* * * * *

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend Alternate I of section 52.212–4 by—

■ a. Revising the date of Alternate I and the introductory text;

■ b. Revising paragraphs of (i)(1) introductory text and (i)(1)(ii)(A); and

■ c. Adding paragraph (m).

The revised and added text reads as follows:

**52.212–4 Contract Terms and Conditions—Commercial Items.**

* * * * *

*Alternate I* (AUG 2012). When a time-and-materials or labor-hour contract is contemplated, substitute the following paragraphs (a), (e), (i), (l), and (m) for those in the basic clause.

* * * * *

(i) *Payments.* (1) *Work performed.* The Government will pay the Contractor as follows upon the submission of commercial invoices approved by the Contracting Officer:

* * * * *

(ii) * * *

(A) If the Contractor furnishes materials that meet the definition of a commercial item at 2.101, the price to be paid for such materials shall not exceed the Contractor's established catalog or market price, adjusted to reflect the—

* * * * *

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon written request, with adequate assurances of future performance. Subject to the terms of this contract, the Contractor shall be paid an amount computed under paragraph (i) Payments of this clause, but the ''hourly rate'' for labor hours expended in furnishing work not delivered to or accepted by the Government shall be reduced to exclude that portion of the rate attributable to profit. Unless otherwise specified in paragraph (a)(4) of this clause, the portion of the ''hourly rate'' attributable to profit shall be 10 percent. In the event of termination for cause, the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

■ 5. Amend section 52.216–7 by adding Alternates II through Alternates IV to read as follows:

**§ 52.216–7 Allowable Cost and Payment.**

* * * * *

*Alternate II* (AUG 2012). As prescribed in 16.307(a)(3), substitute the following paragraph (a)(1) for paragraph (a)(1) of the basic clause:

(a)(1) The Government will make payments to the Contractor when requested as work progresses, but not more often than once every two weeks, in amounts determined to be allowable by the Contracting Officer in accordance with FAR subpart 31.3 in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

*Alternate III* (AUG 2012). As prescribed in 16.307(a)(4), substitute the following paragraph (a)(1) for paragraph (a)(1) of the basic clause:

(a)(1) The Government will make payments to the Contractor when requested as work progresses, but not more often than once every two weeks, in amounts determined to be allowable by the Contracting Officer in accordance with FAR subpart 31.6 in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

*Alternate IV* (AUG 2012). As prescribed in 16.307(a)(5), substitute the following paragraph (a)(1) for paragraph (a)(1) of the basic clause:

(a)(1) The Government will make payments to the Contractor when requested as work progresses, but not more often than once every two weeks, in amounts determined to be allowable by the Contracting Officer in

accordance with FAR subpart 31.7 in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

■ 6. Amend section 52.232–7 by—
■ a. Revising the date of the clause;
■ b. Revising the introductory text of paragraph (a)(5);
■ c. Removing from the last sentence of paragraph (f) ''1 year'' and adding ''120 days'' in its place; and
■ d. Removing ''Alternate I''.

The revised text reads as follows:

**§ 52.232–7 Payments under Time-and-Materials and Labor-Hour Contracts.**

* * * * *

**Payments Under Time-and-Materials and Labor-Hour Contracts (AUG 2012)**

* * * * *

(a) * * *

(5) Vouchers may be submitted not more than once every two weeks, to the Contracting Officer or authorized representative. A small business concern may receive more frequent payments than every two weeks. The Contractor shall substantiate vouchers (including any subcontractor hours reimbursed at the hourly rate in the schedule) by evidence of actual payment and by—

* * * * *

[FR Doc. 2012–17727 Filed 7–25–12; 8:45 am]

**BILLING CODE 6820–EP–P**

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Part 16

**[FAC 2005–60; FAR Case 2012–007; Item III; Docket 2012–0007, Sequence 1]**

**RIN 9000–AM26**

## Federal Acquisition Regulation; Extension of Sunset Date for Protests of Task and Delivery Orders

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

**ACTION:** Interim rule.

**SUMMARY:** DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement sections of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, and the National Defense Authorization Act for Fiscal Year 2012. These statutes extend the sunset date for protests against the award of task or delivery orders from May 27, 2011, to September 30, 2016.

**DATES:** *Effective date:* July 26, 2012.

*Comment date:* Interested parties should submit written comments to the Regulatory Secretariat on or before September 24, 2012 to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by FAC 2005–60, FAR Case 2012–007, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''FAR Case 2012–007''. Select the link ''Submit a Comment'' that corresponds with ''FAR Case 2012–007.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''FAR Case 2012–007'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street NE., 7th Floor, Washington, DC 20417.

*Instructions:* Please submit comments only and cite FAC 2005–60, FAR Case 2012–007, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah Lague, Procurement Analyst, at 202–694–8149 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–60, FAR Case 2012–012.

**SUPPLEMENTARY INFORMATION:**

### I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 76 FR 39238 on July 5, 2011, entitled ''Extension of Sunset Date for Protests of Task and Delivery Orders'' (FAC 2005–53, FAR Case 2011–015). The rule implemented section 825 of the Ike Skelton National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2011 (Pub. L. 111–383, enacted January 7, 2011). The rule extended the sunset date for protests of task and delivery orders valued in excess of $10 million for Title 10 agencies, namely DoD, NASA, and the Coast Guard. The rule did not extend the sunset date for Title 41 agencies as there was no comparable change to Title 41 at that time.

Subsequent to the publication of the interim rule under FAR Case 2011–015, section 813 of the NDAA for FY 2012 (Pub. L. 112–81, enacted December 31, 2011) made comparable changes to Title 41 to extend the sunset date for protests against the award of task and delivery orders from May 27, 2011, to September 30, 2016. In order to accomplish the statutory changes for both Title 10 and Title 41, FAR Case 2011–015 is not being issued as a final rule and is instead being renumbered and incorporated into this second interim rule, FAR Case 2012–007.

### II. Discussion and Analysis

*A. Summary of Significant Changes*

FAR 16.505(a)(10)(ii) is amended to extend, for Title 41 agencies, the authority to protest the placement of task and delivery orders valued in excess of $10 million from May 27, 2011, to September 30, 2016.

*B. Analysis of Public Comment*

One public comment was received for FAR Case 2011–015. The public comment and response are provided as follows:

*Comment on FAR Case 2011–015:* The respondent indicated that the sunset date for protest of orders should extend to Title 41 agencies, not just Title 10 agencies.

*Response:* The rule has been changed to incorporate and implement the later-enacted section 813 of the NDAA for FY 2012 to extend the sunset date for the protest of task and delivery orders from May 27, 2011, to September 30, 2016, for Title 41 agencies.

### 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 change may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601, *et seq.* The Initial Regulatory Flexibility Analysis (IRFA) is summarized as follows:

The objective of this rule is to implement section 825 of the NDAA for FY 2011, which extended the sunset date for Title 10 agencies and section 813 of the NDAA for FY 2012, which extended the sunset date for Title 41 agencies.

The authority to file protests against the award of task or delivery orders is relatively new, and there is little data available, as such protests may be filed with the agency or Government Accountability Office (GAO). GAO has exclusive jurisdiction of a protest of an order valued in excess of $10 million. Data on agency-level protests is not compiled outside the agency concerned; therefore estimates are based on the total number of protests filed at the GAO in FYs 2009, 2010 and 2011. The data was extracted from GAO's report to the Congress for those fiscal years.

Offerors can protest to the agency or to the GAO. Assuming that one-half of all protests are filed with the GAO and the other half are filed with the agency, then the average number of protests filed per fiscal year would be 6,700 (see below):

| | |
|---|---|
| Fiscal Year 2009 protests to GAO | 2,000 |
| Fiscal Year 2010 protests to GAO | 2,300 |
| Fiscal Year 2011 protests to GAO | 2,400 |
| | 6,700 |
| Divided by | 3 |
| Average annual GAO protests | 2,233 |
| Multiplied by | 2 |
| Estimated total number of protests | 4,467 |

Protests may be filed against the award of contracts as well as certain task or delivery orders. There are few prohibitions on the grounds for protests against the award of a contract. However, protests against the award of a task or delivery order are limited to (a) a protest on the grounds that the order increases the scope, period, or maximum value of the contract; or (b) a protest of an order valued in excess of $10 million. Therefore, it is reasonable to assume that less than 50 percent of the total number of protests filed is against the award of a task or delivery order. A generous estimate is approximately one-fourth, or 1,117. Likewise, only a percentage of the protests against the award of a task or delivery order are made by small businesses. Even if we assume that percentage to be one-half, then the number of protests filed by small businesses against the award of a task or delivery order is estimated to be 559.

| | |
|---|---|
| # protests of task/delivery orders by small businesses | 559 |
| % of protests sustained | × .03 |
| # of task/delivery orders protests sustained | 17 |

The number 17 represents the number of small business task or delivery order protests sustained in a fiscal year. This number is representative of protests against awards by all Government agencies.

There is no requirement for small entities to submit any information under this provision. Therefore, no professional skills are necessary on the part of small entities for compliance, and the cost to small entities associated with this provision is $0.

The Regulatory Secretariat will be submitting a copy of the Initial Regulatory Flexibility Analysis (IRFA) to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005–60, FAR Case 2012–007) in correspondence.

## V. Paperwork Reduction Act

The interim 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).

## VI. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because statutory authority for Title 41 offerors to file certain bid protests lapsed May 27, 2011, but was reinstated in the National Defense Authorization Act for Fiscal Year 2012, effective December 31, 2011. Similar authority for Title 10 offerors was extended by a January 7, 2011, statute, and has already been implemented in the FAR. If this rule is not published on an interim basis, offerors could be misinformed about their legal right to file certain protests. Disappointed Title 41 offerors would be unclear on whether to file bid protests of civilian agency task and delivery order awards at either the GAO or the Court of Federal Claims. This interim rule clarifies that GAO has exclusive jurisdiction of a protest of an order valued in excess of $10 million. However, pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD, GSA, and NASA will consider public comments received in response to this interim rule in the formation of the final rule.

## List of Subjects in 48 CFR Part 16

Government procurement.

Dated: July 16, 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 part 16 as follows:

## PART 16—TYPES OF CONTRACT

■ 1. The authority citation for 48 CFR part 16 is revised to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

■ 2. Amend section 16.505 by removing from paragraph (a)(10)(i) introductory text ''under Subpart 33.1'' and adding ''under subpart 33.1'' in its place; and revising paragraph (a)(10)(ii) to read as follows:

**16.505 Ordering.**

(a) * * *

(10) * * *

(ii) The authority to protest the placement of an order under (a)(10)(i)(B) of this section expires on September 30, 2016 (10 U.S.C. 2304a(d), 10 U.S.C. 2304c(e), 41 U.S.C. 4103(d), and 41 U.S.C. 4106(f)).

* * * * *

[FR Doc. 2012–17730 Filed 7–25–12; 8:45 am]

BILLING CODE 6820–EP–P

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Part 29

**[FAC 2005–60; FAR Case 2012–019; Item IV; Docket 2012–0019; Sequence 1]**

**RIN 9000–AM29**

## Federal Acquisition Regulations; DARPA-New Mexico Tax Agreement

**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 the United States Defense Advanced Research Projects Agency (DARPA) to the list of agencies that have entered into separate tax agreements with the State of New Mexico (NM). The DARPA–NM tax agreement eliminates the double taxation of Government cost-reimbursement contracts when DARPA contractors and their subcontractors purchase tangible personal property to be used in performing services in whole or in part in the State of New Mexico, and for which title to such property will pass to the United States upon delivery of the property to the contractor and its subcontractors by the vendor.

**DATES:** *Effective date:* August 27, 2012.

**FOR FURTHER INFORMATION CONTACT:** Mr. Edward N. Chambers, Procurement Analyst, at 202–501–3221 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–60, FAR Case 2012–019.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On August 18, 2011, DARPA and the Taxation and Revenue Department of the State of New Mexico entered into the DARPA–NM tax agreement to eliminate the double taxation of Government cost-reimbursement contracts when DARPA contractors and their subcontractors purchase tangible personal property to be used in performing services in whole or in part in the State of New Mexico and for which title to such property will pass to the United States upon delivery of the property to the contractor and its subcontractors by the vendor.

### II. Discussion

The FAR is amended to add the United States Defense Advanced Research Projects Agency to the list of participating agencies under FAR 29.401–4(c). DARPA joins the list of other agencies with existing tax agreements with the State of New Mexico.

### 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. 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 DARPA that do not have a significant effect on contractors or offerors.

### 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, and 41 U.S.C. 1707 does not require publication for public comment.

### VI. 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 Part 29

Government procurement.

Dated: July 16, 2012.

**Laura Auletta,**

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

Therefore, DoD, GSA, and NASA amend 48 CFR part 29 as follows:

## PART 29—TAXES

■ 1. The authority citation for 48 CFR part 29 is revised to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

**29.401–4 [Amended]**

■ 2. Amend section 29.401–4 in paragraph (c)(1) by adding to the listing, in alphabetical order, ''United States Defense Advanced Research Projects Agency;''.

[FR Doc. 2012–17732 Filed 7–25–12; 8:45 am]

**BILLING CODE 6820–EP–P**

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Part 53

**[FAC 2005–60; FAR Case 2011–022; Item V; Docket 2011–0093, Sequence IV]**

**RIN 9000–AM15**

## Federal Acquisition Regulation: Clarification of Standards for Computer Generation of Forms

**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 remove any reference to Federal Information Processing Standard (FIPS) 161 and codify requirements for standards already in use.

**DATES:** *Effective Date:* August 27, 2012.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah Lague, Procurement Analyst, at 202–694–8149 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–60, FAR Case 2011–022.

**SUPPLEMENTARY INFORMATION:**

### I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 76 FR 79609 on December 22, 2011, to implement the removal of FIPS 161. FIPS 161 is being removed based on the notice posted in the **Federal Register** at 73 FR 51276 on September 2, 2008, by the Department of Commerce. This FIPS requirement was withdrawn by the Secretary of Commerce because it was obsolete and had not been updated to adopt current voluntary industry standards, Federal specifications, Federal data standards, or current good practices for information security. The withdrawal of this standard created a

gap in the FAR. This final rule closes that gap by clarifying the use of American National Standards Institute (ANSI) X12 as the valid standard to use for computer-generated forms. FAR 53.105 is being amended; it will continue allowing agencies and the public to generate standard and optional forms on their computers.

**II. Discussion and Analysis**

There were no public comments received in response to the proposed rule; therefore, this rule is published as a final rule.

**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 Department of Defense, General Services Administration, and National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because it is removing FIPS 161 which is obsolete or has not been updated to adopt current voluntary industry standards, Federal specifications, Federal data standards, or current good practices for information security. This is a technical change acknowledging the removal by the Department of Commerce of FIPS 161 and replacement with the ANSI X12 set of standards. ANSI X12 standards were already a part of the FIPS 161 standard and have been updated with current voluntary industry standards already in use. Therefore, there is no impact to the Government or contractors in establishing ANSI X12 as the new standard. Small businesses will continue to be able to generate forms by computer.

**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 Part 53**

Government procurement.

Dated: July 16, 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 part 53 as follows:

## PART 53—FORMS

■ 1. The authority citation for 48 CFR part 53 is revised to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

■ 2. Revise section 53.105 to read as follows:

**53.105 Computer generation.**

(a) The forms prescribed by this part may be computer generated—without exception approval (see 53.103), provided—

(1) There is no change to the name, content, or sequence of the data elements, and the form carries the Standard or Optional Form number and edition date (see 53.111); or

(2) The form is in an electronic format covered by the American National Standards Institute (ANSI) X12 Standards published by the Accredited Standards Committee X12 on Electronic Data Interchange or a format that can be translated into one of those standards.

(b) The standards listed in paragraph (a)(2) of this section may also be used for submission of data set forth in other parts for which specific forms have not been prescribed.

[FR Doc. 2012–17738 Filed 7–25–12; 8:45 am]

BILLING CODE 6820–EP–P

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Parts 1, 16, 22, and 52

**[FAC 2005–60; Item VI; Docket 2012–0079; Sequence 3]**

## Federal Acquisition Regulation; Technical Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This document makes amendments to the Federal Acquisition Regulation (FAR) in order to make editorial changes.

**DATES:** *Effective Date:* July 26, 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 2005–60, Technical Amendments.

**SUPPLEMENTARY INFORMATION:** In order to update certain elements in 48 CFR parts 1, 16, 22, and 52, this document makes editorial changes to the FAR.

**List of Subjects in 48 CFR Parts 1, 16, 22, and 52**

Government procurement.

Dated: July 16, 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 1, 16, 22, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 16, 22, and 52 is revised to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

## PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

**1.105–2 [Amended]**

■ 2. Amend section 1.105–2 by revising paragraphs (c)(3)(i) and (ii) to read as follows:

**1.105–2 Arrangement of regulations.**

* * * * *

(c) * * *

(3) * * *

(i) Part would be ''FAR part 9'' outside the FAR and ''part 9'' within the FAR.

(ii) Subpart would be ''FAR subpart 9.1'' outside the FAR and ''subpart 9.1'' within the FAR.

* * * * *

## PART 16—TYPES OF CONTRACTS

**16.301–3 [Amended]**

■ 3. Amend section 16.301–3 by removing from paragraph (a)(4) ''other that firm-fixed-priced'' and adding ''other than firm-fixed-priced'' in its place.

## PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

**22.1801 [Amended]**

■ 4. Amend section 22.1801 by—

■ a. Removing from the definition ''Employee assigned to the contract'', ''November 6, 1986'' and adding ''November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands)'' in its place; and

■ b. Removing from the definition ''United States'', ''Guam,'' and adding ''Guam, the Commonwealth of the Northern Mariana Islands'' in its place.

**22.1802 [Amended]**

■ 5. Amend section 22.1802 by removing from paragraph (c) ''November 6, 1986'' and adding ''November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands)'' in its place.

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

**52.212–5 [Amended]**

■ 6. Amend section 52.212–5 by—

■ a. Removing from the clause heading ''(May 2012)'' and adding ''(JUL 2012)'' in its place; and

■ b. Removing from paragraphs (b)(34) and (e)(1)(xii) ''(Jan 2009)'' and adding ''(JUL 2012)'' in their places; and

■ c. Removing from the introductory paragraph of Alternate II ''(Dec 2010)'' and adding ''(JUL 2012)'' in its place; and

■ d. Removing from Alternate II, in paragraph (e)(1)(ii)(L) ''(Jan 2009)'' and adding ''(JUL 2012)'' in its place.

**52.215–20 [Amended]**

■ 7. Amend section 52.215–20 by removing from the introductory paragraph of Alternate I ''15.408(1)'' and adding ''15.408(l)'' in its place.

■ 8. Amend section 52.222–54 by—

■ a. Revising the date of the clause;

■ b. Amending paragraph (a) by—

■ i. In the definition ''Employee assigned to the contract'', in the introductory text, removing ''November 6, 1986'' and adding ''November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands)'' in its place; and

■ ii. Removing from the definition ''United States'', ''Guam,'' and adding ''Guam, the Commonwealth of the Northern Mariana Islands'' in its place; and

■ c. Revising paragraph of (b)(4) introductory text.

The revisions read as follows:

**52.222–54 Employment Eligibility Verification.**

* * * * *

**Employment Eligibility Verification (JUL 2012)**

* * * * *

(b) * * *

(4) *Option to verify employment eligibility of all employees.* The Contractor may elect to verify all existing employees hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), rather than just those employees assigned to the contract. The Contractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), within 180 calendar days of—

* * * * *

■ 9. Amend section 52.223–2 by revising the date of the clause and paragraph (b); and removing from paragraph (c)(3) ''contract to'' and adding ''contact to'' in its place. The revised text reads as follows:

**52.223–2 Affirmative Procurement of Biobased Products Under Service and Construction Contracts.**

* * * * *

**Affirmative Procurement of Biobased Products Under Service and Construction Contracts (JUL 2012)**

* * * * *

(b) Information about this requirement and these products is available at *http://www.biopreferred.gov.*

* * * * *

[FR Doc. 2012–17739 Filed 7–25–12; 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 2012–0081, Sequence 5]**

## Federal Acquisition Regulation; Federal Acquisition Circular 2005–60; 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) 2005–60, 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 2005–60, which precedes this document. These documents are also available via the Internet at *http://www.regulations.gov.*

**DATES:** July 26, 2012.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2005–60 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 2005–60

| Item | Subject | FAR Case | Analyst |
|---|---|---|---|
| I* | Reporting Executive Compensation and First-Tier Subcontract Awards | 2008–039 | Clark. |
| II | Payments Under Time-and-Materials and Labor-Hour Contracts | 2011–003 | Chambers. |
| III* | Extension of Sunset Date for Protests of Task and Delivery Orders (Interim) | 2012–007 | Lague. |
| IV | DARPA-New Mexico Tax Agreement | 2012–019 | Chambers. |

LIST OF RULES IN FAC 2005–60—Continued

| Item | Subject | FAR Case | Analyst |
|---|---|---|---|
| V | Clarification of Standards for Computer Generation of Forms | 2011–022 | Lague. |
| VI | 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 2005–60 amends the FAR as specified below:

**Item I—Reporting Executive Compensation and First-Tier Subcontract Awards (FAR Case 2008–039)**

The interim rule published in the **Federal Register** at 75 FR 39414 on July 8, 2010, is adopted as final with changes. This rule implements section 2 of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282), which requires the Office of Management and Budget to establish a free, public, Web site containing full disclosure of all Federal contract award information.

The interim rule required contractors to report executive compensation and first-tier subcontract awards on contracts expected to be $25,000 or more. This information is available to the public.

The final rule removes the exception for inserting the clause in classified solicitations and contracts, or solicitations or contracts with individuals. Classified information is not required to be disclosed. The clause is not prescribed for contracts unless they are required to be reported in the Federal Procurement Data System (FPDS). The final rule clarifies the responsibility of contracting officers to correct data originating from FPDS found by the contractor to be in error when the contractor completes the subcontract report. The definition of first-tier subcontractor is revised to allow contractors greater flexibility to determine their first-tier subcontractors. The rule also clarifies that a contractor must enter Transparency Act data when registering in the Central Contractor Registration (CCR) database and the contractor is required to report its executive compensation in CCR as a part of its annual registration requirement in CCR.

**Item II—Payments Under Time-and-Materials and Labor-Hour Contracts (FAR Case 2011–003)**

This final rule amends the FAR with regard to payments under time-and-materials and labor-hour contracts. First, the rule harmonizes payment provisions under commercial time-and-materials and labor-hour contracts and non-commercial time-and-materials and labor-hour contracts, largely by having commercial time-and-materials and labor-hour contracts adopt the payment provisions of non-commercial time-and-materials and labor-hour contracts. Second, the rule harmonizes conflicting provisions of the ''Allowable Cost and Payment'' and ''Payments Under Time-and-Materials'' and ''Labor-Hour Contracts'' clauses, which are both prescribed under non-commercial time-and-materials contracts and labor-hour contracts, by using the same periods for invoicing, and submission of the completion voucher as those set forth in the ''Allowable Cost and Payment'' clause. This harmonization will serve to benefit small businesses under time-and-materials and labor-hour contracts by permitting bi-weekly rather than monthly invoicing, and providing contracting officers with the discretion to authorize even more frequent payments.

**Item III—Extension of Sunset Dates for Protests of Task and Delivery Orders (FAR Case 2012–007) (Interim)**

This interim rule amends the FAR to implement section 825 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383) and section 813 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81). These statutes extend the sunset date for protests against awards of task or delivery orders to September 30, 2016. There is no effect on Government automated systems.

**Item IV—DARPA-New Mexico Tax Agreement (FAR Case 2012–019)**

This final rule amends the FAR to add the United States Defense Advanced Research Projects Agency (DARPA) to the list of agencies that have entered into an agreement with the State of New Mexico. The agreement eliminates the double taxation of Government cost-reimbursement contracts when contractors and their subcontractors purchase tangible personal property to be used in performing services in whole or in part in the State of New Mexico, and for which title to such property will pass to the United States upon delivery of the property to the contractor and its subcontractors by the vendor. Small businesses benefit from this agreement because they will no longer have the administrative effort and cost associated with collecting this tax.

**Item V—Clarification of Standards for Computer Generation of Forms (FAR Case 2011–022)**

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 76 FR 79609 on December 22, 2011, to implement the removal of Federal Information Processing Standard (FIPS) 161. FIPS 161 is being removed based on the notice posted in the **Federal Register** at 73 FR 51276 on September 2, 2008, by the Department of Commerce. This is a technical change acknowledging the removal by the Department of Commerce of FIPS 161 and replacement with the American National Standards Institute (ANSI) X12 set of standards. There is no impact to the Government or contractors in establishing ANSI X12 as the new standard. Small businesses will continue to be able to generate forms by computer. No public comments were received on the proposed rule, therefore, the final rule will be published with no changes.

**Item VI—Technical Amendments**

Editorial changes are made at FAR 1.105–2, 16.301–3, 22.1801, 22.1802, 52.212–5, 52.215–20, 52.222–54, and 52.223–2.

Dated: July 16, 2012.

**Laura Auletta,**

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

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