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Part III

Department of Defense General Services Administration National Aeronautics and Space Administration

48 CFR Chapter 1, Parts 2, 4, et al.
Federal Acquisition Regulations; Final
Rules, Interim Rules, and Small Entity
Compliance Guide

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2008–0003, Sequence 2]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–27; Introduction

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

and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of 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 in this Federal Acquisition Circular (FAC) 2005–27. 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 2005–27 and the specific FAR case numbers. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

LIST OF RULES IN FAC 2005–27

Item	Subject	FAR case	Analyst
I	Correcting Statutory References Related to the Higher Education Act of 1965	2007–020	Cundiff.
II	Changing the Name of the Office of Small and Disadvantaged Business Utilization for DoD	2008–001	Cundiff.
III	Administrative Changes to the FPI Blanket Waiver and the JWOD Program Name	2007–015	Clark.
IV	Local Community Recovery Act of 2006	2006–014	Clark.
V	Additional Requirements for Competition Advocate Annual Reports	2007–007	Woodson.
VI	Contract Debts	2005–018	Murphy.
VII	Subcontractor Requests for Bonds	2007–022	Jackson.
VIII	Extension of Authority for Use of Simplified Acquisition Procedures for Certain Commercial Items.	2008–002	Jackson.
IX	Enhanced Competition for Task and Delivery Order Contracts—Section 843 of the Fiscal Year 2008 National Defense Authorization Act (Interim).	2008–006	Clark.
X	Online Representations and Certifications Application Review	2006–025	Woodson.
XI	Cost Accounting Standards (CAS) Administration and Associated Federal Acquisition Regulation Clauses (Interim).	2007–002	Chambers.
XII	CAS Administration	2006–004	Chambers.
XIII	Accepting and Dispensing of \$1 Coin	2006–027	Jackson.
XIV	Technical Amendments		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–27 amends the FAR as specified below:

Item I—Correcting Statutory References Related to the Higher Education Act of 1965 (FAR Case 2007–020)

This final rule amends the Federal Acquisition Regulation to reflect the correct public law citations for the definitions of minority institution and Hispanic-serving institution. The citations changed when the Higher Education Act of 1965 was amended by the Higher Education Amendments of 1998.

Item II—Changing the Name of the Office of Small and Disadvantaged Business Utilization for DoD (FAR Case 2008–001)

This final rule amends the Federal Acquisition Regulation to change the

name of the “Office of Small and Disadvantaged Business Utilization” to the “Office of Small Business Programs” for the Department of Defense. Section 904 of the National Defense Authorization Act for Fiscal Year 2006, Pub. L. 109–163, re-designated the “Office of Small and Disadvantaged Business Utilization”.

Item III—Administrative Changes to the FPI Blanket Waiver and the JWOD Program Name (FAR Case 2007–015)

This final rule amends the language in the Federal Acquisition Regulation to increase the blanket waiver threshold for small dollar-value purchases from Federal Prison Industries by Federal agencies and also changes the name of the JWOD Program to the AbilityOne Program. These changes are administrative in nature and any impact will be minimal.

Item IV—Local Community Recovery Act of 2006 (FAR Case 2006–014)

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have adopted as

final, with a minor change to the second interim rule, two interim rules amending the Federal Acquisition Regulation (FAR) to implement amendments to the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The first interim rule was published in the **Federal Register** at 71 FR 44546, August 4, 2006. The second interim rule was published in the **Federal Register** at 72 FR 63084, November 7, 2007.

Item V—Additional Requirements for Competition Advocate Annual Reports (FAR Case 2007–007)

This final rule amends the Federal Acquisition Regulation 6.502 to require that annual reviews by executive agency competition advocates be provided in writing to both the agency senior procurement executive and the agency chief acquisition officer, and ensure task and delivery orders over \$1,000,000 issued under multiple award contracts are properly planned, issued, and comply with 8.405 and 16.505. The rule provides for one of several initiatives by the Administrator, Office of Federal

Procurement Policy, to reinforce the use of competition and related practices for achieving a competitive environment. The rule reinvigorates the role of agencies' competition advocates, strengthens agencies' competition practices, and ensures best value for the taxpayer.

Item VI—Contract Debts (FAR Case 2005–018)

This final rule amends and reorganizes FAR Subpart 32.6, Contract Debts, and amends associated other FAR coverage, based on the recommendations of the Department of Defense Contract Debt Integrated Process Team, to improve contract debt controls and procedures and to ensure consistency within and between existing regulations. FAR Subpart 32.6 prescribes policies and procedures for identifying, collecting, and deferring collection of contract debts (including interest, if applicable). Throughout, the term "responsible official" has been replaced with the specific individual/organization responsible for fulfilling the FAR requirement. FAR 32.601 is revised to specify what constitutes a contract debt, rather than how a contract debt may arise. All discussions of contract debt determinations are consolidated in FAR 32.603, including the responsibility of the contracting officer in making debt determinations. All discussions of the demand for payment are consolidated in FAR 32.604, including the requirements for demand letters. All discussions of final decisions are consolidated in FAR 32.605. FAR 32.606 includes all coverage on debt collections, including when responsibility should be transferred to the Department of Treasury. All discussions of interest are consolidated at FAR 32.608, including how to compute interest. The Government's right to make a demand for payment and start the interest clock running under the contract is ensured, as is the Government's right to make a demand for payment without first issuing a final decision of the contracting officer. A final decision is required only if the contractor disagrees with the demand for payment.

Item VII—Subcontractor Requests for Bonds (FAR Case 2007–022)

This final rule amends the list of laws inapplicable to commercial items, to clarify that the existing regulations at FAR 28.106–4, Contract clause, and 52.228–12, Prospective Subcontractor Requests for Bonds, do not apply to commercial items. Section 806(a)(3) of Pub. L. 102–190, as amended by Sections 2091 and 8105 of Pub. L. 103–

355 will be included in the list at FAR 12.503(a) and 12.504(a).

Item VIII—Extension of Authority for Use of Simplified Acquisition Procedures for Certain Commercial Items (FAR Case 2008–002)

This final rule amends the Federal Acquisition Regulation to implement Section 822 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181). Section 822 amends Section 4202(e) of the Clinger-Cohen Act of 1996 (division D of Pub. L. 104–106; 110 Stat. 652; 10 U.S.C. 2304 note) by extending until January 1, 2010, the timeframe in which an agency may use simplified procedures to purchase commercial items in amounts greater than the simplified acquisition threshold, but not exceeding \$5,500,000 (\$11 million for acquisitions as described in 13.500(e)).

Item IX—Enhanced Competition for Task and Delivery Order Contracts—Section 843 of the Fiscal Year 2008 National Defense Authorization Act (FAR Case 2008–006) (Interim)

This interim rule amends Federal Acquisition Regulation Subpart 16.5 to implement Section 843 of the Fiscal Year 2008 National Defense Authorization Act (Pub. L. 110–181). The provisions of Section 843 include: (1) Limitation on single award task or delivery order (Indefinite-Delivery Requirements, and Indefinite-Quantity) type contracts greater than \$100 million; (2) Enhanced competition for task and delivery orders in excess of \$5 million; and (3) Protest on orders on the grounds that the order increases the scope, period, maximum value of the contract under which the order is issued; or valued in excess of \$10 million. FAR sections 16.503 and 16.504, as amended by this rule, are applicable to single award task or delivery order contracts awarded on or after May 27, 2008. FAR section 16.505, as amended by this rule, is applicable to orders awarded on or after May 27, 2008 on existing contracts as well as new contracts.

Item X—Online Representations and Certifications Application Review (FAR Case 2006–025)

This final rule adopts as final, without change, the interim rule published in the **Federal Register** at 72 FR 46359, August 17, 2007. The rule amends FAR 23.406 and 23.906 to revise the prescriptions for the use of 52.223–9 and 52.223–14 to provide for their use under the same circumstances as the prescription for use of their associated provisions. These revisions ensure

compliance with the requirements of 40 CFR part 247 and 42 U.S.C. 11023.

Item XI—Cost Accounting Standards (CAS) Administration and Associated Federal Acquisition Regulation Clauses (FAR Case 2007–002) (Interim)

The subject case is revising the Federal Acquisition Regulation (FAR) clauses concerning the administration of Cost Accounting Standards (CAS) to maintain consistency between the CAS rules and the FAR.

Item XII—CAS Administration (FAR Case 2006–004)

This final rule adopts, with minor changes, the proposed rule published in the **Federal Register** at 71 FR 58338, October 3, 2006, amending the Federal Acquisition Regulation to implement revisions to the regulations related to the administration of the Cost Accounting Standards as they pertain to contracts with foreign concerns, including United Kingdom concerns.

Item XIII—Accepting and Dispensing of \$1 Coin (FAR Case 2006–027)

This final rule adopts, with change, the interim rule published in the **Federal Register** at 72 FR 46361, August 17, 2007. This final rule implements the Presidential \$1 Coin Act of 2005 (Pub. L. 109–145). The Presidential \$1 Coin Act of 2005 requires the Secretary of the Treasury to mint and issue annually four new \$1 coins bearing the likenesses of the Presidents of the United States in the order of their service and to continue to mint and issue "Sacagawea-design" coins for circulation. In order to promote circulation of the coins, Section 104 of the Public Law also requires that Federal agencies take action so that, by January 1, 2008, entities that operate any business, including vending machines, on any premises owned by the United States or under the control of any agency or instrumentality of the United States, are capable of accepting and dispensing \$1 coins and that the entities display notices of this capability on the business premises. Pub. L. 110–147 was enacted to amend Section 5112(p)(1)(A) of Title 31, United States Code, to allow an exception from the \$1 coin dispensing capability requirement for those vending machines that do not receive currency denominations greater than \$1. Contracting officers have been instructed in the Applicability Date of the preamble to modify contracts upon request of the contractor, to change the older version of the clause to the newer version without requiring consideration from the contractor.

Item XIV—Technical Amendments

Editorial changes are made at FAR 15.404–1 and 52.212–5.

Dated: September 9, 2008

Al Matera,

Director, Office of Acquisition Policy.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005–27 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 2005–27 is effective October 17, 2008, except for Items VII, VIII, IX, X, XIII, and XIV which are effective September 17, 2008.

Dated: September 5, 2008.

Shay D. Assad,

Director, Defense Procurement and Acquisition Policy.

Dated: September 8, 2008.

David A. Drabkin,

Senior Procurement Executive & Deputy Chief Acquisition Officer, Office of the Chief Acquisition Officer, U.S. General Services Administration.

Dated: August 26, 2008.

William P. McNally,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. E8–21383 Filed 9–16–08; 8:45 am]

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DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 2 and 52**

[FAC 2005–27; FAR Case 2007–020; Item I; Docket 2008–0001; Sequence 15]

RIN 9000–AL06

Federal Acquisition Regulation; FAR Case 2007–020, Correcting Statutory References Related to the Higher Education Act of 1965

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense

Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to correct references to sections of the Higher Education Act of 1965 at FAR 2.101 and 52.2. These sections of the Act contain the definitions of minority institution and Hispanic-serving institution. The citations for these sections changed when the Higher Education Act of 1965 was amended by the Higher Education Amendments of 1998. This final rule updates the FAR accordingly.

DATES: *Effective Date:* October 17, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501–0044, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–27, FAR case 2007–020.

SUPPLEMENTARY INFORMATION:**A. Background**

The definition of “minority institution” had been found in section 1046 of the Higher Education Act of 1965 (HEA) and at 20 U.S.C. 1135d–5(3). The Higher Education Amendments of 1998 redesignated section 1046 of the HEA as section 365.

The Hispanic-serving Institution Program was authorized in section 316 of Title III of the HEA, as amended by 1992 amendments. In the Higher Education Amendments of 1998, Pub. L. 105–244, the Hispanic-serving institution Program was moved into Title V of the HEA and reenacted, in that title, with all the relevant provisions that governed that program while it was part of Title III of the HEA. This final rule reflects these changes.

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

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Parts 2 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2005–27, FAR case 2007–020, in correspondence.)

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 2 and 52

Government procurement.

Dated: September 9, 2008.

Al Matera,

Director, Office of Acquisition Policy.

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

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

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

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 in paragraph (b)(2) by revising the definition “Minority Institution” to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

Minority Institution means an institution of higher education meeting the requirements of Section 365(3) of the Higher Education Act of 1965 (20 U.S.C. 1067k), including a Hispanic-serving institution of higher education, as defined in Section 502(a) of the Act (20 U.S.C. 1101a).

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.212–5 by revising the date of the clause and paragraph (b)(11)(i) 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—COMMERCIALS ITEMS (OCT 2008)

* * * * *

(b) * * *

____ (11)(i) 52.219–23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (OCT 2008) (10 U.S.C. 2323)(if the offeror elects to waive the adjustment, it shall so indicate in its offer.)

* * * * *

■ 4. Amend section 52.219–23 by revising the date of the clause and in paragraph (a) the definition “Minority institution” to read as follows:

52.219–23 Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.

* * * * *

NOTICE OF PRICE EVALUATION
ADJUSTMENT FOR SMALL
DISADVANTAGED BUSINESS CONCERNS
(OCT 2008)

(a) * * *
Minority institution means an institution of higher education meeting the requirements of Section 365(3) of the Higher Education Act of 1965 (20 U.S.C. 1067k), including a Hispanic-serving institution of higher education, as defined in Section 502(a) of the Act (20 U.S.C. 1101a).

* * * * *

■ 5. Amend section 52.226–2 by revising the date of the provision and in paragraph (a) the definition “Minority institution” to read as follows:

52.226–2 Historically Black College or University and Minority Institution Representation.

* * * * *

HISTORICALLY BLACK COLLEGE OR
UNIVERSITY AND MINORITY
INSTITUTION REPRESENTATION (OCT
2008)

(a) * * *
Minority institution means an institution of higher education meeting the requirements of Section 365(3) of the Higher Education Act of 1965 (20 U.S.C. 1067k), including a Hispanic-serving institution of higher education, as defined in Section 502(a) of the Act (20 U.S.C. 1101a).

* * * * *

[FR Doc. E8–21384 Filed 9–16–08; 8:45 am]
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**DEPARTMENT OF DEFENSE
GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Parts 2 and 19

[FAC 2005–27; FAR Case 2008–001; Item II; Docket 2008–001; Sequence 12]

RIN 9000–AL04

Federal Acquisition Regulation; FAR Case 2008–001, Changing the Name of the Office of Small and Disadvantaged Business Utilization for DoD

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to change the name of the “Office of Small and Disadvantaged Business Utilization” to the “Office of Small Business Programs” for the Department of Defense.

DATES: *Effective Date: October 17, 2008.*
FOR FURTHER INFORMATION CONTACT: Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501–0044 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAC 2005–27, FAR case 2008–001.

SUPPLEMENTARY INFORMATION:

A. Background

Section 904 of the National Defense Authorization Act for Fiscal Year 2006, Public Law 109–163, re-designated the “Office of Small and Disadvantaged Business Utilization” to the “Office of Small Business Programs” for the Department of Defense, and the Departments of the Army, the Navy, and the Air Force. The office name change, as well as the change in the title of the director of the office, must be noted in the FAR. This case amends the FAR to make the necessary changes.

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

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Parts 2 and 19 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2005–27, FAR case 2008–001), in correspondence.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 2 and 19

Government procurement.

Dated: September 9, 2008.

Al Matera,
Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2 and 19 as set forth below:

■ 1. The authority citation for 48 CFR parts 2 and 19 continues to read as follows:

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

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 in paragraph (b)(2) by adding, in alphabetical order, the definition “Office of Small and Disadvantaged Business Utilization” to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

Office of Small and Disadvantaged Business Utilization means the Office of Small Business Programs when referring to the Department of Defense.

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

■ 3. Amend section 19.201 by revising the introductory text of paragraph (d) and paragraph (d)(1) to read as follows:

19.201 General policy.

* * * * *

(d) The Small Business Act requires each agency with contracting authority to establish an Office of Small and Disadvantaged Business Utilization (see section (k) of the Small Business Act). For the Department of Defense, in accordance with the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163), the Office of Small and Disadvantaged Business Utilization has been redesignated as the Office of Small Business Programs. Management of the office shall be the responsibility of an officer or employee of the agency who shall, in carrying out the purposes of the Act—

(1) Be known as the Director of Small and Disadvantaged Business Utilization, or for the Department of Defense, the Director of Small Business Programs;

* * * * *

■ 3. Amend section 19.702 by revising the second and third sentences of paragraph (d) to read as follows:

19.702 Statutory requirements.

* * * * *

(d) * * * However, the mentor-protégé agreement must have been approved by the Director, Small Business Programs of the cognizant DoD military department or defense agency, before developmental assistance costs may be credited against subcontract goals. A list of approved agreements may be obtained at http://www.acq.osd.mil/osbp/mentor_protege/.

[FR Doc. E8-21385 Filed 9-16-08; 8:45 am]

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DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 4, 8, 9, 18, 44, and 52**

[FAC 2005-27; FAR Case 2007-015; Item III; Docket 2008-0001; Sequence 16]

RIN 9000-AK96

**Federal Acquisition Regulation; FAR
Case 2007-015, Administrative
Changes to the FPI Blanket Waiver and
the JWOD Program Name**

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to increase the blanket waiver threshold for small dollar-value purchases from Federal Prison Industries (FPI) by Federal agencies and to change the name of the JWOD Program to the AbilityOne Program.

DATES: *Effective Date: October 17, 2008.*

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 FAR Secretariat at (202) 501-4755. Please cite FAC 2005-27, FAR case 2007-015.

SUPPLEMENTARY INFORMATION:**A. Background**

The FPI Board of Directors recently revised its 2003 resolution to increase the blanket waiver threshold for small dollar-value purchases from FPI by Federal agencies. A revision to an

earlier resolution adopted by the FPI Board provides that the increased dollar threshold necessary to obtain FPI clearance would become effective upon the publication of appropriate modification to the FAR.

This final rule amends the FAR to reflect the threshold increase from \$2,500 to \$3,000. No waiver is required to buy from an alternative source below \$3,000. Customers may, however, still purchase from FPI at, or below, this threshold, if they so choose.

The Committee for Purchase From People Who Are Blind or Severely Disabled, which administers the Javits-Wagner-O'Day Act, has changed its program name to the AbilityOne Program (formerly JWOD Program). The Committee changed the program's name to the AbilityOne Program through the **Federal Register** on November 27, 2006 (71 FR 68492). This final rule will update the name of the program for all occurrences in the FAR.

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

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 99-577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR parts 4, 8, 9, 18, 44 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2005-27, FAR Case 2007-015), in correspondence.

C. Paperwork Reduction Act

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

**List of Subjects in 48 CFR Parts 4, 8, 9,
18, 44, and 52**

Government procurement.

Dated: September 9, 2008.

Al Matera,*Director, Office of Acquisition Policy.*

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 4, 8, 9, 18, 44, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 4, 8, 9, 18, 44, and 52 continues to read as follows:

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

PART 4—ADMINISTRATIVE MATTERS**4.602 [Amended]**

■ 2. Amend section 4.602 paragraph (a)(2) by removing “and nonprofit agencies” and adding “and AbilityOne nonprofit agencies” in its place.

4.606 [Amended]

■ 3. Amend section 4.606 paragraph (c)(3) by removing “JWOD” and adding “AbilityOne” in its place.

**PART 8—REQUIRED SOURCES OF
SUPPLIES AND SERVICES**

■ 4. Amend section 8.602 by revising the introductory text of paragraph (c) and paragraph (c)(1) to read as follows.

8.602 Policy.

* * * * *

(c) In some cases where FPI and an AbilityOne participating nonprofit agency produce identical items (see 8.603), FPI grants a waiver to permit the Government to purchase a portion of its requirement from the AbilityOne participating nonprofit agency. When this occurs, the portion of the requirement for which FPI has granted a waiver—

(1) Shall be purchased from the AbilityOne participating nonprofit agency using the procedures in Subpart 8.7; and

* * * * *

■ 5. Amend section 8.603 by revising the introductory paragraph; and removing from paragraphs (a)(2) and (b)(1) “JWOD” and adding “AbilityOne” in its place.

8.603 Purchase priorities.

FPI and nonprofit agencies participating in the AbilityOne Program under the Javits-Wagner-O'Day Act (see Subpart 8.7) may produce identical supplies or services. When this occurs, ordering offices shall purchase supplies and services in the following priorities:

* * * * *

8.605 [Amended]

■ 6. Amend section 8.605 by removing from paragraph (e) “\$2,500” and adding “\$3,000” in its place.

■ 7. Revise section 8.700 to read as follows:

8.700 Scope of subpart.

This subpart prescribes the policies and procedures for implementing the Javits-Wagner-O'Day Act (41 U.S.C. 46-

48c) and the rules of the Committee for Purchase from People Who Are Blind or Severely Disabled (41 CFR Chapter 51) which implements the AbilityOne Program.

8.701 [Amended]

■ 8. Amend section 8.701 by removing “JWOD” wherever it occurs and adding “AbilityOne” in its place.

8.702 [Amended]

■ 9. Amend section 8.702 by removing from paragraph (a) “JWOD” and adding “AbilityOne” in its place; and removing from paragraph (c) “the JWOD” and adding “the Javits-Wagner-O’Day” in its place.

8.703 [Amended]

■ 10. Amend section 8.703 by removing “JWOD” and adding “AbilityOne” in its place; removing “<http://www.jwod.gov/procurementlist>” and adding “<http://www.abilityone.gov/jwod/PL.html>” in its place; and removing “info@jwod.gov” and adding “info@abilityone.gov” in its place.

8.704 [Amended]

■ 11. Amend section 8.704 by removing from the introductory text of paragraph (a) “The JWOD” and adding “The Javits-Wagner-O’Day” in its place, and removing “from JWOD” and adding “from AbilityOne” in its place; and removing from paragraphs (a)(1)(ii), (a)(2)(i), and (c) “JWOD” and adding “AbilityOne” in its place.

8.705-1 [Amended]

■ 12. Amend section 8.705-1 by removing “JWOD” wherever it occurs and adding “AbilityOne” in its place.

8.705-2 [Amended]

■ 13. Amend section 8.705-2 by removing “a JWOD” and adding “an AbilityOne” in its place.

8.705-3 [Amended]

■ 14. Amend section 8.705-3 by removing from paragraphs (a) and (c) “JWOD” and adding “AbilityOne” in its place.

8.705-4 [Amended]

■ 15. Amend section 8.705-4 by removing from paragraphs (a) and (b) “JWOD” and adding “AbilityOne” in its place; and removing from paragraph (c) “a JWOD” and adding “an AbilityOne” in its place.

8.706, 8.707, 8.708, 8.710, 8.711, and 8.712 [Amended]

■ 16. Amend sections 8.706, 8.707, 8.708, 8.710, 8.711, and 8.712 by removing “JWOD” wherever it occurs and adding “AbilityOne” in its place.

8.713 [Amended]

■ 17. Amend section 8.713 by removing from paragraph (a) “a JWOD” and adding “an AbilityOne” in its place; and removing from paragraph (b) “JWOD” and adding “AbilityOne” in its place.

8.715 [Amended]

■ 18. Amend section 8.715 by removing “JWOD” wherever it occurs and adding “AbilityOne” in its place.

8.716 [Amended]

■ 19. Amend section 8.716 by removing from the introductory paragraph “a JWOD” and adding “an AbilityOne” in its place.

PART 9—CONTRACTOR QUALIFICATIONS

■ 20. Amend section 9.107 by revising the section heading and paragraph (a); and removing from paragraphs (b) and (d) “JWOD” and adding “AbilityOne” in its place. The revised text reads as follows:

9.107 Surveys of nonprofit agencies participating in the AbilityOne Program under the Javits-Wagner-O’Day Act.

(a) The Committee for Purchase From People Who Are Blind or Severely Disabled (Committee), as authorized by 41 U.S.C. 46-48c, determines what supplies and services Federal agencies are required to purchase from AbilityOne participating nonprofit agencies serving people who are blind or have other severe disabilities (see Subpart 8.7). The Committee is required to find an AbilityOne participating nonprofit agency capable of furnishing the supplies or services before the nonprofit agency can be designated as a mandatory source under the AbilityOne Program. The Committee may request a contracting office to assist in assessing the capabilities of a nonprofit agency.

* * * * *

PART 18—EMERGENCY ACQUISITIONS

■ 21. Revise section 18.107 to read as follows:

18.107 AbilityOne specification changes.

Contracting officers are not held to the notification required when changes in AbilityOne specifications or descriptions are required to meet emergency needs. (See 8.712(d).)

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

44.202-2 [Amended]

■ 22. Amend section 44.202-2 by removing from paragraph (a)(4)(ii) “(JWOD)”.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 23. Amend section 52.208-9 by—
 ■ a. Revising the date of the clause;
 ■ b. Removing from paragraph (a) “(JWOD)”;

■ c. Removing from paragraph (b) “a JWOD” and adding “an AbilityOne” in its place; and

■ d. Removing from paragraph (c) “JWOD” and adding “AbilityOne” in its place.

■ The revised text reads as follows:

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

* * * * *

CONTRACTOR USE OF MANDATORY SOURCES OF SUPPLY OR SERVICES (OCT 2008)

* * * * *

[FR Doc. E8-21386 Filed 9-16-08; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 6, 12, 18, 26, and 52

[FAC 2005-27; FAR Case 2006-014; Item IV; Docket 2007-0001; Sequence 7]

RIN 9000-AK54

Federal Acquisition Regulation; FAR Case 2006-014, Local Community Recovery Act of 2006

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have adopted as final, with a minor change to the second interim rule, two interim rules amending the Federal Acquisition Regulation (FAR) to implement amendments to the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The first interim rule was published in the **Federal Register** at 71 FR 44546, August 4, 2006. The second interim rule was published in the **Federal Register** at 72 FR 63084, November 7, 2007.

DATES: *Effective Date:* October 17, 2008.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. William Clark, Procurement Analyst, at (202) 219-1813. For information

pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-27, FAR case 2006-014.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the Federal Acquisition Regulation implementing amendments to the Robert T. Stafford Disaster Relief and Emergency Assistance Act at 42 U.S.C. 5150.

The Local Community Recovery Act of 2006 amended the Robert T. Stafford Disaster Relief and Emergency Assistance Act to authorize set-asides for major disaster or emergency assistance acquisitions to businesses that reside or primarily do business in the geographic area affected by the disaster or emergency. DoD, GSA, and NASA published an interim rule in the **Federal Register** at 71 FR 44546, August 4, 2006, to implement this statutory amendment.

Subsequently, Section 694 of the Department of Homeland Security Appropriations Act of 2007, Pub. L. 109-295, amended the Robert T. Stafford Disaster Relief and Emergency Assistance Act to enact requirements for transitioning work under existing contracts. A second interim rule was published in the **Federal Register** at 72 FR 63084, November 7, 2007, to address this statutory amendment. The second interim rule addressed the public comments received on the first interim rule. There were no comments received on the second interim rule.

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

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The rule implements set-asides for local businesses in an area affected by a major disaster or emergency to promote economic recovery.

The set-aside does not replace the small business set-aside. Both set-asides can apply to an acquisition. The local set-aside encourages the use of local small businesses.

The rule also implements a new requirement that work performed under

contracts already in effect be transitioned to local area organizations, firms or individuals, unless the agency head determines it is not feasible or practicable. The Councils expect that more work will be transitioned to small businesses than away from them. The Government Accountability Office (GAO) report on Hurricane Katrina Small Business Contracts (GAO-07-205) found that businesses in the three states primarily affected by the hurricane received \$1.9 billion, which was 18 percent of the \$11.6 billion spent by DHS, GSA, DoD and the Army Corps of Engineers between August 1, 2005 and June 30, 2006. Small businesses received 66 percent of the \$1.9 billion awarded to those local businesses. The Councils believe this shows that small businesses would not be hurt by a local area set-aside.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 5, 6, 12, 18, 26, and 52

Government procurement.

Dated: September 9, 2008.

Al Matera,

Director, Office of Acquisition Policy.

■ Accordingly, under the authority of 40 U.S.C. 121, the interim rule published at 71 FR 44546, August 4, 2006, is adopted as a final rule, and the interim rule published at 72 FR 63084, November 7, 2007, is adopted as a final rule with the following change:

PART 26—OTHER SOCIOECONOMIC PROGRAMS

■ 1. The authority citation for 48 CFR part 26 continues to read as follows:

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

■ 2. Revise section 26.202-2 to read as follows.

26.202-2 Evaluation preference.

The contracting officer may use an evaluation preference, when authorized in agency regulations or procedures.

[FR Doc. E8-21387 Filed 9-16-08; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 6

[FAC 2005-27; FAR Case 2007-007; Item V; Docket 2008-001; Sequence 17]

RIN 9000-AL08

Federal Acquisition Regulation; FAR Case 2007-007, Additional Requirements for Competition Advocate Annual Reports

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to require that annual reviews by executive agency competition advocates be provided in writing to both the agency senior procurement executive and the agency chief acquisition officer, if designated, and that the reports specifically address the quality of planning, executing, and managing of task and delivery orders over \$1 million.

DATES: *Effective Date:* October 17, 2008.

FOR FURTHER INFORMATION CONTACT Mr. Ernest Woodson, Procurement Analyst, at (202) 501-3775 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755. Please cite FAC 2005-27, FAR case 2007-007.

SUPPLEMENTARY INFORMATION:

A. Background

The Administrator of the Office of Federal Procurement Policy (OFPP) issued a memorandum dated May 31, 2007, entitled "Enhancing Competition in Federal Acquisition", to executive agency chief acquisition officers and senior procurement executives that outlined several initiatives for enhancing competition in Federal acquisition. The agency competition advocates are required to describe initiatives that ensure task and delivery orders over \$1,000,000 issued under multiple award contracts are properly planned, issued, and comply with 8.405 and 16.505 in a report to the agency senior procurement executive and the

agency chief acquisition officer. An attachment to the Administrator's May 31, 2007 memorandum entitled, *Enhancing Competition in Federal Acquisition*, contains a list of questions designed to assist competition advocates in assessing the quality of competitive practices at their agencies. The policy memorandum and attachment can be found at http://www.whitehouse.gov/omb/procurement/comp_contracting/competition_memo_053107.pdf. This FAR case implements this policy change.

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

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Part 6 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2005-27, FAR case 2007-007), in correspondence.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 6

Government procurement.

Dated: September 9, 2008.

Al Matera,

Director, Office of Acquisition Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR part 6 as set forth below:

PART 6—COMPETITION REQUIREMENTS

1. The authority citation for 48 CFR part 6 continues to read as follows:

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

2. Amend section 6.502 by—

- a. Revising the introductory text of paragraphs (b)(1) and (b)(2);
- b. Removing from the end of the paragraph (b)(2)(v) the word "and";
- c. Adding to the end of paragraph (b)(2)(vi) the word "and";

d. Adding a new paragraph (b)(2)(vii); and

e. Revising paragraphs (b)(3) and (b)(4) to read as follows:

6.502 Duties and Responsibilities.

* * * * *

(b) * * *

(1) Review the contracting operations of the agency and identify and report to the agency senior procurement executive and the chief acquisition officer—

* * * * *

(2) Prepare and submit an annual report to the agency senior procurement executive and the chief acquisition officer in accordance with agency procedures, describing—

* * * * *

(vii) Initiatives that ensure task and delivery orders over \$1,000,000 issued under multiple award contracts are properly planned, issued, and comply with 8.405 and 16.505.

(3) Recommend goals and plans for increasing competition on a fiscal year basis to the agency senior procurement executive and the chief acquisition officer; and

(4) Recommend to the agency senior procurement executive and the chief acquisition officer a system of personal and organizational accountability for competition, which may include the use of recognition and awards to motivate program managers, contracting officers, and others in authority to promote competition in acquisition.

[FR Doc. E8-21388 Filed 9-16-08; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12, 13, 32, 33, 36, 42, and 52

[FAC 2005-27; FAR Case 2005-018; Item VI; Docket 2006-0020; Sequence 11]

RIN 9000-AK59

Federal Acquisition Regulation; FAR Case 2005-018, Contract Debts

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense

Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to revise the policies and procedures for contract debts.

DATES: *Effective Date:* October 17, 2008

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, Procurement Analyst, at (202) 208-6925 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755. Please cite FAC 2005-27, FAR case 2005-018.

SUPPLEMENTARY INFORMATION:

A. Background

In 2003, the DoD Comptroller established the DoD Accounts Receivable Workgroup to evaluate the processes and procedures for reporting accounts receivables. This Workgroup concluded that contracting officers may not be properly reporting contract debts. Based on the Workgroup's recommendations, DoD established a Contract Debt Integrated Process Team (IPT).

The mission of the IPT was to evaluate the adequacy of DoD's existing controls and procedures for ensuring that contract debts are identified and recovered in a timely manner, properly accounted for in DoD's books and records, and properly coordinated with the appropriate Government officials. Contract debts result from compliance, or a failure to comply, with the terms of a contract and include debts identified by auditors, contracting officers, disbursing officials, and contractors. On May 26, 2005, a final report was issued that included a number of recommended FAR changes to improve contract debt controls and procedures, and to ensure consistency within/between existing regulations.

The Councils established this case to evaluate the DoD recommendations and apply them, where appropriate, Governmentwide. The rule makes the following changes:

1. *Reorganizes FAR 32.6.* Reorganizes FAR 32.6 to add clarity and provide a logical sequence. The section has been reorganized as follows:

- 32.600—Scope of subpart.
- 32.601—General.
- 32.602—Responsibilities.
- 32.603—Debt determination.
- 32.604—Demand for payment.
- 32.605—Final decisions.
- 32.606—Debt collection.
- 32.607—Installment payments and deferral of collection.
- 32.608—Interest.
- 32.609—Delays in receipt of notices or demands.

32.610—Compromising debts.

32.611—Contract clause.

2. *Scope of Subpart.* Revises FAR 32.600 to provide a more accurate description of the scope of this FAR subpart. FAR Subpart 32.6 prescribes policies and procedures for identifying, collecting, and deferring collection of contract debts (including interest, if applicable).

3. *Responsible Official.* Replaces the term “responsible official” with the specific individual/organization responsible for fulfilling the FAR requirement. Some of the responsibilities currently listed are assigned to one individual/organization (e.g., the Procuring Contracting Officer) and other responsibilities are assigned to another individual/organization (e.g., the payment office). To assure a clear understanding of the process and applicable duties, the rule specifies the responsible party for each required action (e.g., the Procuring Contracting Officer, the Administrative Contracting Officer, the payment office, etc.) rather than referring to all parties as “responsible officials.”

4. *Contract Debt—General.* Revises FAR 32.601 to specify what constitutes a contract debt, rather than how a contract debt may arise. In addition, this section is amended to include payments determined to be in excess of contract limitations for commercial financing, because such payments constitute a contract debt.

5. *Contract Debt Responsibilities—Identifying, Demanding Payment, Collecting, and Liquidating.* Adds a section to clearly define the responsibilities of the contracting officer and the payment officials to assure an efficient and non-duplicative process. Under the rule—

a. The contracting officer is responsible for identifying a contract debt and demanding payment of a contract debt. The contracting officer is prohibited from collecting contract debts or otherwise liquidating contract debts (e.g., offsetting the amount of the debt against existing unpaid bills due the contractor or allowing contractors to retain contract debts to cover amounts that may be payable to the contractor in the future); and

b. The payment office is responsible for collecting payment of the contract debt and liquidating the contract debt.

6. *Contract Debt Determinations.* Consolidates all discussions of contract debt determinations in FAR 32.603, Debt Determinations, including the responsibility of the contracting officer in making debt determinations.

7. *Tax Credit.* Deletes the current FAR 32.607 because the referenced tax credit

(Sec. 1481) was repealed on November 5, 1990, by Public Law 101–508.

8. *Demand for Payment.* Consolidates all discussions of the demand for payment in a single section, at FAR 32.604. Demand for payment, to include—

a. A requirement to issue the demand letter except in specific circumstances;

b. A requirement that the demand letter include accounting information to enable the payment office to correctly record the amounts in the proper accounts;

c. A requirement that the demand letter include the amount of interest owed under statutes that require interest assessments from the date of noncompliance to the date of repayment (CAS and TINA).

d. A paragraph implementing the requirements of 31 U.S.C. 3717(e)(1) and the Debt Collection Improvement Act of 1996; and

e. A paragraph addressing instances where overpayments exist but a demand for payment is not necessary.

9. *Final Decisions.* Consolidates all discussions of final decisions in a single section at FAR 32.605, Final Decisions, to include—

a. When a final decision must be issued;

b. A statement that the due date for a demand letter is not extended simply because a final decision is being issued; and

c. A need to obtain evidence of receipt by the contractor to establish the starting date for interest computations and the statute of limitations.

10. *Debt Collection.* Consolidates all discussions of debt collection in a single section, at FAR 32.606, Debt Collection, to include—

a. The current requirements at FAR 32.612;

b. The current requirements for transferring debts to the Department of Treasury; and

c. A requirement to assure the debt is being collected by maintaining communication between the contracting officer and the payment office.

11. *Installment Payments and Deferment of Collection.* Clarifies procedures for processing installment payments and deferment of collection requests.

12. *Interest.* Consolidates and simplifies all discussions of interest in a single section, at FAR 32.608, Interest, to include—

a. The substance of the current language at FAR 32.614; and

b. *Computing interest credits.* The discussion focuses on how to compute the interest, i.e., from the time of overcollection until the time the

overcollection is remitted to the contractor.

13. Revises FAR 12.215 and 32.008 to refer to the responsibilities of the contracting officer at 32.604 when notified by the contractor of an overpayment.

14. *FAR Contract Clauses—Payment.* Revises the contract clauses at FAR 52.212–4(i)(5) and (6); 52.232–25(d); 52.232–26(c); and FAR 52.232–27(l) to assure that the contractor remits payment to the payment office (rather than the contracting officer) and the payment office is able to properly account for the remittance. Also, revises Alternate I of the clause at FAR 52.212–4 to be consistent with the requirements of the basic clause.

15. *FAR 52.232–17, Interest.* Revises FAR 52.232–17 to conform with the other revisions.

16. FAR 52.212–4 and 52.232–17. Revises the subject clauses to be consistent with the policy at FAR Part 32:

a. The Government’s right to make a demand for payment and start the interest clock running under the contract is ensured by adding a procedure to the Interest Clause permitting a demand for payment.

b. The Government’s right to make a demand for payment without first issuing a final decision of the contracting officer is ensured by incorporating the procedure into the interest clause. A final decision is required only if the contractor disagrees with the demand for payment.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 71 FR 62230, October 24, 2006.

Comments were received from three respondents in response to the proposed rule. The Councils considered all of the comments and recommendations in developing the final rule. A discussion of the comments is provided below.

B. Disposition of Comments:

1. *Comment.* One commenter recommended deleting the requirement at FAR 32.607–2(a)(2) for contractors to provide contracting officers information on the advisability of debt deferment to avoid possible over-collections when the contractor is not disputing the debt. When the contractor does not dispute the debt, there can be no over-collection.

Response. Under the Contract Disputes Act of 1978, contractors have one year to file an appeal. While a contractor may not initially dispute the claim, a contractor can subsequently decide to file an appeal within the statutory time limits. Therefore, over-collections can occur when a contractor

does not initially dispute the claim but subsequently files a claim. However, the office designated in agency procedures is responsible for determining whether the deferment of collection should be granted to avoid possible over-collections. That determination does not require input from the contractor. Therefore, the Councils deleted the requirement as recommended. In addition, the proposed rule also required contractors to provide the same information when the contractor is disputing the debt. The Councils also deleted that requirement since the determination does not require input from the contractor.

2. *Comment.* One commenter recommended moving the requirement at FAR 32.607-2(c)(2) for contracting officers to consider any information necessary to develop a recommendation on a deferment request before the requirement for the contracting officer to forward the recommendation on the deferment request to the office designated in agency procedures since the contracting officer should consider the information before developing and sending the recommendation.

Response. The Councils agreed and revised the rule as recommended.

3. *Comment.* One commenter said the statement at FAR 32.607-2(d) that an agency is required to use current year unexpired funds to pay interest on over-collections is unnecessary since the information is related to a financial management matter, not a contracting matter.

Response. The rule requires contracting officers to provide a recommendation on the contractor's request for a deferment of collection, including the advisability of deferment to avoid possible over-collections. Contracting officers need to know the possible ramifications of over-collections to make an informed recommendation.

4. *Comment.* One commenter stated that "actions filed by contractors shall not suspend or delay collection" in the last paragraph at FAR 32.607-2(j), "deferment of collection," made no sense since the subsection provides the rule for processing a deferment to suspend or defer collection. The commenter recommended rewording the requirement to say "the filing of an action under the Disputes clause does not suspend or delay the need for collection of a debt" and moving the requirement to the beginning of the subsection.

Response. The Councils agree and revised the rule as recommended.

5. *Comment.* One commenter said the statement in FAR 32.607-2(j) that "until

the action is decided" was unnecessary and confusing since contractors do not have to file an "action" or appeal in order to be eligible for a deferment of collection.

Response. The Councils agree and deleted the statement.

6. *Comment.* One commenter recommended deleting the requirement at FAR 32.607-2(j) for contractors to present "a good and sufficient bond or other acceptable collateral in the amount of the claim" for a deferment of collection because the requirement conflicts with the requirements that allow deferment of collections when a claim is not filed. The contractor's financial condition and promise to pay are considered "other acceptable collateral." Also, the requirement for the contractor to present the collateral to the contracting officer within 30 days of filing a dispute makes no sense because there is no time limit requirement for filing a dispute.

Response. A contractor's financial condition and promise to pay are not "other acceptable collateral." Collateral is property pledged by a contractor to protect the interests of the Government. However, the office designated in agency procedure, not the contracting officer, is responsible for determining whether a bond or other acceptable collateral is needed. Therefore, the Councils deleted the statement as recommended.

7. *Comment.* One commenter said the statement at FAR 32.607-2(j) that "any amount collected by the Government in excess of the amount found to be due on appeal shall be refunded to the contractor with interest" was misplaced since there can be no excess collection if payment is deferred. Also, this requirement would apply to cases where there is no deferment of collection but including it only in the subpart on deferment of collection means it would only apply to cases with deferments of collection. The requirement should be addressed in subsection FAR 32.608-2 on "interest credits." Further, the requirement says interest will be refunded to the contractor for any amounts collected by the Government in excess of the amount found due on appeal from "the date of collection" conflicts with the requirements in the subsection on "interest credits" that says the interest will be computed from the "date specified in the first demand for payment." If the requirement is addressed in the subsection on "interest credits," the last sentence of subpart FAR 32.607-2(j) that includes additional requirements for calculating interest on excess amounts collected by

the Government becomes unnecessary and should be deleted.

Response. The requirements of the subpart apply to all contractor requests for deferment of collections, not just to deferments granted by the Government. Therefore, there can be over-collections when the Government does not grant the deferment of collections. In addition, the requirements apply to all Government over-collections, not just those involving deferment of collections. Therefore, the coverage was relocated to the subsection on interest credits, and the last sentence of subpart 32.607-2(j) was deleted as recommended. Also, the methodology for calculating interest in the subpart did conflict with the methodology in the subpart on "interest credits." Therefore, the rule was revised to make the requirements consistent. Interest on Government over-collections begins on the date of over-collection, not the date of the first demand for payment.

8. *Comment.* One commenter recommended deleting the methodology for computing interest charges from 32.608-1(a)(2) because it duplicates coverage in the clause at FAR 52.232-7, Interest.

Response. The Councils agree the language is redundant and deleted the text as recommended.

9. *Comment.* One commenter recommended adding the requirement for making interest on contract debts part of the required elements for deferment agreements at 32.608-2(g) and deleting the requirement at 32.608-1(b) because it duplicates coverage at 32.607(c) on installment payments and deferment of collection.

Response. The Councils agree and revised the rule as recommended.

10. *Comment.* One commenter recommended revising the coverage at 32.608-2(b)(1) on interest credits to say interest "to be credited" instead of interest "to be charged" since the subsection deals with "interest credits."

Response. The Councils disagree and leave the rule as is.

11. *Comment.* One commenter said including information such as lines of accounting in the demand for payment is excessive and not particularly relevant to the contractor. Instead, require the contracting officer to provide the distribution of the debt by line of accounting and "additional information" to allow the payment or finance office to identify the affected lines of accounting, appropriations, and contracts, when the demand for payment is forwarded to the payment office. Finance offices have procedures for debt collection or other recovery of monies owed that are in accordance

with Department of Treasury regulations and policy. Most payment offices also know how to apply payments. Some of these procedures may overlap other policy or regulations such as those issued by the Department of Treasury.

Response. The lines of accounting are required for agency finance or payment offices to properly record the debt. If the lines of accounting are not readily available, the rule authorizes issuing the demand for payment without the lines of accounting. The Councils see no reason to require contracting officers to separately report the lines of accounting if the information is readily available when the demand for payment is made. In addition, the Councils are unaware of any conflict with Treasury or other agency's policy or regulations.

12. *Comment.* One commenter recommended combining the requirements of FAR 32.604(b)(4)(iii) and (i).

Response. The Councils believe the commenter is recommending combining the requirements at FAR 32.604(b)(4)(iii) and FAR 32.604(b)(4)(i). Both references discuss the methodology for calculating interest on contract debts that result from specific contract terms. The Councils agree and have revised the rule as recommended.

13. *Comment.* One commenter said the rule should also allow contractors to remit checks "payable to the agency," instead of requiring that the checks be "payable to the Treasurer of the United States" because payments due an agency are made payable to the agency.

Response. Section 2015 of the Treasury Financial Manual (TFM) says checks should be made payable to the organization maintaining the account to be credited, not to the Department of Treasury. Therefore, the Councils revised the rule to be consistent with the TFM.

14. *Comment.* One commenter asked whether the required notification at 32.604(b)(6) that the payment office may offset the debt against any payments otherwise due the contractor means any payment owed to the contractor by any Federal agency under any contract or only payments under the cognizant contract or other contracts awarded by the agency issuing the demand for payment.

Response. For the first 180 days after the demand for payment, the agency issuing the demand for payment will attempt to offset the debt against any payments otherwise due from the agency to the contractor. If an agency is unable to recover the debt within 180 days, agencies are required to transfer the debt to the Department of Treasury in accordance with the Debt Collection

Improvement Act of 1996. The Department of Treasury will then offset the debt against any payment made by a Federal agency under any contract and other Federal payments to the delinquent debt holder under the cognizant contract or other contracts awarded by the agency issuing the demand letter.

15. *Comment.* One commenter recommended including a statement in the required notice at FAR 32.604(b)(8) that requests for installment payments or deferment of collection must be written, provided to the contracting officer, and include "any information required."

Response. The commenter did not provide rationale for the change; however, the rule already requires that requests for installment payments or deferment of collection be written (see 32.607-1 and 32.607-2(a)). The rule also identifies to whom the contractor should submit its request, *i.e.*, payment office for installment payments and contracting officer for deferment of collections. Finally, nothing in the rule precludes agencies from requiring contractors to provide additional information to make a decision on a request for installment payments or deferment.

16. *Comment.* One commenter asked if there was a point in time that the contracting officer is expected to do more than follow up with the payment office to determine whether the debt has been collected and credited to the correct appropriations.

Response. The payment office is responsible for collecting debts identified by the contracting officer. As discussed above, agencies are required to transfer any debt that is delinquent more than 180 days to the Department of Treasury for collection. The Department of Treasury then offsets the debt against any payment made by a Federal agency under any contract and other Federal payments to the delinquent debt holder. As stated in the rule, contracting officers are not authorized to collect contract debts or otherwise agree to liquidate contract debts.

17. *Comment.* One commenter said the requirement at 32.607(a) that the contracting officer cannot approve or deny a contractor's request for installment payments or deferment of collections appears to contradict the requirement at FAR 32.605(a)(3) for the contracting officer to issue a final decision if the contractor requests a deferment of collection on a debt previously demanded by the contracting officer.

Response. Approving or denying a contractor's request for installment payments or deferment of collections is not the same as issuing a final decision. The contracting officer is required to issue a demand for payment as soon as the contracting officer has determined the existence and amount of a debt. In most cases, contractors willingly repay the debt after receiving the demand for payment. If a contractor instead requests a deferment of collection or otherwise does not repay the debt in accordance with the demand for payment, the Government is required to initiate a claim against the contractor to ensure the debt is repaid. Government claims require a contracting officer's final decision under the Contract Disputes Act.

18. *Comment.* One commenter said the proposed coverage at 32.607(b)(1) on the circumstances that might justify debt deferment or installment payments when the contractor has not appealed the debt or filed an action under the disputes clause appears to be information necessary for agency financing offices, not contracting officers, since the office designed to approve or deny these actions is probably the payment or finance office. The commenter questioned the purpose of and need for its inclusion in the FAR.

Response. Contracting officers are required to provide the office designated in agency procedures for a decision on a deferment request a recommendation on the requests. Therefore, contracting officers need to understand the circumstances that might justify a deferment of collection. In addition, if the contractor's operations under national defense contracts will be seriously impaired by immediate repayment, the contracting officer should provide the payment or finance office information that will be considered for an installment payment agreement or debt deferment. The Councils note the subject requirements are not changed by this rule.

19. *Comment.* One commenter questioned the need for the deferment/installment agreement requirements at 32.607(b)(2) in the FAR since contracting officers are not authorized to approve or deny requests for deferments or installment payments.

Response. The Councils note the subject requirements are not changed by this rule. The Councils believe it is appropriate to include the language so contracting officers and contractors understand what will be required if an agreement is reached. While the contracting officers do not approve or deny these requests, contracting officers

routinely provide contractors assistance when preparing the requests.

20. *Comment.* One commenter questioned how the requirement for the contracting officer to forward to the office designated in agency procedures for a decision (a) a copy of the contractor's request for a deferment of collection, (b) a recommendation on that request, (c) a statement as to whether the contractor has an appeal pending or action filed under the disputes clause, and (d) a copy of the contracting officer's final decision (see 32.607–2(c)(1)) is different from the contracting officer's final decision.

Response. The contracting officer's final decision is one of the four items the contracting officer is required to forward to the office designated in agency procedure for a decision on the deferment request. The other required items provide additional information used by the office designated in agency procedure for a decision on the deferment request. Finally, a contracting officer has sole authority to determine the existence and amount of contract debts and to issue the final decision. That contracting officer's final decision is not subject to any other office's decision.

21. *Comment.* One commenter said the coverage at 32.607–2(f) that states contracts and arrangements for deferment shall not provide that a claim of the Government will not become due and payable pending mutual agreement on the amount of the claim or, in the case of dispute, until a decision is reached is confusing and unclear as to its meaning.

Response. The Councils note that the coverage is not changed by this rule. However, the Councils believe stating 'contracts and arrangements for deferments' could be confusing since deferment agreements are binding contracts between the contractor and the Government. Therefore, the Councils deleted the reference to "contracts" and changed "arrangements for deferment" to "deferment agreements" to clarify the requirement. The remaining coverage says that the Government retains the right to collect the debt at any time. The Councils are unaware of any problems with this coverage.

22. *Comment.* One commenter asked if the deferment agreement is a contract or whether the agreement should be incorporated into the contract to ensure the agreement is legally binding.

Response. There is no need to incorporate the agreements into the affected contracts because the agreements themselves are legally binding contracts between the contractor and the Government.

23. *Comment.* One commenter recommended revising the coverage on "compromise" at 32.610 because the contracting officer has the authority to settle any Government claim under the Contract Disputes Act at any time except for claims pending litigation, which are the responsibility of the Attorney General. While the term "compromise" is not defined in the Federal Claims Collection Act or the implementing regulations at 31 CFR 900.2, Black's Law Dictionary defines "compromise" as settlement. The commenter recommended revising the coverage to allow contracting officers to "compromise" debt claims that fall under the Contract Disputes Act to be consistent with FAR 33.204 and 33.210.

Response. Contracting officers have the authority to resolve all contractual issues in controversy. Contracting officers do not have the authority to compromise any resulting debt after the controversial issues have been resolved.

24. *Comment.* One commenter recommended requiring contracting officers to attempt to resolve any disputes over the existence of a debt or the amount through negotiations as part of the initial debt determination at FAR 32.605(a) to be consistent with the requirements at FAR 33.204.

Response. The rule is consistent with FAR 33.204, which requires contracting officers to use reasonable efforts to resolve controversies prior to the submission of a claim. Making a debt determination does not constitute submission of a claim. A Government claim is submitted when the contracting officer issues a final decision on the claim. Nothing in the rule prevents the Government from attempting to resolve controversies prior to the contracting officer's final decision.

25. *Comment.* One commenter said the coverage on final decisions at FAR 32.605 duplicates the coverage on contracting officer's decisions at FAR 33.211. The commenter also said all coverage on final decisions should be addressed in one FAR section and that section should be FAR Subpart 33.2, Disputes and Appeals.

Response. FAR 32.6 prescribes the policies and procedures for identifying, collecting, and deferring contract debts. Part 33 prescribes policies and procedures for processing contract disputes and appeals. Contracting officer's final decisions are key to both processes. Therefore, the Councils believe it is appropriate to include coverage in both subparts.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and

Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the regulatory changes are predominantly internal operating procedures for contracting officers and will not significantly change duties of small entities under their contract.

D. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 12, 13, 32, 33, 36, 42, and 52

Government procurement.

Dated: September 9, 2008.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 12, 13, 32, 33, 36, 42, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 12, 13, 32, 33, 36, 42, and 52 continues to read as follows:

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

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Revise section 12.215 to read as follows:

12.215 Notification of overpayment.

If the contractor notifies the contracting officer of a duplicate payment or that the Government has otherwise overpaid, the contracting officer shall follow the procedures at 32.604.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 3. Amend section 13.401 by revising paragraph (b) to read as follows:

13.401 General.

* * * * *

(b) The contracting officer shall be primarily responsible for determining the amount of debts resulting from failure of contractors to properly

replace, repair, or correct supplies lost, damaged, or not conforming to purchase requirements (see 32.602 and 32.603).

PART 32—CONTRACT FINANCING

■ 4. Revise section 32.008 to read as follows:

32.008 Notification of overpayment.

If the contractor notifies the contracting officer of a duplicate payment or that the Government has otherwise overpaid, the contracting officer shall follow the procedures at 32.604.

■ 5. Revise Subpart 32.6 to read as follows:

Sec.

- 32.600 Scope of subpart.
- 32.601 General.
- 32.602 Responsibilities.
- 32.603 Debt determination.
- 32.604 Demand for payment.
- 32.605 Final decisions.
- 32.606 Debt collection.
- 32.607 Installment payments and deferment of collection.
- 32.607-1 Installment payments.
- 32.607-2 Deferment of collection.
- 32.608 Interest.
- 32.608-1 Interest charges.
- 32.608-2 Interest credits.
- 32.609 Delays in receipt of notices or demands.
- 32.610 Compromising debts.
- 32.611 Contract clause.

Subpart 32.6—Contract Debts

32.600 Scope of subpart.

This subpart prescribes policies and procedures for identifying, collecting, and deferring collection of contract debts (including interest, if applicable). Sections 32.607, 32.608, and 32.610 of this subpart do not apply to claims against common carriers for transportation overcharges and freight and cargo losses (31 U.S.C. 3726).

32.601 General.

(a) Contract debts are amounts that—

- (1) Have been paid to a contractor to which the contractor is not currently entitled under the terms and conditions of the contract; or

(2) Are otherwise due from the contractor under the terms and conditions of the contract.

(b) Contract debts include, but are not limited to, the following:

(1) Billing and price reductions resulting from contract terms for price redetermination or for determination of prices under incentive type contracts.

(2) Price or cost reductions for defective cost or pricing data.

(3) Financing payments determined to be in excess of the contract limitations at 52.232-16(a)(7), Progress Payments, or 52.232-32(d)(2), Performance—Based

Payments, or any contract clause for commercial item financing.

(4) Increases to financing payment liquidation rates.

(5) Overpayments disclosed by quarterly statements required under price redetermination or incentive contracts.

(6) Price adjustments resulting from Cost Accounting Standards (CAS) noncompliances or changes in cost accounting practice.

(7) Reinspection costs for nonconforming supplies or services.

(8) Duplicate or erroneous payments.

(9) Damages or excess costs related to defaults in performance.

(10) Breach of contract obligations concerning progress payments, performance-based payments, advance payments, commercial item financing, or Government-furnished property.

(11) Government expense of correcting defects.

(12) Overpayments related to errors in quantity or billing or deficiencies in quality.

(13) Delinquency in contractor payments due under agreements or arrangements for deferral or postponement of collections.

(14) Reimbursement of amounts due under 33.102(b)(3) and 33.104(h)(8).

32.602 Responsibilities.

(a) The contracting officer has primary responsibility for identifying and demanding payment of contract debts except those resulting from errors made by the payment office. The contracting officer shall not collect contract debts or otherwise agree to liquidate contract debts (e.g., offset the amount of the debt against existing unpaid bills due the contractor, or allow contractors to retain contract debts to cover amounts that may become payable in future periods).

(b) The payment office has primary responsibility for—

(1) Collecting contract debts identified by contracting officers;

(2) Identifying and collecting duplicate and erroneous payments; and

(3) Authorizing the liquidation of contract debts in accordance with agency procedures.

32.603 Debt determination.

(a) If the contracting officer has any indication that a contractor owes money to the Government under a contract, the contracting officer shall determine promptly whether an actual debt is due and the amount. Any unnecessary delay may contribute to—

(1) Loss of timely availability of the funds to the program for which the funds were initially provided;

(2) Increased difficulty in collecting the debt; or

(3) Actual monetary loss to the Government.

(b) The amount of indebtedness determined by the contracting officer shall be an amount that—

(1) Is based on the merits of the case; and

(2) Is consistent with the contract terms.

32.604 Demand for payment.

(a) Except as provided in paragraph (c) of this section, the contracting officer shall take the following actions:

(1) Issue the demand for payment as soon as the contracting officer has determined that an actual debt is due the Government and the amount.

(2) Issue the demand for payment even if—

(i) The debt is or will be the subject of a bilateral modification;

(ii) The contractor is otherwise obligated to pay the money under the existing contract terms; or

(iii) The contractor has agreed to repay the debt.

(3) Issue the demand for payment as a part of the final decision, if a final decision is required by 32.605(a).

(b) The demand for payment shall include the following:

(1) A description of the debt, including the debt amount.

(2) A distribution of the principal amount of the debt by line(s) of accounting subject to the following:

(i) If the debt affects multiple lines of accounting, the contracting officer shall, to the maximum extent practicable, identify all affected lines of accounting. If it is not practicable to identify all affected lines of accounting, the contracting officer may select representative lines of accounting in accordance with paragraph (b)(2)(ii) of this section.

(ii) In selecting representative lines of accounting, the contracting officer shall—

(A) Consider the affected departments or agencies, years of appropriations, and the predominant types of appropriations; and

(B) Not distribute to any line of accounting an amount of the principal in excess of the total obligation for the line of accounting; and

(iii) Include the lines of accounting even if the associated funds are expired or cancelled. While cancelled funds will be deposited in a miscellaneous receipt account of the Treasury if collected, the funds are tracked under the closed year appropriation(s) to comply with the Anti-Deficiency Act.

(iv) If the debt affects multiple contracts and the lines of accounting are not readily available, the contracting officer shall—

(A) Issue the demand for payment without the distribution of the principal amount to the affected lines of accounting;

(B) Include a statement in the demand for payment advising when the distribution will be provided; and

(C) Provide the distribution by the date identified in the demand for payment.

(3) The basis for and amount of any accrued interest or penalty.

(4)(i) For debts resulting from specific contract terms (e.g., debts resulting from incentive clause provisions, Quarterly Limitation on Payments Statement, Cost Accounting Standards, price reduction for defective pricing), a notification stating that payment should be made promptly, and that interest is due in accordance with the terms of the contract. Interest shall be computed from the date specified in the applicable contract clause until repayment by the contractor. The interest rate shall be the rate specified in the applicable contract clause. In the case of a debt arising from a price reduction for defective pricing, or as specifically set forth in a Cost Accounting Standards (CAS) clause in the contract, interest is computed from the date of overpayment by the Government until repayment by the contractor at the underpayment rate established by the Secretary of the Treasury, for the periods affected, under 26 U.S.C. 6621(a)(2).

(ii) For all other contract debts, a notification stating that any amounts not paid within 30 days from the date of the demand for payment will bear interest. Interest shall be computed from the date of the demand for payment until repayment by the contractor. The interest rate shall be the interest rate established by the Secretary of the Treasury, as provided in Section 611 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six-month period as established by the Secretary until the amount is paid.

(5) A statement advising the contractor—

(i) To contact the contracting officer if the contractor believes the debt is invalid or the amount is incorrect; and

(ii) If the contractor agrees, to remit a check payable to the agency's payment office annotated with the contract number along with a copy of the demand for payment to the payment office identified in the contract or as otherwise specified in the demand letter in accordance with agency procedures.

(6) Notification that the payment office may initiate procedures, in

accordance with the applicable statutory and regulatory requirements, to offset the debt against any payments otherwise due the contractor.

(7) Notification that the debt may be subject to administrative charges in accordance with the requirements of 31 U.S.C. 3717(e) and the Debt Collection Improvement Act of 1996.

(8) Notification that the contractor may submit a request for installment payments or deferment of collection if immediate payment is not practicable or if the amount is disputed.

(c) Except as provided in paragraph (d) of this section, the contracting officer should not issue a demand for payment if the contracting officer only becomes aware of the debt when the contractor—

(1) Provides a lump sum payment or submits a credit invoice. (A credit invoice is a contractor's request to liquidate the debt against existing unpaid bills due the contractor); or

(2) Notifies the contracting officer that the payment office overpaid on an invoice payment. When the contractor provides the notification, the contracting officer shall notify the payment office of the overpayment.

(d) If a demand for payment was not issued as provided for in paragraph (c) of this section, the contracting officer shall issue a demand for payment no sooner than 30 days after the contracting officer becomes aware of the debt unless—

(1) The contractor has liquidated the debt;

(2) The contractor has requested an installment payment agreement; or

(3) The payment office has issued a demand for payment.

(e) The contracting officer shall—

(1) Furnish a copy of the demand for payment to the contractor by certified mail, return receipt requested, or by any other method that provides evidence of receipt; and

(2) Forward a copy of the demand to the payment office.

32.605 Final decisions.

(a) The contracting officer shall issue a final decision as required by 33.211 if—

(1) The contracting officer and the contractor are unable to reach agreement on the existence or amount of a debt in a timely manner;

(2) The contractor fails to liquidate a debt previously demanded by the contracting officer within the timeline specified in the demand for payment unless the amounts were not repaid because the contractor has requested an installment payment agreement; or

(3) The contractor requests a deferment of collection on a debt

previously demanded by the contracting officer (see 32.607-2).

(b) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(c) The contracting officer shall—

(1) Furnish the decision to the contractor by certified mail, return receipt requested, or by any other method that provides evidence of receipt; and

(2) Forward a copy to the payment office identified in the contract.

32.606 Debt collection.

(a) If the contractor has not liquidated the debt within 30 days of the date due or requested installment payments or deferment of collection, the payment office shall initiate withholding of principal, interest, penalties, and administrative charges. In the event the contract is assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 15), the rights of the assignee will be scrupulously respected and withholding of payments shall be consistent with those rights. For additional information on assignment of claims, see Subpart 32.8.

(b) As provided for in the Debt Collection Improvement Act of 1996 (31 U.S.C. 3711(g)(1)), payment offices are required to transfer any debt that is delinquent more than 180 days to the Department of Treasury for collection.

(c) The contracting officer shall periodically follow up with the payment office to determine whether the debt has been collected and credited to the correct appropriation(s).

32.607 Installment payments and deferment of collection.

(a) The contracting officer shall not approve or deny a contractor's request for installment payments or deferment of collections. The office designated in agency procedures is responsible for approving or denying requests for installment payments or deferment of collections.

(b) If a contractor has not appealed the debt or filed an action under the Disputes clause of the contract and the contractor has submitted a proposal for debt deferment or installment payments—

(1) The office designated in agency procedures may arrange for deferment/installment payments if the contractor is unable to pay at once in full or the contractor's operations under national defense contracts would be seriously impaired. The arrangement shall include appropriate covenants and

securities and should be limited to the shortest practicable maturity; and

(2) The deferment/installment agreement shall include a specific schedule or plan for payment. It should permit the Government to make periodic financial reviews of the contractor and to require payments earlier than required by the agreement if the Government considers the contractor's ability to pay improved. It should also provide for required stated or measurable payments on the occurrence of specific events or contingencies that improve the contractor's ability to pay.

(c) If not already applicable under the contract terms, interest on contract debt shall be made an element of any agreement entered into for installment payments or deferment of collection.

32.607-1 Installment payments.

If a contractor requests an installment payment agreement, the contracting officer shall notify the contractor to send a written request for installment payments to the office designated in agency procedures.

32.607-2 Deferment of collection.

(a) All requests for deferment of collection must be submitted in writing to the contracting officer.

(1) If the contractor has appealed the debt under the procedures of the Disputes clause of the contract, the information with the request for deferment may be limited to an explanation of the contractor's financial condition.

(2) Actions filed by contractors under the Disputes Clause shall not suspend or delay collection.

(3) If there is no appeal pending or action filed under the Disputes clause of the contract, the following information about the contractor should be submitted with the request:

- (i) Financial condition.
- (ii) Contract backlog.
- (iii) Projected cash receipts and requirements.

(iv) The feasibility of immediate payment of the debt.

(v) The probable effect on operations of immediate payment in full.

(b) Upon receipt of the contractor's written request, the contracting officer shall promptly provide a notification to the payment office and advise the payment office that the contractor's request is under consideration.

(c)(1) The contracting officer should consider any information necessary to develop a recommendation on the deferment request.

(2) The contracting officer shall forward the following to the office

designated in agency procedures for a decision:

(i) A copy of the contractor's request for a deferment of collection.

(ii) A written recommendation on the request and the basis for the recommendation including the advisability of deferment to avoid possible overcollections.

(iii) A statement as to whether the contractor has an appeal pending or action filed under the Disputes clause of the contract and the docket number if the appeal has been filed.

(iv) A copy of the contracting officer's final decision (see 32.605).

(d) The office designated in agency procedures may authorize a deferment pending the resolution of appeal to avoid possible overcollections. The agency is required to use unexpired funds to pay interest on overcollections.

(e) Deferments pending disposition of appeal may be granted to small business concerns and financially weak contractors, balancing the need for Government security against loss and undue hardship on the contractor.

(f) The deferment agreement shall not provide that a claim of the Government will not become due and payable pending mutual agreement on the amount of the claim or, in the case of a dispute, until the decision is reached.

(g) At a minimum, the deferment agreement shall contain the following:

- (1) A description of the debt.
- (2) The date of first demand for payment.

(3) Notice of an interest charge, in conformity with 32.608 and the FAR clause at 52.232-17, Interest; or, in the case of a debt arising from a defective pricing or a CAS noncompliance overpayment, interest, as prescribed by the applicable Price Reduction for Defective Cost or Pricing Data or CAS clause (see 32.607(c)).

(4) Identification of the office to which the contractor is to send debt payments.

(5) A requirement for the contractor to submit financial information requested by the Government and for reasonable access to the contractor's records and property by Government representatives.

(6) Provision for the Government to terminate the deferment agreement and accelerate the maturity of the debt if the contractor defaults or if bankruptcy or insolvency proceedings are instituted by or against the contractor.

(7) Protective requirements that are considered by the Government to be prudent and feasible in the specific circumstances. The coverage of protective terms at 32.409 and 32.501-5 may be used as a guide.

(h) If a contractor appeal of the debt determination is pending, the deferment agreement shall also include a requirement that the contractor shall—

(1) Diligently prosecute the appeal; and

(2) Pay the debt in full when the appeal is decided, or when the parties reach agreement on the debt amount.

(i) The deferment agreement may provide for the right to make early payments without prejudice, for refund of overpayments, and for crediting of interest.

32.608 Interest.

32.608-1 Interest charges.

Unless specified otherwise in the clause at 52.232-17, Interest, interest charges shall apply to any contract debt unpaid after 30 days from the issuance of a demand unless—

(a) The contract is a kind excluded under 32.611; or

(b) The contract or debt has been exempted from interest charges under agency procedures.

32.608-2 Interest credits.

(a) An equitable interest credit shall be applied under the following circumstances:

(1) When the amount of debt initially determined is subsequently reduced; e.g., through a successful appeal.

(2) When any amount collected by the Government is in excess of the amount found to be due on appeal under the Disputes Clause of the contract.

(3) When the collection procedures followed in a given case result in an overcollection of the debt due.

(4) When the responsible official determines that the Government has unduly delayed payments to the contractor on the same contract at some time during the period to which the interest charge applied, provided an interest penalty was not paid for such late payment.

(b) Any appropriate interest credits shall be computed under the following procedures:

(1) Interest at the rate under 52.232-17 shall be charged on the reduced debt from the date of collection by the Government until the date the monies are remitted to the contractor.

(2) Interest may not be reduced for any time between the due date under the demand and the period covered by a deferment of collection, unless the contract includes an interest clause; e.g., the clause prescribed in 32.611.

(3) Interest shall not be credited in an amount that, when added to other amounts refunded or released to the contractor, exceeds the total amount

that has been collected, or withheld for the purpose of collecting the debt. This limitation shall be further reduced by the amount of any limitation applicable under paragraph (b)(2) of this subsection.

32.609 Delays in receipt of notices or demands.

If interest is accrued based on the date of the demand letter and delivery of the demand letter is delayed by the Government (e.g., undue delay after dating at the originating office or delays in the mail), the date of the debt and accrual of interest shall be extended to a time that is fair and reasonable under the particular circumstances.

32.610 Compromising debts.

For debts under \$100,000, excluding interest, the designated agency official may compromise the debt pursuant to the Federal Claims Collection Standards (31 CFR part 902) and agency regulations. Unless specifically authorized by agency procedures, contracting officers cannot compromise debts.

32.611 Contract clause.

(a) The contracting officer shall insert the clause at 52.232-17, Interest, in solicitations and contracts unless it is contemplated that the contract will be in one or more of the following categories:

- (1) Contracts at or below the simplified acquisition threshold.
- (2) Contracts with Government agencies.
- (3) Contracts with a State or local government or instrumentality.
- (4) Contracts with a foreign government or instrumentality.
- (5) Contracts without any provision for profit or fee with a nonprofit organization.
- (6) Contracts described in Subpart 5.5, Paid Advertisements.
- (7) Any other exceptions authorized under agency procedures.

(b) The contracting officer may insert the FAR clause at 52.232-17, Interest, in solicitations and contracts when it is contemplated that the contract will be in any of the categories specified in 32.611(a).

PART 33—PROTESTS, DISPUTES, AND APPEALS

33.208 [Amended]

■ 6. Amend section 33.208 by removing from paragraph (b) “32.614” and adding “the clause at 52.232-17” in its place.

33.211 [Amended]

■ 7. Amend section 33.211 by removing from paragraph (a)(4)(vi) “32.610(b)”

and adding “32.604 and 32.605” in its place.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.608 [Amended]

■ 8. Amend section 36.608 in the fourth sentence by removing “collect” and adding “issue a demand for payment of” in its place.

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 9. Amend section 42.302 by revising paragraph (a)(17) to read as follows:

42.302 Contract administration functions.

(a) * * *
 (17) Analyze quarterly limitation on payments statements and take action in accordance with Subpart 32.6 to recover overpayments from the contractor.
 * * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 10. Amend section 52.212-4 by—
 - a. Revising the date of the clause;
 - b. Revising paragraph (i)(5);
 - c. Adding paragraph (i)(6); and
 - d. Amending Alternate I as follows:
 - 1. Revising the date of Alternate I;
 - 2. Revising paragraph (i)(5); and
 - 3. Redesignating paragraphs (i)(6) through (i)(9) as (i)(7) through (i)(10), respectively, and adding a new paragraph (i)(6).

The revised and added text reads as follows:

52.212-4 Contract Terms and Conditions—Commercial Items.

* * * * *
 CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS (OCT 2008)
 * * * * *

(i) * * *
 (5) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

- (A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);
- (B) Affected contract number and delivery order number, if applicable;
- (C) Affected contract line item or subline item, if applicable; and
- (D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) *Interest.* (i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 611 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) *Final decisions.* The Contracting Officer will issue a final decision as required by 33.211 if—

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.
 (B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

- (A) The date on which the designated office receives payment from the Contractor;
- (B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or
- (C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

* * * * *
 Alternate I (OCT 2008). * * * * *
 * * * * *

(j) * * *
 (5) *Overpayments/Underpayments.* Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices, that are found by the Contracting Officer not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. The Contractor shall

promptly pay any such reduction within 30 days unless the parties agree otherwise. The Government within 30 days will pay any such increases, unless the parties agree otherwise. The Contractor's payment will be made by check. If the Contractor becomes aware of a duplicate invoice payment or that the Government has otherwise overpaid on an invoice payment, the Contractor shall—

- (i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—
 - (A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);
 - (B) Affected contract number and delivery order number, if applicable;
 - (C) Affected contract line item or subline item, if applicable; and
 - (D) Contractor point of contact.
- (ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6)(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury, as provided in section 611 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six month period as established by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) *Final Decisions.* The Contracting Officer will issue a final decision as required by 33.211 if—

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt in a timely manner;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see FAR 32.607-2).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

- (A) The date fixed under this contract.
- (B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

- (A) The date on which the designated office receives payment from the Contractor;
- (B) The date of issuance of a Government check to the Contractor from which an

amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(viii) Upon receipt and approval of the invoice designated by the Contractor as the "completion invoice" and supporting documentation, and upon compliance by the Contractor with all terms of this contract, any outstanding balances will be paid within 30 days unless the parties agree otherwise. The completion invoice, and supporting documentation, shall be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event later than 1 year (or such longer period as the Contracting Officer may approve in writing) from the date of completion.

* * * * *

■ 11. Amend section 52.213-4 by revising the date of the clause and paragraph (a)(2)(iv) to read as follows:

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

* * * * *

TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL ITEMS) (OCT 2008)

* * * * *

- (a) * * *
- (2) * * *
- (iv) 52.232-25, Prompt Payment (OCT 2008).

* * * * *

■ 12. Revise section 52.232-17 to read as follows:

52.232-17 Interest.

As prescribed in 32.611(a) and (b), insert the following clause:

INTEREST (OCT 2008)

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 611 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (e) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(c) *Final Decisions.* The Contracting Officer will issue a final decision as required by 33.211 if—

(1) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt in a timely manner;

(2) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(3) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).

(d) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(e) Amounts shall be due at the earliest of the following dates:

- (1) The date fixed under this contract.
- (2) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(f) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(1) The date on which the designated office receives payment from the Contractor;

(2) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(3) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(g) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(End of clause)

■ 13. Amend section 52.232-25 by revising the date of the clause and paragraph (d) to read as follows:

52.232-25 Prompt Payment.

* * * * *

PROMPT PAYMENT (OCT 2008)

* * * * *

(d) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(1) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(i) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(ii) Affected contract number and delivery order number if applicable;

(iii) Affected contract line item or subline item, if applicable; and

(iv) Contractor point of contact.

(2) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(End of clause)

* * * * *

■ 14. Amend section 52.232–26 by revising the date of the clause and paragraph (c) to read as follows:

52.232–26 Prompt Payment for Fixed-Price Architect-Engineer Contracts.

* * * * *

PROMPT PAYMENT FOR FIXED-PRICE ARCHITECT-ENGINEER CONTRACTS (OCT 2008)

* * * * *

(c) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(1) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(i) Circumstances of the overpayment (*e.g.*, duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(ii) Affected contract number and delivery order number if applicable;

(iii) Affected contract line item or subline item, if applicable; and

(iv) Contractor point of contact.

(2) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(End of clause)

■ 15. Amend section 52.232–27 by revising the date of the clause and paragraph (l) to read as follows:

52.232–27 Prompt Payment for Construction Contracts.

* * * * *

PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS (OCT 2008)

* * * * *

(l) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(1) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(i) Circumstances of the overpayment (*e.g.*, duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(ii) Affected contract number and delivery order number if applicable;

(iii) Affected contract line item or subline item, if applicable; and

(iv) Contractor point of contact.

(2) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(End of clause)

[FR Doc. E8–21382 Filed 9–16–08; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 12

[FAC 2005–27; FAR Case 2007–022; Item VII; Docket 2008–0001; Sequence 13]

RIN 9000–AL03

Federal Acquisition Regulation; FAR Case 2007–022, Subcontractor Requests for Bonds

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify that the clause “Prospective Subcontractor Requests for Bonds” does not apply to commercial items.

DATES: *Effective Date:* September 17, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Jackson, Procurement Analyst, at (202) 208–4949 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAC 2005–27, FAR case 2007–022.

SUPPLEMENTARY INFORMATION:

A. Background

The FAR clause at FAR 52.228–12, Prospective Subcontractor Requests for Bonds, implemented Section 806(a)(3) of Public Law 102–190, as amended, which specifies that, upon the request of a prospective subcontractor or supplier offering to furnish labor or material for the performance of a construction contract for which a payment bond has been furnished to the United States pursuant to the Miller Act, the contractor shall promptly provide a copy of such payment bond to the requestor. In conjunction with performance bonds, payment bonds are used in Government construction contracts to secure fulfillment of the contractor’s obligations under the contract and to assure that the contractor makes all payments, as required by law, to persons furnishing labor or material in performance of the contract. The FAR clause at 52.228–12,

which has an effective date of October 1, 1995, reflects the addition of Section 806(a)(3) of Pub L. 102–190, as amended by Sections 2091 and 8105 of Pub. L. 103–355, at FAR 12.503(a) and 12.504(a). When the implementation of FAR 28.106–4 occurred, the appropriate incorporation of the FAR clause at 52.228–12, Prospective Subcontractor Requests for Bonds, was accomplished, but not the incorporation of the associated statutory citation in FAR 12.503 and 12.504.

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

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Part 12 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2005–27, FAR case 2007–022), in correspondence.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 12

Government procurement.

Dated: September 9, 2008.

Al Matera,

Director, Office of Acquisition Policy.

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

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 1. The authority citation for 48 CFR part 12 continues to read as follows:

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

■ 2. Amend section 12.503 by revising the section heading and adding paragraph (a)(7) to read as follows:

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

(a) * * *

(7) Section 806(a)(3) of Pub. L. 102-190, as amended by Sections 2091 and 8105 of Pub. L. 103-355, Payment Protections for Subcontractors and Suppliers (see 28.106-6).

* * * * *

■ 3. Amend section 12.504 by adding paragraph (a)(13) to read as follows:

12.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

(a) * * *

(13) Section 806(a)(3) of Pub. L. 102-190, as amended by Sections 2091 and 8105 of Pub. L. 103-355, Payment Protections for Subcontractors and Suppliers (see 28.106-6).

* * * * *

[FR Doc. E8-21381 Filed 9-16-08; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Part 13**

[FAC 2005-27; FAR Case 2008-002; Item VIII; Docket 2008-0001; Sequence 11]

RIN 9000-AL02

Federal Acquisition Regulation; FAR Case 2008-002, Extension of Authority for Use of Simplified Acquisition Procedures for Certain Commercial Items

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Section 822 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

DATES: *Effective Date:* September 17, 2008.

FOR FURTHER INFORMATION CONTACT Mr. Michael Jackson, Procurement Analyst, at (202) 208-4949 for clarification of content. For information pertaining to status or publication schedules, contact

the FAR Secretariat at (202) 501-4755. Please cite FAC 2005-27, FAR case 2008-002.

SUPPLEMENTARY INFORMATION:**A. Background**

This final rule amends the FAR to implement Section 822 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181). Section 822 amends Section 4202(e) of the Clinger-Cohen Act of 1996 (division D of Pub. L. 104-106; 110 Stat. 652; 10 U.S.C. 2304 note) by extending until January 1, 2010, the timeframe in which an agency may use simplified procedures to purchase commercial items in amounts greater than the simplified acquisition threshold, but not exceeding \$5,500,000 (\$11 million for acquisitions as described in 13.500(e)).

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

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98-577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Part 13 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2005-27, FAR case 2008-002), in all correspondence.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 13

Government procurement.

Dated: September 9, 2008.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 13 as set forth below:

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 1. The authority citation for 48 CFR part 13 continues to read as follows:

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

13.500 [Amended]

■ 2. Amend section 13.500 by removing from paragraph (d) "January 1, 2008" and adding "January 1, 2010" in its place.

[FR Doc. E8-21380 Filed 9-16-08; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Part 16**

[FAC 2005-27; FAR Case 2008-006; Item IX; Docket 2008-01, Sequence 5]

RIN 9000-AL05

Federal Acquisition Regulation; FAR Case 2008-006, Enhanced Competition for Task and Delivery Order Contracts—Section 843 of the Fiscal Year 2008 National Defense Authorization Act

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

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement the Fiscal Year 2008 National Defense Authorization Act, Section 843 "Enhanced Competition for Task and Delivery Order Contracts" (FY08 NDAA). Section 843 of the FY08 NDAA stipulates several requirements regarding enhancing competition within Federal contracting.

DATES: *Effective Date:* September 17, 2008.

Applicability date: FAR 16.503 and 16.504, as amended by this rule, are applicable to single award task or delivery order contracts awarded on or after May 27, 2008. FAR 16.505, as amended by this rule, is applicable to orders awarded on or after May 27, 2008 on existing contracts as well as new contracts.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before November 17, 2008 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–27, FAR case 2008–006, by any of the following methods:

• Regulations.gov: <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by inputting “FAR Case 2008–006” under the heading “Comment or Submission”. Select the link “Send a Comment or Submission” that corresponds with FAR Case 2008–006. Follow the instructions provided to complete the “Public Comment and Submission Form”. Please include your name, company name (if any), and “FAR Case 2008–006” on your attached document.

• Fax: 202–501–4067.

• Mail: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW, Room 4041, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–27, FAR case 2008–006, 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: Mr. William Clark, Procurement Analyst, at (202) 219–1813 for clarification of content. Please cite FAC 2005–27, FAR case 2008–006. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

The Fiscal Year 2008 National Defense Authorization Act (Pub. L. 110–181), Section 843 “Enhanced Competition for Task and Delivery Order Contracts” includes several requirements regarding enhancing competition within the Federal contracting framework. The provisions of Section 843 include: (1) Limitation on single award task and delivery order contracts greater than \$100 million; (2) Enhanced competition for task and delivery orders in excess of \$5 million; and (3) Protest on orders on the grounds that the order increases the scope, period, maximum value of the contract under which the order is issued; or valued in excess of \$10 million.

The FAR changes are applicable to Indefinite-Delivery Requirements, and Indefinite-Quantity, type contracts where issuance of a task or delivery order is placed pursuant to FAR Subpart 16.5. The purpose of this statute is to improve opportunities for competition

through fair opportunity, transparency and accountability in contracting.

1. *Limitation on single award task or delivery order contracts greater than \$100 million.* Section 843 states that no task or delivery order contract in an amount estimated to exceed \$100 million (including all options) may be awarded to a single source unless the head of the agency determines in writing that—

a. The task or delivery orders expected under the contract are so integrally related that only a single source can reasonably perform the work;

b. The contract provides only for firm-fixed price task or delivery orders;

c. Only one source is qualified and capable of performing the work at a reasonable price to the Government; or

d. It is necessary in the public interest to award the contract to a single source due to exceptional circumstances.

The agency head must also notify Congress within 30 days after making the determination in the public interest. The objective of this provision is to place greater emphasis on awarding multiple award contracts and enhancing the fair opportunity provisions within FAR Subpart 16.5. Competition of orders leads to improved contractor performance, stimulation of technological solutions, and reduction of costs over time. The tenets of this provision strike at the core of enhancing competition and ensuring competition continues to exist even after award of the initial contract vehicles. Notwithstanding the limitation on single awards, there are occasions when a single award is necessary. For these occasions, Section 843 authorizes exceptions for awarding single award task or delivery order contracts that exceed \$100 million.

2. *Enhanced competition for orders in excess of \$5 million.* This Section 843 requirement emphasizes the importance of following certain specified procedures in the competitive placement of task or delivery orders with an expected value in excess of \$5 million (including options) placed against multiple award contracts. All awardees are to be given a fair opportunity to be considered for each order, at a minimum, a notice of the order with a clear statement of requirements, a reasonable response period, disclosure of the significant evaluation factors and subfactors, and where award is made on a best value basis, a statement documenting the basis for award and the relative importance of quality and price or cost factors. Section 843 also provides an opportunity for a vendor to request a debriefing on orders valued over \$5 million. The goal is to

improve the transparency and accountability of agency award decisions. The new requirements apply to orders on existing contracts, as well as on new contracts.

3. *Protest of orders greater than \$10 million.* This Section 843 requirement provides a mechanism to protest task or delivery orders valued in excess of \$10 million (including options) under multiple award contracts and states that the Comptroller General shall have exclusive jurisdiction over such protests. In particular, protests are authorized on the grounds that—

(a) The order increases the scope, period, or maximum value of the contract under which the order is issued; or

(b) As a matter of right for orders valued in excess of \$10 million. This provision provides for greater accountability, oversight and discipline within the Federal acquisition framework, when coupled with the requirement of post award debriefings. The existing requirement to protest orders under section 16.505(a)(9) and the newly added requirement for orders greater than \$10 million expire May 27, 2011, unless extended by a new statute. The protest authority applies to orders on existing contracts, as well as on new contracts.

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

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule does not revise or change existing regulations pertaining to small business concerns seeking Government contracts. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Part 16 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2005–27, FAR case 2008–006), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management

and Budget under 44 U.S.C. 3501, et seq.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because provisions of the Fiscal Year 2008 National Defense Authorization Act Section 843 go into effect on May 27, 2008. The Councils believe that the interim rule in the FAR will provide the contracting officer the relevant regulatory guidance needed when addressing requirements outlined in this notice. The rule will also benefit industry in regards to the requirements for strengthening competition among orders, and the ability to protest orders. However, pursuant to Pub. L. 98-577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Part 16

Government procurement.

Dated: September 9, 2008.

Al Matera,

Director, Office of Acquisition Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR part 16 as set forth below:

PART 16—TYPES OF CONTRACTS

1. The authority citation for 48 CFR part 16 continues to read as follows:

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

2. Amend section 16.503 by revising paragraph (b) to read as follows:

16.503 Requirements contracts.

* * * * *

(b) *Application.* (1) A requirements contract may be appropriate for acquiring any supplies or services when the Government anticipates recurring requirements but cannot predetermine the precise quantities of supplies or services that designated Government activities will need during a definite period.

(2) No requirements contract in an amount estimated to exceed \$100 million (including all options) may be awarded to a single source unless a determination is executed in accordance with 16.504(c)(1)(ii)(D).

* * * * *

3. Amend section 16.504 by removing from paragraph (a)(4)(v) "16.505(b)(5)" and adding "16.505(b)(6)" in its place; and adding paragraph (c)(1)(ii)(D) to read as follows:

16.504 Indefinite-quantity contracts.

* * * * *

(c) * * *

(1) * * *

(ii) * * *

(D)(i) No task or delivery order contract in an amount estimated to exceed \$100 million (including all options) may be awarded to a single source unless the head of the agency determines in writing that—

(i) The task or delivery orders expected under the contract are so integrally related that only a single source can reasonably perform the work;

(ii) The contract provides only for firm-fixed price (see 16.202) task or delivery orders for—

(A) Products for which unit prices are established in the contract; or

(B) Services for which prices are established in the contract for the specific tasks to be performed;

(iii) Only one source is qualified and capable of performing the work at a reasonable price to the Government; or

(iv) It is necessary in the public interest to award the contract to a single source due to exceptional circumstances.

(2) The head of the agency must notify Congress within 30 days after any determination under paragraph (c)(1)(ii)(D)(i)(iv) of this section.

(3) The requirement for a determination for a single award contract greater than \$100 million applies in addition to the requirements of Subpart 6.3.

* * * * *

4. Amend section 16.505 by—

a. Revising paragraph (a)(9);

b. Adding to the end of the fourth sentence before the period of paragraph (b)(1)(ii) "and the order does not exceed \$5 million";

c. Redesignating paragraph (b)(1)(iii) as (b)(1)(iv); and adding a new paragraph (b)(1)(iii); and

d. Redesignating paragraphs (b)(4) and (b)(5) as paragraphs (b)(5) and (b)(6); and adding a new paragraph (b)(4).

The revised text reads as follows:

16.505 Ordering.

(a) * * *

(9)(i) No protest under Subpart 33.1 is authorized in connection with the issuance or proposed issuance of an order under a task-order contract or delivery-order contract, except for—

(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. Protests of orders in excess of \$10 million may only be filed with the Government Accountability Office, in accordance with the procedures at 33.104.

(ii) The authority to protest the placement of an order under this subpart expires on May 27, 2011. (10 U.S.C. 2304a(d) and 2304c(d), and 41 U.S.C. 253h(d) and 253j(d)).

(b) * * *

(1) * * *

(iii) *Orders exceeding \$5 million.* For task or delivery orders in excess of \$5 million, the requirement to provide all awardees a fair opportunity to be considered for each order shall include, at a minimum—

(A) A notice of the task or delivery order that includes a clear statement of the agency's requirements;

(B) A reasonable response period;

(C) Disclosure of the significant factors and subfactors, including cost or price, that the agency expects to consider in evaluating proposals, and their relative importance;

(D) Where award is made on a best value basis, a written statement documenting the basis for award and the relative importance of quality and price or cost factors; and

(E) An opportunity for a postaward debriefing in accordance with paragraph (b)(4) of this section.

* * * * *

(4) *Postaward Notices and Debriefing of Awardees for Orders Exceeding \$5 million.* The contracting officer shall notify unsuccessful awardees when the total price of a task or delivery order exceeds \$5 million.

(i) The procedures at 15.503(b)(1) shall be followed when providing postaward notification to unsuccessful awardees.

(ii) The procedures at 15.506 shall be followed when providing postaward debriefing to unsuccessful awardees.

(iii) A summary of the debriefing shall be included in the task or delivery order file.

* * * * *

[FR Doc. E8-21379 Filed 9-16-08; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Part 23

[FAC 2005-27; FAR Case 2006-025; Item
X; Docket 2007-0001; Sequence 18]

RIN 9000-AK76

Federal Acquisition Regulation; FAR
Case 2006-025, Online
Representations and Certifications
Application Review**AGENCIES:** Department of Defense (DoD),
General Services Administration (GSA),
and National Aeronautics and Space
Administration (NASA).**ACTION:** Final rule.**SUMMARY:** The Civilian Agency
Acquisition Council and the Defense
Acquisition Regulations Council
(Councils) have agreed to adopt as final,
without change, an interim rule
amending the Federal Acquisition
Regulation (FAR) to revise the
prescription for use of clauses for the
use of Environmental Protection
Agency-designated products and toxic
chemical release reporting.**DATES:** *Effective Date:* September 17,
2008.**FOR FURTHER INFORMATION CONTACT** Mr.
Ernest Woodson Procurement Analyst,
at (202) 501-3775 for clarification of
content. For information pertaining to
status or publication schedules, contact
the FAR Secretariat at (202) 501-4755.
Please cite FAC 2005-27, FAR case
2006-025.**SUPPLEMENTARY INFORMATION:****A. Background**DoD, GSA, and NASA published an
interim rule in the **Federal Register** at
72 FR 46359 on August 17, 2007, to
amend FAR 23.406 and 23.906 to revise
the prescriptions for the use of 52.223-
9 and 52.223-14 to provide for their use
under the same circumstances as the
prescription for use of their associated
provisions. These revisions ensure
compliance with the requirements of 40
CFR part 247 and 42 U.S.C. 11023. The
comment period closed October 16,
2007. No public comments were
received on the rule. The Councils have
determined to adopt the interim rule as
final, without change.This is not a significant regulatory
action and, therefore, was not subject to
review under Section 6(b) of Executive
Order 12866, Regulatory Planning andReview, dated September 30, 1993. This
rule is not a major rule under 5 U.S.C.
804.**B. Regulatory Flexibility Act**The Department of Defense, the
General Services Administration, and
the National Aeronautics and Space
Administration certify that this final
rule will not have a significant
economic impact on a substantial
number of small entities within the
meaning of the Regulatory Flexibility
Act, 5 U.S.C. 601, *et seq.*, because the
rule revises language that the Office of
Management and Budget (OMB) has
already approved for obtaining
representations and certifications under
OMB Control Numbers 9000-0134 and
9000-0139 for compliance with Section
6002 of the Resource Conservation and
Recovery Act and the requirements of
Executive Order 12969, Emergency
Planning and Community Right-to-
Know Act of 1986. No comments were
received with regard to an impact on
small entities.**C. Paperwork Reduction Act**The Paperwork Reduction Act does
apply; however, these changes to the
FAR do not impose additional
information collection requirements to
the paperwork burden previously
approved under OMB Control Numbers
9000-0134 and 9000-0139.**List of Subjects in 48 CFR Part 23**

Government procurement.

Dated: September 9, 2008.

Al Matera,*Director, Office of Acquisition Policy.***Interim Rule Adopted as Final Without
Change**■ Accordingly, under the authority of 40
U.S.C. 121, the interim rule amending
48 CFR part 23 which was published in
the **Federal Register** at 72 FR 46359,
August 17, 2007, is adopted as a final
rule without change.

[FR Doc. E8-21378 Filed 9-16-08; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Parts 30 and 52

[FAC 2005-27; FAR Case 2007-002; Item
XI; Docket 2008-0001, Sequence 7]

RIN 9000-AL09

Federal Acquisition Regulation; FAR
Case 2007-002, Cost Accounting
Standards (CAS) Administration and
Associated Federal Acquisition
Regulation Clauses**AGENCIES:** Department of Defense (DoD),
General Services Administration (GSA),
and National Aeronautics and Space
Administration (NASA).**ACTION:** Interim rule with request for
comments.**SUMMARY:** The Civilian Agency
Acquisition Council and the Defense
Acquisition Regulations Council
(Councils) have agreed on an interim
rule amending the Federal Acquisition
Regulation (FAR) to revise the contract
clauses related to the administration of
the Cost Accounting Standards (CAS) to
maintain consistency between the FAR
and CAS.**DATES:** *Effective Date:* October 17, 2008.*Comment Date:* Interested parties
should submit written comments to the
FAR Secretariat on or before November
17, 2008 to be considered in the
formulation of a final rule.**ADDRESSES:** Submit comments
identified by FAC 2005-27, FAR case
2007-002, by any of the following
methods:

- Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2007-002" under the heading "Comment or Submission". Select the link "Send a Comment or Submission" that corresponds with FAR Case 2007-002. Follow the instructions provided to complete the "Public Comment and Submission Form". Please include your name, company name (if any), and "FAR Case 2007-002" on your attached document.

- Fax: 202-501-4067.

- Mail: General Services
Administration, Regulatory Secretariat
(VPR), 1800 F Street, NW., Room 4041,
ATTN: Laurieann Duarte, Washington,
DC 20405.

Instructions: Please submit comments
only and cite FAC 2005-27, FAR case
2007-002, 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 Mr. Ed Chambers, Procurement Analyst, at (202) 501-3221 for clarification of content. Please cite FAC 2005-27, FAR case 2007-002. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Background

On June 14, 2007, the CAS Board published a final rule (72 FR 32809) revising the contract clauses for CAS administration. The final rule effected the following changes:

- Amended the CAS applicability threshold to be the same as the threshold for compliance with the Truth in Negotiations Act (TINA) as required by section 822 of the 2006 National Defense Authorization Act (Pub. L. 109-163). The TINA threshold is currently \$650,000.

- Changed the effective dates of 48 CFR 9903.201-3 and 48 CFR 9903.201-4(a), (c), and (e) from April 2000 and June 2000, respectively, to June 2007.

On June 14, 2000, the CAS Board published a final rule (65 FR 37470) revising the contract clauses for CAS administration. The final rule effected the following changes:

- Specified that the interest rate for overpayments by the Government under 48 CFR 9903.201-4(a), (c), and (e) shall be computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)).

In order to maintain consistency between CAS and FAR in matters relating to the administration of CAS, the Councils are revising the FAR as outlined below:

1. FAR 30.201-4(b)(1), the prescription for use of the FAR clause at 52.230-3, is revised to reflect the amendments promulgated by the CAS Board on June 14, 2007.

2. FAR 52.230. The following clauses are revised to reflect the amendments promulgated by the CAS Board on June 14, 2007 and June 14, 2000:

a. FAR 52.230-2, Cost Accounting Standards.

b. FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices.

c. FAR 52.230-5, Cost Accounting Standards—Educational Institution.

3. FAR 52.230-1, Cost Accounting Standards Notices and Certification, is

revised to reflect the amendments promulgated by the CAS Board on June 14, 2007.

4. FAR 52.230-4, Consistency of Cost Accounting Practices, is revised to maintain consistency with all other CAS clauses in specifying the rate to be used to compute interest on overpayments by the Government.

5. FAR 52.230-3(a)(3)(ii) is revised to correctly reference 48 CFR 9903.201-6(c), Desirable change.

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

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because contracts and subcontracts awarded to small businesses are exempt from the Cost Accounting Standards. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 30 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2005-27, FAR case 2007-002), in correspondence.

C. Paperwork Reduction Act

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

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because Federal Acquisition Regulation Part 30, Cost Accounting Standards, describes policies and procedures for applying the Cost Accounting Standards Board (CASB) rules and regulations (48 CFR Chapter 99 (FAR Appendix). Without this interim rule, FAR Part 30 is inconsistent with the Cost Accounting

Standards that it is to describe. However, pursuant to Public Law 98-577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 30 and 52

Government procurement.

Dated: September 9, 2008.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 30 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 30 and 52 continues to read as follows:

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

PART 30—COST ACCOUNTING STANDARDS ADMINISTRATION

30.201-4 [Amended]

■ 2. Amend section 30.201-4 in paragraph (b)(1) by removing “\$500,000” and adding “\$650,000” in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.230-1 [Amended]

■ 3. Amend section 52.230-1 by revising the date of the provision to read “(OCT 2008)”, and by removing from I. Disclosure Statement—Cost Accounting Practices and Certification, in paragraph (a) “\$500,000” and adding “\$650,000” in its place.

52.230-2 [Amended]

■ 4. Amend section 52.230-2 by—

- a. Revising the date of the clause to read “(OCT 2008)”;
- b. Removing from paragraph (a)(5) “6621” and adding “6621(a)(2)” in its place each time it appears; and
- c. Removing from paragraph (d) “\$500,000” and adding “\$650,000” in its place.

■ 5. Amend section 52.230-3 by—

- a. Revising the date of the clause;
- b. Removing from paragraph (a)(3)(ii) “9903.201-6(b)” and adding “9903.201-6(c)” in its place;
- c. Revising the second sentence of paragraph (a)(4); and
- d. Removing from paragraph (d)(2) “\$500,000” and adding “\$650,000” in its place.

■ The revised text reads as follows:

52.230-3 Disclosure and Consistency of Cost Accounting Practices.

* * * * *

DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (OCT 2008)

(a) * * *

(4) * * * Such adjustment shall provide for recovery of the increased costs to the United States together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)), from the time the payment by the United States was made to the time the adjustment is effected.

* * * * *

52.230-4 [Amended]

■ 6. Amend section 52.230-4 by revising the date of the clause date to read "(OCT 2008)"; and removing "6621" and adding "6621(a)(2)" in its place each time it appears.

52.230-5 [Amended]

■ 7. Amend section 52.230-5 by—
 ■ a. Revising the date of the clause date to read "(OCT 2008)";
 ■ b. Removing from paragraph (a)(5) "6621" and adding "6621(a)(2)" in its place each time it appears; and
 ■ c. Removing from paragraph (d)(2) "\$500,000" and adding "\$650,000" in its place.

[FR Doc. E8-21367 Filed 9-16-08; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 30 and 52**

[FAC 2005-27; FAR Case 2006-004; Item XII; Docket 2008-0001; Sequence 14]

RIN 9000-AK58

Federal Acquisition Regulation; FAR Case 2006-004, CAS Administration

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed to adopt a proposed rule, published in the **Federal Register** at 71 FR 58338, October 3, 2006, as a final rule, with minor changes. The rule amends the Federal Acquisition Regulation (FAR) to implement revisions to the regulations related to the administration of the Cost Accounting Standards (CAS) as they

pertain to contracts with foreign concerns, including United Kingdom (U.K.) concerns.

DATES: *Effective Date:* October 17, 2008.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Edward Chambers, at (202) 501-3221. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-27, FAR case 2006-004.

SUPPLEMENTARY INFORMATION:**A. Background**

The Councils published a proposed rule in the **Federal Register** at 71 FR 58338, October 3, 2006, to maintain consistency between CAS and FAR in matters relating to disclosure requirements and the administration of CAS for contracts awarded to foreign concerns, including U.K. concerns.

This proposed rule was issued in response to the Cost Accounting Standards Board's interim rule (70 FR 29457, May 23, 2005) (finalized without change at 72 FR 32546, June 13, 2007), revising the applicability of CAS to U.K. contracts and subcontracts.

The Councils received no comments on the proposed rule and have adopted the proposed rule as a final rule with minor changes. The minor changes to 30.201-4(c) clarify that clause 52.230-4 need not be included in contracts with foreign concerns otherwise exempt from CAS coverage, and that foreign concerns do not include foreign governments, or their agents or instrumentalities.

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

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because all small businesses are exempt from CAS.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 30 and 52

Government procurement.

Dated: September 9, 2008.

Al Matera,*Director, Office of Acquisition Policy.*

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 30 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 30 and 52 continues to read as follows:

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

PART 30—COST ACCOUNTING STANDARDS ADMINISTRATION

■ 2. Amend section 30.201-4 by revising paragraph (c) to read as follows:

30.201-4 Contract clauses.

* * * * *

(c) *Disclosure and Consistency of Cost Accounting Practices for Contracts Awarded to Foreign Concerns.* The contracting officer shall insert the clause at FAR 52.230-4, Disclosure and Consistency of Cost Accounting Practices for Contracts Awarded to Foreign Concerns, in negotiated contracts with foreign concerns, unless the contract is otherwise exempt from CAS (see 48 CFR 9903.201-1). Such contracts are subject to CAS 401 and 402 under 48 CFR 9903.201-1(b)(4)(FAR Appendix). Foreign concerns do not include foreign governments or their agents or instrumentalities.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.230-4 by revising the section heading, the clause heading and date, and the first, second, and fourth sentences of the clause to read as follows.

52.230-4 Disclosure and Consistency of Cost Accounting Practices for Contracts Awarded to Foreign Concerns.

* * * * *

DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES FOR CONTRACTS AWARDED TO FOREIGN CONCERNS (OCT 2008).

The Contractor agrees that it will consistently follow the cost accounting practices disclosed on FORM CASB DS-1, or other disclosure form as permitted by 48 CFR 9903.202-1(e), in estimating, accumulating, and reporting costs under this contract, and comply with the requirements of CAS 401, Consistency in Estimating, Accumulating, and Reporting Costs, and CAS 402, Consistency in Allocating Costs Incurred for the Same Purpose. In the event the Contractor fails to follow such practices, or

comply consistently with CAS 401 and 402, it agrees that the contract price shall be adjusted, together with interest, if such failure results in increased cost paid by the U.S. Government. * * * The Contractor agrees that the Disclosure Statement or other form permitted, pursuant to 48 CFR 9903.202-1(e) shall be available for inspection and use by authorized representatives of the United States Government.

(End of clause)

[FR Doc. E8-21365 Filed 9-16-08; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 37 and 52

[FAC 2005-27; FAR Case 2006-027; Item XIII; Docket 2007-0001; Sequence 5]

RIN 9000-AK54

Federal Acquisition Regulation; FAR Case 2006-027, Accepting and Dispensing of \$1 Coin

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed to adopt as final, with change, the interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 104 of the Presidential \$1 Coin Act of 2005. Section 104 requires that entities that operate any business on any premises owned or controlled by the United States be capable of accepting and dispensing \$1 coins on January 1, 2008. Subsequent to this, Pub. L. 110-147 amended 31 U.S.C. 5112(p)(1)(A), to allow an exception from the \$1 coin dispensing capability requirement for vending machines that do not receive currency denominations greater than \$1.

DATES: *Effective Date:* September 17, 2008.

Applicability Date: This rule applies to all service contracts that involve business operations conducted in U.S. coins and currency, including vending machines, on any premises owned by the United States or under the control of any agency or instrumentality of the United States. The clause shall be placed in all such solicitations and contracts on and after the effective date

of this rule. Those applicable contracts in existence before January 1, 2008, that do not already have the clause shall be modified to include the clause; those contracts that have the August 2007 edition of the clause shall be modified if the contractor requests, to include the newer version contained in this FAC, without requiring consideration from the contractor.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Jackson, Procurement Analyst, at (202) 208-4949 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755. Please cite FAC 2005-27, FAR case 2006-027.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the FAR to implement the Presidential \$1 Coin Act of 2005 (Pub. L. 109-145). The Presidential \$1 Coin Act of 2005 requires the Secretary of the Treasury to mint and issue annually four new \$1 coins bearing the likenesses of Presidents of the United States in the order of their service and to continue to mint and issue "Sacagawea-design" coins for circulation. In order to promote circulation of the coins, Section 104 of the Public Law also requires that Federal agencies take action so that, by January 1, 2008, entities that operate any business, including vending machines, on any premises owned by the United States or under the control of any agency or instrumentality of the United States, are capable of accepting and dispensing \$1 coins and that the entities display notices of this capability on the business premises. Subsequent to the passage of the Presidential Coin Act, Pub. L. 110-147 amended 31 U.S.C. 5112(p)(1)(A), to allow an exception from the \$1 coin dispensing capability requirement for vending machines that do not receive currency denominations greater than \$1. This will require modification of existing covered contracts whose period of performance extends beyond the January 1, 2008 date in order to assure compliance with Section 104 of the Act, as well as compliance with Pub. L. 110-147.

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 72 FR 46361, August 17, 2007. The 60-day comment period for the interim rule ended October 16, 2007. Three respondents provided comments. The comments are discussed below.

Public Comments

Comment 1: One respondent asked why does the FAR matrix show that

52.237-11 is applicable to R&D contracts and to A&E contracts?

R&D contracts and A&E contracts are usually paid by electronic funds transfer. There is usually no cash payment involved in such contracts. Therefore, why would contractors who provide R&D or A&E services have to be capable of accepting dollar coins?

Response: The inclusion of R&D and A&E contracts in the FAR matrix as applicable to 52.237-11 was an inadvertent error.

Comment 2: One respondent stated in order to implement these widespread and extensive changes to vending machines, our members simply need more time. Contrary to the statement contained in the **Federal Register** notice, this interim rule *does* have a significant economic impact. It is not accurate to state that "receiving and dispensing the new coins as part of business operations should not add to workload or expense" (72 FR 46361, August 17, 2007). Accordingly, we strongly encourage the Councils to account for both the workload and expense by extending the compliance date to July 1, 2008.

Response: Section 104 of the Presidential \$1 Coin Act of 2005 (31 U.S.C. 5112(p)(1)), established the effective date for this provision to be January 1, 2008. The effect of this clause is merely to implement the provision of law. Notwithstanding, the provision of law cannot be modified under these circumstances without further consideration by Congress, who passed the provision of law. Pub. L. 110-147 amended section 5112(p)(1)(A) of title 31, U.S.C., to allow an exception from the \$1 coin dispensing capability requirement for vending machines that do not receive currency denominations greater than \$1. Thus, the exception of the law provides relief for those vending machines.

Comment 3: One respondent requested an amendment to the interim rule published in the **Federal Register**, August 17, 2007, amending 48 CFR 52 (Solicitation Provisions and Contract Clauses), Section 52.237-11 (Accepting and Dispensing of \$1 Coin) to exempt vending machines on Federal property that do not accept currency denominations above \$1 from the requirement to dispense dollar coins.

Response: The very intent of the statute is to require those businesses and instrumentalities operating on Federal property to be able to accept and dispense the \$1 coin if that business or instrumentality is conducting a business whereby coins or currency is exchanged. However, Pub. L. 110-147 amended section 5112(p)(1)(A) of title

31, U.S.C., to allow an exception from the \$1 coin dispensing capability requirement for vending machines that do not receive currency denominations greater than \$1.

Comment 4: One commenter stated the key paragraph within Section 104, (p)(1) is Paragraph A. It states: "any business operations conducted by any such agency, instrumentality, system, or entity that involve coins or currency will be fully capable of accepting and dispensing \$1 coins in connection with such operations;"

Commenter stated that they believe it is perfectly reasonable to read this paragraph to mean that a vending operation on Federal property in which every vending machine accepts dollar coins, every bill changer in the operation dispenses dollar coins, and every machine that accepts denominations above \$1 dispenses dollar coins in change is in full compliance with this paragraph.

Response: Due to the amended language at Pub. L. 110-147, the commenter is correct.

Comment 5: One commenter stated we note that Paragraph (B) requires the display of signs and notices denoting \$1 coin capability, "including on each vending machine." Yet Paragraph (A), the key paragraph that imposes the general coin acceptance and dispensing obligation, lacks this individual vending machine requirement. Again, if Congress truly intended to require every vending machine to dispense dollar coins in change, it could easily have stated this in the key Paragraph, Paragraph A. It did not.

Response: See response to comment 3.

Comment 6: One commenter stated requiring vending machines that do not accept denominations higher than \$1 to dispense dollar coins does not serve the purpose of Section 104 of the Presidential Dollar Coin Act of 2005. The purpose of Section 104 of the Act, requiring that dollar coins be available on all Federal property and that signs be posted denoting such availability, is to promote wider distribution and use of dollar coins in commerce. The Preamble to Pub. L. 109-145, enacted January 4, 2005, states that one of the purposes of the Law is "to improve circulation of the \$1 coin." Requiring machines that accept nothing higher than the \$1 denomination to be modified to dispense dollar coins would not improve circulation of dollar coins. Instead, this requirement would involve needless expense.

Response: Congress did recognize that requiring vending machines that did not receive denominations greater than \$1 coins, but programmed to dispense \$1

coins would impair the public's ability to circulate \$1 coins. Thus, Pub. L. 110-147 amended section 5112(p)(1)(A) of title 31, U.S.C., to allow an exception from the \$1 coin dispensing capability requirement for vending machines that do not receive currency denominations greater than \$1.

In reviewing the interim FAR language, the reference to "higher than \$1" in FAR Clauses 37.116-1 Presidential \$1 Coin Act of 2005 (new inserted text) and 52.237-11 "Accepting and Dispensing \$1 Coin" paragraph "b", be modified to change the wording "...higher than \$1..." to read as "...greater than \$1..." since this is more consistent with the reference to a currency denomination.

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

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because accepting \$1 coins as part of business operations should not add to workload or expense. While it is relatively easy for beverage and other vending machines to accept \$1 coins, configuring the machines to dispense the \$1 coin as change is much more difficult. For several years, most vending machines have been fully capable of accepting the \$1 coin. However, due to the vending price of beverages, machines usually have no reason to dispense \$1 coins as change during a normal transaction, and therefore, are not currently set up for this transaction. In order to dispense a \$1 coin, each machine would need to be individually serviced and retrofitted. In the case of coin mechanisms manufactured before the year 2000, these mechanisms will have to be replaced. The cost of a new mechanism is approximately \$300 - \$400. In the case of mechanisms manufactured after the year 2000, a new coin cassette will cost from \$20 - \$40. However, due to Congress amending the statute and making the \$1 coin dispensing requirement only apply to those machines that receive currency denominations greater than \$1, this eases the burden on industry.

The National Automatic Merchandising Association (NAMA) is the agent that took the lead in causing the amendment to the original statute. The December 2007 amendment made an exception to the rule and added that vending machines that did not receive denominations over \$1 were released from the requirement of dispensing the \$1 coin. NAMA informed that most of their members are small businesses. NAMA is of the belief that the December 2007 amendment to exempt vending machines that do not take greater than \$1 from the dispensing requirement will protect most small businesses. For those machines that take denominations greater than \$1, these machines are relatively new and already accept the \$1 coin and would have to be refitted with dispensers that would cost about \$40. For those older machines that take denominations above \$1, these machines will require new parts at a cost of about \$400.00. NAMA is of the belief that most of the machines that take denominations greater than \$1 are of the newer variety and therefore can be brought into compliance with the dispensing \$1 coin requirement at an expense of \$40. For vending machines already configured to accept and dispense the Sacagawea-design \$1 coin, which has been in circulation since January 2000, there will be no need to change or modify equipment. Contracting officers have been instructed in the Applicability Date of the preamble to modify contracts upon request of the contractor, to change the older version of the clause to the newer version without requiring consideration from the contractor.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 37 and 52

Government procurement.

Dated: September 9, 2008

Al Matera,

Director, Office of Acquisition Policy.

■ Accordingly, the interim rule amending 48 CFR parts 37 and 52 which was published in the **Federal Register** at 72 FR 46361, August 17, 2007, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 37 and 52 continues to read as follows:

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

PART 37—SERVICE CONTRACTING

■ 2. Amend section 37.116–1 by removing from the second sentence the words “United States”; and adding a sentence to the end of the paragraph to read as follows:

37.116–1 Presidential \$1 Coin Act of 2005.

* * * Pub. L. 110–147 amended 31 U.S.C. 5112(p)(1)(A) to allow an exception from the \$1 coin dispensing capability requirement for those vending machines that do not receive currency denominations greater than \$1.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.212–5 by revising the date of the clause and paragraph (c)(7) 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 (SEP 2008).

* * * * *
 (c) * * *
 (7) 52.237–11, Accepting and Dispensing of \$1 Coin (SEP 2008) (31 U.S.C. 5112(p)(1)).

■ 4. Amend section 52.237–11 by revising the date of the clause and paragraph (b) to read as follows:

52.237–11 Accepting and Dispensing of \$1 Coin.

* * * * *
 ACCEPTING AND DISPENSING OF \$1 COIN (SEP 2008)

(b) All business operations conducted under this contract that involve coins or currency, including vending machines, shall be fully capable of—

- (1) Accepting \$1 coins in connection with such operations; and
- (2) Dispensing \$1 coins in connection with such operations, unless the vending machine does not receive currency denominations greater than \$1.

* * * * *
 (End of clause)
 [FR Doc. E8–21369 Filed 9–16–08; 8:45 am]
 BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 15 and 52

[FAC 2005–27; Item XIV; Docket FAR–2008–0007; Sequence 1]

Federal Acquisition Regulation; Technical Amendment

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

ACTION: Final rule.

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

DATES: *Effective Date:* September 17, 2008.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4041, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. Please cite FAC 2005–27, Technical Amendment.

List of Subjects in 48 CFR Parts 15 and 52

Government procurement.

Dated: September 9, 2008

Al Matera,
 Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 15 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 15 and 52 continues to read as follows:

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

PART 15—CONTRACTING BY NEGOTIATION

15.404–1 [Amended]

■ 2. Amend section 15.404–1 by removing from paragraph (a)(7) “<http://www.acq.osd.mil/dpap/contractpricing/index.htm>” and adding “http://www.acq.osd.mil/dpap/cpf/contract_pricing_reference_guides.html” in its place.

LIST OF RULES IN FAC 2005–27

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.212–5 [Amended]

■ 3. Amend section 52.212–5 by removing from paragraph (b)(26) the word “FAR”.

[FR Doc. E8–21368 Filed 9–16–08; 8:45 am]
 BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2008–0003, Sequence 2]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–27; Small Entity Compliance Guide

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

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator of the National Aeronautics and Space Administration. This Small Entity Compliance Guide has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2005–27 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2005–27 which precedes this document. These documents are also available via the Internet at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Laurieann Duarte, Regulatory Secretariat, (202) 501–4225. For clarification of content, contact the analyst whose name appears in the table below.

Item	Subject	FAR case	Analyst
I	Correcting Statutory References Related to the Higher Education Act of 1965	2007–020	Cundiiff.

LIST OF RULES IN FAC 2005–27—Continued

Item	Subject	FAR case	Analyst
II	Changing the Name of the Office of Small and Disadvantaged Business Utilization for DoD	2008–001	Cundiff.
III	Administrative Changes to the FPI Blanket Waiver and the JWOD Program Name	2007–015	Clark.
IV	Local Community Recovery Act of 2006	2006–014	Clark.
V	Additional Requirements for Competition Advocate Annual Reports	2007–007	Woodson.
VI	Contract Debts	2005–018	Murphy.
VII	Subcontractor Requests for Bonds	2007–022	Jackson.
VIII	Extension of Authority for Use of Simplified Acquisition Procedures for Certain Commercial Items.	2008–002	Jackson.
IX	Enhanced Competition for Task and Delivery Order Contracts—Section 843 of the Fiscal Year 2008 National Defense Authorization Act (Interim).	2008–006	Clark.
X	Online Representations and Certifications Application Review	2006–025	Woodson.
XI	Cost Accounting Standards (CAS) Administration and Associated Federal Acquisition Regulation Clauses (Interim).	2007–002	Chambers.
XII	CAS Administration	2006–004	Chambers.
XIII	Accepting and Dispensing of \$1 Coin	2006–027	Jackson.
XIV	Technical Amendments		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–27 amends the FAR as specified below:**Item I—Correcting Statutory References Related to the Higher Education Act of 1965 (FAR Case 2007–020)**

This final rule amends the Federal Acquisition Regulation to reflect the correct public law citations for the definitions of minority institution and Hispanic-serving institution. The citations changed when the Higher Education Act of 1965 was amended by the Higher Education Amendments of 1998.

Item II—Changing the Name of the Office of Small and Disadvantaged Business Utilization for DoD (FAR Case 2008–001)

This final rule amends the Federal Acquisition Regulation to change the name of the “Office of Small and Disadvantaged Business Utilization” to the “Office of Small Business Programs” for the Department of Defense. Section 904 of the National Defense Authorization Act for Fiscal Year 2006, Pub. L. 109–163, re-designated the “Office of Small and Disadvantaged Business Utilization”.

Item III—Administrative Changes to the FPI Blanket Waiver and the JWOD Program Name (FAR Case 2007–015)

This final rule amends the language in the Federal Acquisition Regulation to increase the blanket waiver threshold for small dollar-value purchases from Federal Prison Industries by Federal agencies and also changes the name of

the JWOD Program to the AbilityOne Program. These changes are administrative in nature and any impact will be minimal.

Item IV—Local Community Recovery Act of 2006 (FAR Case 2006–014)

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have adopted as final, with a minor change to the second interim rule, two interim rules amending the Federal Acquisition Regulation (FAR) to implement amendments to the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The first interim rule was published in the **Federal Register** at 71 FR 44546, August 4, 2006. The second interim rule was published in the **Federal Register** at 72 FR 63084, November 7, 2007.

Item V—Additional Requirements for Competition Advocate Annual Reports (FAR Case 2007–007)

This final rule amends the Federal Acquisition Regulation 6.502 to require that annual reviews by executive agency competition advocates be provided in writing to both the agency senior procurement executive and the agency chief acquisition officer, and ensure task and delivery orders over \$1,000,000 issued under multiple award contracts are properly planned, issued, and comply with 8.405 and 16.505. The rule provides for one of several initiatives by the Administrator, Office of Federal Procurement Policy, to reinforce the use of competition and related practices for achieving a competitive environment. The rule reinvigorates the role of agencies’ competition advocates, strengthens agencies’ competition practices, and ensures best value for the taxpayer.

Item VI—Contract Debts (FAR Case 2005–018)

This final rule amends and reorganizes FAR Subpart 32.6, Contract Debts, and amends associated other FAR coverage, based on the recommendations of the Department of Defense Contract Debt Integrated Process Team, to improve contract debt controls and procedures and to ensure consistency within and between existing regulations. FAR Subpart 32.6 prescribes policies and procedures for identifying, collecting, and deferring collection of contract debts (including interest, if applicable). Throughout, the term “responsible official” has been replaced with the specific individual/organization responsible for fulfilling the FAR requirement. FAR 32.601 is revised to specify what constitutes a contract debt, rather than how a contract debt may arise. All discussions of contract debt determinations are consolidated in FAR 32.603, including the responsibility of the contracting officer in making debt determinations. All discussions of the demand for payment are consolidated in FAR 32.604, including the requirements for demand letters. All discussions of final decisions are consolidated in FAR 32.605. FAR 32.606 includes all coverage on debt collections, including when responsibility should be transferred to the Department of Treasury. All discussions of interest are consolidated at FAR 32.608, including how to compute interest. The Government’s right to make a demand for payment and start the interest clock running under the contract is ensured, as is the Government’s right to make a demand for payment without first issuing a final decision of the contracting officer. A final decision is

required only if the contractor disagrees with the demand for payment.

Item VII—Subcontractor Requests for Bonds (FAR Case 2007-022)

This final rule amends the list of laws inapplicable to commercial items, to clarify that the existing regulations at FAR 28.106-4, Contract clause, and 52.228-12, Prospective Subcontractor Requests for Bonds, do not apply to commercial items. Section 806(a)(3) of Pub. L. 102-190, as amended by Sections 2091 and 8105 of Pub. L. 103-355 will be included in the list at FAR 12.503(a) and 12.504(a).

Item VIII—Extension of Authority for Use of Simplified Acquisition Procedures for Certain Commercial Items (FAR Case 2008-002)

This final rule amends the Federal Acquisition Regulation to implement Section 822 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181). Section 822 amends Section 4202(e) of the Clinger-Cohen Act of 1996 (division D of Pub. L. 104-106; 110 Stat. 652; 10 U.S.C. 2304 note) by extending until January 1, 2010, the timeframe in which an agency may use simplified procedures to purchase commercial items in amounts greater than the simplified acquisition threshold, but not exceeding \$5,500,000 (\$11 million for acquisitions as described in 13.500(e)).

Item IX—Enhanced Competition for Task and Delivery Order Contracts—Section 843 of the Fiscal Year 2008 National Defense Authorization Act (FAR Case 2008-006) (Interim)

This interim rule amends Federal Acquisition Regulation Subpart 16.5 to implement Section 843 of the Fiscal Year 2008 National Defense Authorization Act (Pub. L. 110-181). The provisions of Section 843 include: (1) Limitation on single award task or delivery order (Indefinite-Delivery Requirements, and Indefinite-Quantity) type contracts greater than \$100 million; (2) Enhanced competition for task and

delivery orders in excess of \$5 million; and (3) Protest on orders on the grounds that the order increases the scope, period, maximum value of the contract under which the order is issued; or valued in excess of \$10 million. FAR sections 16.503 and 16.504, as amended by this rule, are applicable to single award task or delivery order contracts awarded on or after May 27, 2008. FAR section 16.505, as amended by this rule, is applicable to orders awarded on or after May 27, 2008 on existing contracts as well as new contracts.

Item X—Online Representations and Certifications Application Review (FAR Case 2006-025)

This final rule adopts as final, without change, the interim rule published in the *Federal Register* at 72 FR 46359, August 17, 2007. The rule amends FAR 23.406 and 23.906 to revise the prescriptions for the use of 52.223-9 and 52.223-14 to provide for their use under the same circumstances as the prescription for use of their associated provisions. These revisions ensure compliance with the requirements of 40 CFR part 247 and 42 U.S.C. 11023.

Item XI—Cost Accounting Standards (CAS) Administration and Associated Federal Acquisition Regulation Clauses (FAR Case 2007-002) (Interim)

The subject case is revising the Federal Acquisition Regulation (FAR) clauses concerning the administration of Cost Accounting Standards (CAS) to maintain consistency between the CAS rules and the FAR.

Item XII—CAS Administration (FAR Case 2006-004)

This final rule adopts, with minor changes, the proposed rule published in the *Federal Register* at 71 FR 58338, October 3, 2006, amending the Federal Acquisition Regulation to implement revisions to the regulations related to the administration of the Cost Accounting Standards as they pertain to contracts with foreign concerns, including United Kingdom concerns.

Item XIII—Accepting and Dispensing of \$1 Coin (FAR Case 2006-027)

This final rule adopts, with change, the interim rule published in the *Federal Register* at 72 FR 46361, August 17, 2007. This final rule implements the Presidential \$1 Coin Act of 2005 (Pub. L. 109-145). The Presidential \$1 Coin Act of 2005 requires the Secretary of the Treasury to mint and issue annually four new \$1 coins bearing the likenesses of the Presidents of the United States in the order of their service and to continue to mint and issue "Sacagawea-design" coins for circulation. In order to promote circulation of the coins, Section 104 of the Public Law also requires that Federal agencies take action so that, by January 1, 2008, entities that operate any business, including vending machines, on any premises owned by the United States or under the control of any agency or instrumentality of the United States, are capable of accepting and dispensing \$1 coins and that the entities display notices of this capability on the business premises. Pub. L. 110-147 was enacted to amend Section 5112(p)(1)(A) of Title 31, United States Code, to allow an exception from the \$1 coin dispensing capability requirement for those vending machines that do not receive currency denominations greater than \$1. Contracting officers have been instructed in the Applicability Date of the preamble to modify contracts upon request of the contractor, to change the older version of the clause to the newer version without requiring consideration from the contractor.

Item XIV—Technical Amendments

Editorial changes are made at FAR 15.404-1 and 52.212-5.

Dated: September 9, 2008

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E8-21370 Filed 9-16-08; 8:45 am]

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