



Federal Register

**Friday,
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Part III

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

**48 CFR Chapter 1 and Parts 1, 3, et al.
Federal Acquisition Regulation; Interim
and Final Rules**

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Chapter 1

[Docket FAR–2007–0002, Sequence 4]

**Federal Acquisition Regulation;
Federal Acquisition Circular 2005–19;
Introduction**

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

and National Aeronautics and Space
Administration (NASA).

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

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) 2005–19. A companion
document, the Small Entity Compliance
Guide (SECG), follows this FAC. The
FAC, including the SECG, is available
via the Internet at <http://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 2005–19 and the
specific FAR case number(s). For
information pertaining to status or
publication schedules, contact the FAR
Secretariat at (202) 501–4755.

LIST OF RULES IN FAC 2005–19

Item	Subject	FAR case	Analyst
I	Reporting of Purchases from Overseas Sources	2005–034	Murphy.
II	Changes to Lobbying Restrictions	2005–035	Woodson.
III	Online Representations and Certifications Application Archiving Capability	2005–025	Woodson.
IV	Requirement to Purchase Approved Authentication Products and Services	2005–017	Jackson.
V	Combating Trafficking in Persons (Interim)	2005–012	Woodson.
VI	Emergency Acquisitions	2005–038	Clark.
VII	Small Business Credit for Alaska Native Corporations and Indian Tribes	2004–017	Cundiff.
VIII	New Designated Countries—Bulgaria, Dominican Republic, and Romania (Interim)	2006–028	Murphy.
IX	Online Representations and Certifications Application Review (Interim)	2006–025	Woodson.
X	Free Trade Agreements— El Salvador, Honduras, and Nicaragua	2006–006	Murphy.
XI	Free Trade Agreements—Bahrain and Guatemala	2006–017	Murphy.
XII	Accepting and Dispensing of \$1 Coin (Interim)	2006–027	Jackson.
XIII	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 2005–19 amends the FAR as
specified below:

**Item I—Reporting of Purchases from
Overseas Sources (FAR Case 2005–034)**

This final rule converts the interim
rule to a final rule with a minor change.
The interim rule amended FAR Part 25
and added a provision (52.225–18, Place
of Manufacture) to implement Section
837 of Division A of the Transportation,
Treasury, Housing and Urban
Development, the Judiciary, the District
of Columbia, and Independent Agencies
Appropriations Act, 2006 (Pub. L. 109–
115). Section 837 requires the head of
each Federal agency to submit a report
to Congress relating to acquisitions of
articles, materials, or supplies that are
manufactured outside the United States.
The new provision requests from
offerors necessary data regarding place
of manufacture. The new provision will
require an offeror to indicate whether
the place of manufacture of the end
products it expects to provide in

response to the solicitation is
predominantly inside or outside the
United States. Whenever the place of
manufacture for a contract is coded
outside the United States, the
contracting officer will be required to
enter into FPDS the reason for buying
items manufactured outside the United
States. In addition, the rule clarifies
different tests used to determine the
country of origin (FAR 25.001) under
the Buy American Act and the Trade
Agreements Act.

**Item II—Changes to Lobbying
Restrictions (FAR Case 2005–035)**

This final rule amends the FAR in
order to be consistent with the Lobbying
Disclosure Act of 1995 and the OMB
Interim Final Guidance, and to improve
clarity of the regulation through
improved use of plain language and
compliance with FAR drafting
conventions. Among the changes, this
final rule—

Includes the new concept of
“lobbying contact” and brings in the
concept of registrants under the
Lobbying Act of 1995;

Includes the OMB guidance that the
term “appropriated funds” does not
include profit or fee from a covered
Federal action and that to the extent the

contractor can demonstrate that the
contractor has sufficient monies, other
than Federal appropriated funds, the
Government will assume that these
other monies were spent for any
influencing activities that would be
unallowable if paid for with Federal
appropriated funds;

Formalizes in the regulations the
changes that were already incorporated
in the OMB Form Standard Form LLL,
Disclosure of Lobbying Activities;

Removes 31 U.S.C. 1352, Limitations
on Payment to Influence Certain Federal
Transactions), from the list of laws that
are inapplicable to subcontracts for the
acquisition of commercial item; and

Makes the text, provisions, and
clauses easier to understand, for both
contracting officers and offerors/
contractors.

**Item III—Online Representations and
Certifications Application Archiving
Capability (FAR Case 2005–025)**

This final rule amends the FAR to
eliminate confusion between the FAR
record retention requirements at FAR
4.803 and the requirements at FAR
Subpart 4.12 requiring contractors to
submit Annual Representations and
Certifications via the Online
Representations and Certifications

Application (ORCA), a part of the Business Partner Network. Using ORCA eliminates the administrative burden for contractors of submitting the same information to various contracting offices, and establishes a common source for this information to procurement offices throughout the Government. The interim rule published at 71 FR 57362, September 28, 2006, is adopted as final without change.

Item IV—Requirement to Purchase Approved Authentication Products and Services (FAR Case 2005–017)

This final rule amends the Federal Acquisition Regulation (FAR) to address the acquisition of products and services for personal identity verification that comply with requirements in Homeland Security Presidential Directive (HSPD) 12, “Policy for a Common Identification Standard for Federal Employees and Contractors,” and Federal Information Processing Standards Publication (FIPS PUB) 201, “Personal Identity Verification of Federal Employees and Contractors.”

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

This revised interim rule amends the Federal Acquisition Regulation (FAR) to implement 22 U.S.C. 7104(g). This statute requires that contracts must include a clause that authorizes the department or agency to terminate the contract, if the contractor, contractor employee, subcontractor, or subcontractor employee engages in trafficking in persons. To accurately reflect the statutory language, the revised interim rule provides for contract termination for engaging in severe forms of trafficking in persons or procurement of a commercial sex act during the period of performance of the contract, and provides for contract termination for use of forced labor in the performance of the contract. While the interim rule only applied to contracts for services (other than commercial), this revised interim rule applies to all contracts, including contracts for supplies, and all contracts for commercial items as defined at 2.101.

Item VI—Emergency Acquisitions (FAR Case 2005–038)

This final rule converts the interim rule published at 71 FR 38247, July 5, 2006, to a final rule with changes. This final rule amends the Federal Acquisition Regulation (FAR) to provide a consolidated reference to acquisition flexibilities that may be used during emergency situations. This change improves the contracting officer’s ability to expedite acquisition of supplies and

services during emergency situations. The final rule makes no change to existing contracting policy.

Item VII—Small Business Credit for Alaska Native Corporations and Indian Tribes (FAR Case 2004–017)

This final rule amends the Federal Acquisition Regulation (FAR) to provide that contractors may count subcontracts awarded to Alaskan Native Corporations (ANCs) and Indian tribes towards the satisfaction of goals for subcontracting with small business (SB) and small disadvantaged business (SDB) concerns, regardless of their size. This rule implements Section 702 of Pub. L. 107–117, as amended by Section 3003 of Pub. L. 107–206. These changes are expected to increase subcontracting opportunities for ANCs and Indian tribes, and improve Government and contractor subcontracting performance with these entities.

Item VIII—New Designated Countries—Bulgaria, Dominican Republic, and Romania (FAR Case 2006–028) (Interim)

This interim rule allows contracting officers to purchase the goods and services of Bulgaria, the Dominican Republic, and Romania without application of the Buy American Act if the acquisition is subject to the Free Trade Agreements. This trade agreement with the Dominican Republic joins the North American Free Trade Agreement (NAFTA), the Australia, Bahrain, Chile, Morocco, and Singapore Free Trade Agreements, and the CAFTA-DR with respect to El Salvador, Guatemala, Honduras, and Nicaragua, which are already in the FAR. The threshold for applicability of the Dominican Republic—Central America—United States Free Trade Agreement is \$64,786 for supplies and services (the same as other Free Trade Agreements to date except Morocco, Bahrain, Israel, and Canada) and \$7,407,000 for construction (the same as all other Free Trade Agreements to date except NAFTA and Bahrain). Bulgaria and Romania have become parties to the World Trade Organization Government Procurement Agreement, so they are now designated countries.

Item IX—Online Representations and Certifications Application (ORCA) Review (FAR Case 2006–025) (Interim)

This interim rule amends FAR 23.406 and 23.906, both titled Solicitation provision and contract clause, to revise the prescriptions for the use of 52.223–9 and 52.223–14 to provide for use under the same circumstances as the prescription for use of their associated

provisions. These revisions allow the proper receipt of certification information and ensure compliance with the statutory requirements of 40 CFR Part 247 and 42 U.S.C. 11023.

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

This final rule converts the interim rule published at 71 FR 36935, June 28, 2006, to a final rule without change. This rule allows contracting officers to purchase the products of El Salvador, Honduras, and Nicaragua without application of the Buy American Act if the acquisition is subject to the Dominican Republic—Central America—United States Free Trade Agreement (CAFTA-DR). The CAFTA-DR took effect with respect to El Salvador on March 1, 2006. It took effect with respect to Honduras and Nicaragua on April 1, 2006. This agreement joins the North American Free Trade Agreement (NAFTA) and the Australia, Chile, Morocco, Bahrain, and Singapore Free Trade Agreements which are already in the FAR. The threshold for applicability of the CAFTA-DR is \$64,786 for supplies and services, and \$7,407,000 for construction.

Item XI—Free Trade Agreements—Bahrain and Guatemala (FAR Case 2006–017)

This final rule converts the interim rule published at 71 FR 67776, November 22, 2006, to a final rule without change. The rule allows contracting officers to purchase the goods and services of Bahrain and Guatemala without application of the Buy American Act if the acquisition is subject to the Free Trade Agreements. These trade agreements with Bahrain and Guatemala join the North American Free Trade Agreement (NAFTA), the Australia, Chile, Morocco, and Singapore Free Trade Agreements, and the CAFTA-DR with respect to El Salvador, Honduras, and Nicaragua that are already in the FAR. The threshold for applicability of the Dominican Republic—Central America—United States Free Trade Agreement is \$64,786 for supplies and services (the same as other Free Trade Agreements to date except Morocco and Canada) and \$7,407,000 for construction (the same as all other Free Trade Agreements to date except NAFTA). The threshold for applicability of the Bahrain Free Trade Agreement is \$193,000 (the same as the Morocco FTA and the WTO GPA) and \$8,422,165 for construction (the same as NAFTA).

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

This interim 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.

Item XIII—Technical Amendments

Editorial changes are made at FAR 31.201–5, 32.006–1, 32.006–2, 52.212–5, 52.232–16, and 52.245–1 in order to update references.

Dated: July 30, 2007

Al Matera,

Acting Director, Contract Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005–19 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 2005–19 is effective August 17, 2007, except for Items II, IV, VI, and VII which are effective September 17, 2007.

Dated: July 25, 2007.

Shay D. Assad,

Director, Defense Procurement and Acquisition Policy.

Dated: July 18, 2007.

George Barclay,

Acting Senior Procurement Executive, General Services Administration.

Dated: July 17, 2007.

Sheryl Goddard,

Acting Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 07–3806 Filed 8–16–07; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 1, 25, and 52**

[FAC 2005–19; FAR Case 2005–034; Item I; Docket 2006–0020; Sequence 9]

RIN 9000–AK52

Federal Acquisition Regulation; FAR Case 2005–034, Reporting of Purchases from Overseas Sources

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 a final rule with changes the interim rule published in the **Federal Register** at 71 FR 57375, September 28, 2006. This final rule implements 41 U.S.C. 10a, Buy American Act, as amended by Section 8306 of Public Law 110–28.

DATES: Effective Date: August 17, 2007.

FOR FURTHER INFORMATION CONTACT:

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 2005–19, FAR case 2005–034.

SUPPLEMENTARY INFORMATION:**A. Background**

This final rule implements 41 U.S.C. 10a, which requires the head of each Federal agency to submit a report to Congress relating to acquisitions of articles, materials, or supplies that are manufactured outside the United States. The provision at 52.225–18 requests from offerors necessary data regarding place of manufacture.

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 71 FR 57375, September 28, 2006. The 60–day comment period on the interim rule ended on November 27, 2006. The Councils received one public comment.

Comment: The respondent did not suggest any changes to the interim rule. Rather, the comment related to a statement in the **Federal Register** notice that the amendment is mandatory for solicitations issued and contracts awarded on or after October 1, 2006. The respondent considers this statement

to be incorrect because the interim rule prescribes only a solicitation provision, which is to be incorporated in solicitations, not contracts.

Response: The **Federal Register** notice states that the amendment is mandatory for solicitations issued and contracts awarded on or after October 1, 2006. The respondent is correct that the solicitation provision is used only in solicitations, not contracts. However, other aspects of the interim rule are applicable to contracts. The contracting officer is required to enter into the FPDS data on all contracts awarded on or after October 1, 2006, even if the solicitation did not include the new FAR provision at 52.225–18, Place of Manufacture.

Section 8306 of the U.S. Troop Readiness, Veterans’ Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Pub. L. 110–28), signed on May 25, 2007, amended the Buy American Act (41 U.S.C. 10a) to include an agency reporting requirement for acquisition of articles manufactured outside the United States. Therefore, the statutory citation at FAR 25.004(a) is amended in this final rule to cite 41 U.S.C. 10a rather than Section 837 of Division A of the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006 (Pub. L. 109–115) and similar sections in subsequent appropriations acts.

As a conforming amendment, it is necessary to include the new Office of Management and Budget (OMB) Control Number in FAR 1.106. In addition, a technical correction deletes OMB Control Number 9000–0023 as a control number associated with FAR clause 52.225–2, because 52.225–2 no longer implements the Balance of Payments Program and OMB Control Number 9000–0023 has expired.

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

DoD, GSA, and NASA certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this final rule does not change the rules for buying, it only amends the statutory citation and finalizes an information collection requirement. It does not have a significant economic impact to ask offerors of manufactured end products

to check off a box to indicate whether products offered to the Federal Government are predominantly manufactured in the United States or outside the United States. The offeror is not even required to identify the country of manufacture if the product is manufactured outside the United States. No comments were received with regard to 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 Number 9000-0161.

The FAR Secretariat obtained an emergency approval of the new information collection requirement, estimated at 38,146 hours, under OMB Control Number 9000-0161, FAR Case 2005-034, Reporting of Overseas Purchases, from OMB under 44 U.S.C. 3501, *et seq.* An estimated burden of 38,146 hours was granted temporary approval under OMB Control Number 9000-0161. We received no comments regarding the estimated burden hours.

List of Subjects in 48 CFR Parts 1, 25 and 5

Government procurement.

Dated: July 30, 2007.

Al Matera,

Acting Director, Contract Policy Division.

Interim Rule Adopted as Final With Changes

■ Accordingly, the interim rule amending 48 CFR parts 25 and 52 which was published at 71 FR 57375, September 28, 2006, is adopted as a final rule with changes.

■ 1. The authority citation for 48 CFR parts 1, 25, and 52 continues to read as follows:

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

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

■ 2. Amend section 1.106 by removing from FAR Segment 52.225-2 “9000-0023 and” and by adding, in numerical order, new FAR Segment “52.225-18” with OMB Control Number “9000-0161.”

PART 25—FOREIGN ACQUISITION

■ 3. Amend section 25.004 by revising paragraph (a) to read as follows:

25.004 Reporting of acquisition of end products manufactured outside the United States.

(a) In accordance with the requirements of 41 U.S.C. 10a, the head of each Federal agency must submit a report to Congress on the amount of the acquisitions made by the agency from entities that manufacture end products outside the United States in that fiscal year.

* * * * *

[FR Doc. 07-3808 Filed 8-16-07; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 3, 12, and 52

[FAC 2005-19; FAR Case 2005-035; Item II; Docket 2006-0020; Sequence 8]

RIN 9000-AD76

Federal Acquisition Regulation; FAR Case 2005-035, Changes to Lobbying Restrictions

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) in order to be consistent with the Lobbying Disclosure Act of 1995 and the Office of Management and Budget (OMB) Interim Final Guidance, and to improve clarity of the regulation through improved use of plain language and compliance with FAR drafting conventions.

DATES: Effective Date: September 17, 2007.

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 2005-19, FAR case 2005-035.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 71 FR 54255 on September 14, 2006.

The final rule is not significantly different from the proposed rule. Among the various changes, this final rule—

- Includes the new concept of “lobbying contact” and brings in the concept of registrants under the Lobbying Act of 1995.

- Includes the OMB guidance that the term “appropriated funds” does not include profit or fee from a covered Federal action and that to the extent the contractor can demonstrate that the contractor has sufficient monies, other than Federal appropriated funds, the Government will assume that these other monies were spent for any influencing activities that would be unallowable if paid for with Federal appropriated funds.

- Formalizes in the regulations the changes that were already incorporated in the OMB Standard Form (SF) LLL, Disclosure of Lobbying Activities.

- Removes 31 U.S.C. 1352, Limitations on Payment to Influence Certain Federal Transactions, from the list of laws that are inapplicable to subcontracts for the acquisition of commercial items.

- Makes the text, provisions, and clauses, easier to understand, for both contracting officers and offerors/contractors.

The comment period closed on November 13, 2006. We received 3 public comments, each addressing a different aspect of the rule. The Councils addressed these comments in the formulation of the final rule as follows:

Commercial contracts

Comment: One respondent comments that the rule deletes in FAR 12.504(a), paragraph (3) “31 U.S.C. 1352, Limitation on Payments to Influence Certain Federal Transactions (see FAR Subpart 3.8),” thereby making lobbying payments unacceptable under commercial subcontracts acquired under FAR Part 12. The respondent is concerned that although the rule requires a certification and disclosure, it does not include any means to enforce the prohibition on commercial contracts.

Response: The rule provides civil and criminal penalties for any person who makes an expenditure prohibited by the rule.

The requirements of the law are generally conveyed to the contractor through clauses. Paragraph (e) of FAR 52.212-3, Offeror Representations and Certifications—Commercial Items, already provides for offeror lobbying certification. The proposed rule also added language to paragraph (e) relating to the requirement to submit OMB SF

LLL, Disclosure of Lobbying Activities, if any registrants under the Lobbying Disclosure Act of 1995 have made lobbying contact on behalf of the offeror with respect to the contract. The rule provides that contractors may rely without penalty on the representation made by their subcontractors in the certification and representations. FAR 52.212-5, Contract Terms and Conditions Required to Implement Statute or Executive Orders—Commercial Items, does not require inclusion of FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, in commercial contracts awarded using Part 12 procedures. However, FAR 52.212-4, Contract Terms and Conditions—Commercial Items, does require compliance with 31 U.S.C. 1352, relating to limitations on the use of appropriated funds to influence certain Federal contracts in paragraph 52.212-4(r), Compliance with laws unique to Government contracts. Therefore, even without FAR 52.203-12 and the specific flow down in paragraph 52.203-12(g) of the requirement for the contractor to obtain from subcontractors a declaration, including the certification and disclosure in paragraphs (b) and (c) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, the requirement to comply with the law is imposed on the prime contractor, including obtaining necessary documentation from subcontractors, to the extent required by law.

Due date for quarterly reports

Comment: One respondent believes that there is a practical problem in FAR 52.203-12(d)(2), requiring the prime contractor to report to the contracting officer by the end of the quarter in which the subcontractors have reported to the prime contractor. The respondent is concerned that if the subcontractor does not report until the last day of the quarter, it will be impossible for the prime contractor to meet the proposed reporting obligation. The respondent recommends changing the reporting paragraph to read “the Prime Contractors shall submit a copy of all disclosures to the Contracting Officer as soon as possible after the end of the calendar quarter in which the disclosure form is submitted by the subcontractor.”

Response: To clarify this point, the Councils have revised the clause to require submission within 30 days after the end of the calendar quarter.

Grants, loans, and cooperative agreements

Comment: Another respondent strongly supports the rule, and the fact that “covered Federal Action” also includes grants and cooperative agreements. The respondent suggests that the presumption stated in the 1990 OMB Interim Guidance should be extended to OMB Circular A-122, *Cost Principles for Non-Profit Organizations*. This presumption was that to the extent a person can demonstrate that the person has sufficient monies, other than Federal appropriated funds, the Government shall assume that these other monies were spent for any influencing activities unallowable with the Federal appropriated funds.

The respondent also suggests that the FAR rule should be revised to include the additional statement from OMB’s clarifying notice of June 15, 1990, that “Profits, and fees that constitute profits, earned under *Federal grants, loans, and cooperative agreements* are not considered appropriated funds.”

Response: The respondent’s first suggestion regarding OMB Circular A-122 is outside the scope of the rule. However, the respondent’s suggestion will be referred to OMB for its consideration.

Although, the definition of covered Federal action correctly includes actions other than contracts, the respondent’s request to include policies regarding grants, loans, and cooperative agreements in the FAR rule exceeds the appropriate scope of the FAR rule. The FAR only governs acquisition (acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease). The FAR does not govern Federal grants, loans, or cooperative agreements.

Editorial corrections

In addition to the changes made in response to public comment, the Councils agreed to various editorial corrections:

- Definition of “recipient” at 3.801 and 52.203-12(a)—insert “are” in last line between “and” and “permitted”.
- 3.802(a) and 52.203-12(b) introductory text—Insert “any” in the fifth line after “in connection with” and before “Federal actions”.
- 3.802(a)(2) and 52.203-12(b)(2)—Add at the end of sentence “* * * that would be unallowable if paid for with Federal appropriated funds” and change “the Government shall” to “the Government will” in the clause.
- 3.803(a)(2)(iii) and 52.203-12(c)(2)(iii)—Revise “paragraph (a)(2) of

this section” to “this paragraph (a)(2)” and revise “paragraph (c)(2) of this clause” to “this paragraph (c)(2)”.

- 52.203-12(a) Definition of “Agency”—Add Acronym “FAR” after “Federal Acquisition Regulation”. The acronym is used several times subsequently in the clause.

- 52.203-12(c)(1)(v)—Add after the text “Making capability presentations” “prior to formal solicitation of any covered Federal action” for consistency with the exception in the text at 3.803(a)(1)(v).

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

DoD, GSA, and NASA certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule mainly implements improvements in clarity and consistency. The number of small entities paying for lobbying with non-Federal funds is estimated to be near zero. The rule does not impose new requirements that impose a burden on contractors. No comments were received with regard to impact on small business.

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 Number 0348-0046.

OMB claimed a reduction in the information collection requirement upon issuance of the interim final amendments to OMB’s Governmentwide guidance on lobbying in January 1996, due to the simplified SF LLL, Disclosure of Lobbying Activities.

List of Subjects in 48 CFR Parts 3, 12, and 52.

Government procurement.

Dated: July 30, 2007.

Al Matera,

Acting Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 3, 12, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 3, 12, 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 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

■ 2. Revise section 3.800 to read as follows:

3.800 Scope of subpart.

This subpart prescribes policies and procedures implementing 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions."

■ 3. Revise section 3.801 to read as follows:

3.801 Definitions.

As used in this subpart—

Agency means *executive agency* as defined in 2.101.

Covered Federal action means any of the following actions:

- (1) Awarding any Federal contract.
- (2) Making any Federal grant.
- (3) Making any Federal loan.
- (4) Entering into any cooperative agreement.
- (5) Extending, continuing, renewing, amending, or modifying any Federal contract, grant, loan, or cooperative agreement.

Indian tribe and *tribal organization* have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) and include Alaskan Natives.

Influencing or attempting to influence means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

Local government means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

Officer or employee of an agency includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.
- (2) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.

(3) A special Government employee, as defined in section 202, Title 18, United States Code.

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

Person means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph 3.802(a) and are permitted by other Federal law.

Reasonable compensation means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

Reasonable payment means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

Recipient includes the contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph 3.802(a) and are permitted by other Federal law.

Regularly employed means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

State means a State of the United States, the District of Columbia, an outlying area of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

■ 4. Revise section 3.802 to read as follows:

3.802 Statutory prohibition and requirement.

(a) 31 U.S.C. 1352 prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal actions.

(1) For purposes of this subpart the term "appropriated funds" does not include profit or fee from a covered Federal action.

(2) To the extent a person can demonstrate that the person has sufficient monies, other than Federal appropriated funds, the Government shall assume that these other monies were spent for any influencing activities that would be unallowable if paid for with Federal appropriated funds.

(b) 31 U.S.C. 1352 also requires offerors to furnish a declaration consisting of both a certification and a disclosure, with periodic updates of the disclosure after contract award. These requirements are contained in the provision at 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and the clause at 52.203-12, Limitation on Payments to Influence Certain Federal Transactions.

■ 5. Revise section 3.803 to read as follows:

3.803 Exceptions.

(a) The prohibition of paragraph 3.802(a) does not apply under the following conditions:

(1) *Agency and legislative liaison by own employees.* (i) Payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action. For purposes of this paragraph, providing any information specifically requested by an agency or Congress is permitted at any time.

(ii) Participating with an agency in discussions that are not related to a specific solicitation for any covered Federal action, but that concern—

(A) The qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities; or

(B) The application or adaptation of the person's products or services for an agency's use.

(iii) Providing prior to formal solicitation of any covered Federal action any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action.

(iv) Participating in technical discussions regarding the preparation of an unsolicited proposal prior to its official submission.

(v) Making capability presentations prior to formal solicitation of any covered Federal action when seeking an award from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(2) *Professional and technical services.* (i) Payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action;

(ii) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action, or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(iii) As used in paragraph (a)(2) of this section "professional and technical services" are limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional or a technical person are

not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another, are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(iv) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(b) Only those communications and services expressly authorized by paragraph (a) of this section are permitted.

(c) The disclosure requirements of paragraph 3.802(b) do not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

■ 6. Revise section 3.804 to read as follows:

3.804 Policy.

The contracting officer shall obtain certifications and disclosures as required by the provision at 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, prior to the award of any contract exceeding \$100,000.

■ 7. Revise section 3.805 to read as follows:

3.805 Exemption.

The Secretary of Defense may exempt, on a case-by-case basis, a covered Federal action from the prohibitions of this subpart whenever the Secretary determines, in writing, that such an exemption is in the national interest. The Secretary shall transmit a copy of the exemption to Congress immediately after making the determination.

■ 8. Revise section 3.806 to read as follows:

3.806 Processing suspected violations.

The contracting officer shall report suspected violations of the requirements of 31 U.S.C. 1352 in accordance with agency procedures.

■ 9. Revise section 3.808 to read as follows:

3.808 Solicitation provision and contract clause.

(a) Insert the provision at 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, in solicitations expected to exceed \$100,000.

(b) Insert the clause at 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, in solicitations and contracts expected to exceed \$100,000.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.504 [Amended]

■ 10. Amend section 12.504 by removing and reserving paragraph (a)(3).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 11. Revise section 52.203-11 to read as follows:

52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.

As prescribed in 3.808(a), insert the following provision:

CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEP 2007)

(a) *Definitions.* As used in this provision—"Lobbying contact" has the meaning provided at 2 U.S.C. 1602(8). The terms "agency," "influencing or attempting to influence," "officer or employee of an agency," "person," "reasonable compensation," and "regularly employed" are defined in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12).

(b) *Prohibition.* The prohibition and exceptions contained in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12) are hereby incorporated by reference in this provision.

(c) *Certification.* The offeror, by signing its offer, hereby certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee

of a Member of Congress on its behalf in connection with the awarding of this contract.

(d) *Disclosure.* If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(e) *Penalty.* Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by 31 U.S.C. 1352. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure required to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(End of provision)

■ 12. Revise section 52.203–12 to read as follows:

52.203–12 Limitation on Payments to Influence Certain Federal Transactions.

As prescribed in 3.808(b), insert the following clause:

LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEP 2007)

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

Agency means executive agency as defined in Federal Acquisition Regulation (FAR) 2.101.

Covered Federal action means any of the following actions:

- (1) Awarding any Federal contract.
- (2) Making any Federal grant.
- (3) Making any Federal loan.
- (4) Entering into any cooperative agreement.
- (5) Extending, continuing, renewing, amending, or modifying any Federal contract, grant, loan, or cooperative agreement.

Indian tribe and *tribal organization* have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) and include Alaskan Natives.

Influencing or attempting to influence means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

Local government means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

Officer or employee of an agency includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.

(2) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.

(3) A special Government employee, as defined in section 202, Title 18, United States Code.

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

Person means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.

Reasonable compensation means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

Reasonable payment means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

Recipient includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or

organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.

Regularly employed means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

State means a State of the United States, the District of Columbia, or an outlying area of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) *Prohibition.* 31 U.S.C. 1352 prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal actions. In accordance with 31 U.S.C. 1352, the Contractor shall not use appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the award of this contractor the extension, continuation, renewal, amendment, or modification of this contract.

(1) The term *appropriated funds* does not include profit or fee from a covered Federal action.

(2) To the extent the Contractor can demonstrate that the Contractor has sufficient monies, other than Federal appropriated funds, the Government will assume that these other monies were spent for any influencing activities that would be unallowable if paid for with Federal appropriated funds.

(c) *Exceptions.* The prohibition in paragraph (b) of this clause does not apply under the following conditions:

(1) *Agency and legislative liaison by Contractor employees.* (i) Payment of reasonable compensation made to an officer or employee of the Contractor if the payment is for agency and legislative liaison activities not directly

related to this contract. For purposes of this paragraph, providing any information specifically requested by an agency or Congress is permitted at any time.

(ii) Participating with an agency in discussions that are not related to a specific solicitation for any covered Federal action, but that concern—

(A) The qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities; or

(B) The application or adaptation of the person's products or services for an agency's use.

(iii) Providing prior to formal solicitation of any covered Federal action any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(iv) Participating in technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(v) Making capability presentations prior to formal solicitation of any covered Federal action by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub.L. 95-507, and subsequent amendments.

(2) *Professional and technical services.* (i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(ii) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(iii) As used in paragraph (c)(2) of this clause, "professional and technical services" are limited to advice and analysis directly applying any professional or technical discipline (for examples, see FAR 3.803(a)(2)(iii)).

(iv) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(3) Only those communications and services expressly authorized by paragraphs (c)(1) and (2) of this clause are permitted.

(d) *Disclosure.* (1) If the Contractor did not submit OMB Standard Form LLL, Disclosure of Lobbying Activities, with its offer, but registrants under the Lobbying Disclosure Act of 1995 have subsequently made a lobbying contact on behalf of the Contractor with respect to this contract, the Contractor shall complete and submit OMB Standard Form LLL to provide the name of the lobbying registrants, including the individuals performing the services.

(2) If the Contractor did submit OMB Standard Form LLL disclosure pursuant to paragraph (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and a change occurs that affects Block 10 of the OMB Standard Form LLL (name and address of lobbying registrant or individuals performing services), the Contractor shall, at the end of the calendar quarter in which the change occurs, submit to the Contracting Officer within 30 days an updated disclosure using OMB Standard Form LLL.

(e) *Penalties.* (1) Any person who makes an expenditure prohibited under paragraph (b) of this clause or who fails to file or amend the disclosure to be filed or amended by paragraph (d) of this clause shall be subject to civil penalties as provided for by 31 U.S.C.1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(f) *Cost allowability.* Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

(g) *Subcontracts.* (1) The Contractor shall obtain a declaration, including the certification and disclosure in

paragraphs (c) and (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, from each person requesting or receiving a subcontract exceeding \$100,000 under this contract. The Contractor or subcontractor that awards the subcontract shall retain the declaration.

(2) A copy of each subcontractor disclosure form (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall, at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor, submit to the Contracting Officer within 30 days a copy of all disclosures. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(3) The Contractor shall include the substance of this clause, including this paragraph (g), in any subcontract exceeding \$100,000.

(End of clause)

■ 13. Amend section 52.212-3 by revising the date of the provision and paragraph (e) to read as follows:

52.212-3 Offeror Representations and Certifications—Commercial Items.

* * * * *
OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS (SEP 2007)
* * * * *

(e) *Certification Regarding Payments to Influence Federal Transactions (31 U.S.C. 1352).* (Applies only if the contract is expected to exceed \$100,000.) By submission of its offer, the offeror certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

* * * * *

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 4, 12, 14, and 15**

[FAC 2005–19; FAR Case 2005–025; Item III; Docket 2006–0020; Sequence 4]

RIN 9000–AK56

Federal Acquisition Regulation; FAR Case 2005–025; Online Representations and Certifications Application Archiving Capability**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 the interim rule published in the **Federal Register** at 71 FR 57362, September 28, 2006, as a final rule without change. This final rule amends the Federal Acquisition Regulation (FAR) to address the record retention policy where the Online Representations and Certifications Application (ORCA) is used to submit an offeror's representations and certification.

DATES: Effective Date: August 17, 2007.

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 2005–19, FAR case 2005–025.

SUPPLEMENTARY INFORMATION:**A. Background**

DoD, GSA, and NASA published an interim rule with request for comments in the **Federal Register** at 71 FR 57362, September 28, 2006. This final rule amends the Federal Acquisition Regulation to address the record retention policy where the Online Representations and Certifications Application (ORCA) is used to submit an offeror's representations and certifications.

The comment period closed November 27, 2006. One respondent submitted comments.

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

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

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule addresses management of contract files and clarifies existing procedures and practices used by Government contracting officers in making contract award decisions. The rule does not impose new requirements that impose a burden on contractors. No comments were received with regard to an impact on small business.

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, 12, 14, and 15

Government procurement.

Dated: July 30, 2007.

Al Matera,

*Acting Director, Contract Policy Division.***Interim Rule Adopted as Final Without Change**

■ Accordingly, the interim rule amending 48 CFR parts 4, 12, 14, and 15 which was published at 71 FR 57362 on September 28, 2006, is adopted as a final rule without change.

[FR Doc. 07–3794 Filed 8–16–07; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 4 and 52**

[FAC 2005–19; FAR Case 2005–017; Item IV; Docket 2006–0020; Sequence 6]

RIN 9000–AK53

Federal Acquisition Regulation; FAR Case 2005–017, Requirement to Purchase Approved Authentication Products and Services**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 address the acquisition of products and services for personal identity verification that comply with requirements in Homeland Security Presidential Directive (HSPD) 12, “Policy for a Common Identification Standard for Federal Employees and Contractors,” and Federal Information Processing Standards Publication (FIPS PUB) 201, “Personal Identity Verification of Federal Employees and Contractors.”

DATES: Effective Date: September 17, 2007.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Michael Jackson, Procurement Analyst, at (202) 208–4949. Please cite FAC 2005–19, FAR case 2005–017. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:**A. Background**

This final rule amends the Federal Acquisition Regulation to address the acquisition of products and services.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 71 FR 49405 on August 23, 2006. The Councils received no comments on the proposed rule. Therefore, the Councils have adopted the proposed rule as a final rule with minor editorial and baseline changes.

Increasingly, contractors are required to have physical access to Federally-

controlled facilities and information systems in the performance of Government contracts. On August 27, 2004, in response to the general threat of unauthorized access to physical facilities and information systems, the President issued Homeland Security Presidential Directive (HSPD) 12. The primary objectives of HSPD-12 are to establish a process to enhance security, increase Government efficiency, reduce identity fraud, and protect personal privacy by establishing a mandatory, Government-wide standard for secure and reliable forms of identification issued by the Federal Government to its employees and contractors. In accordance with HSPD-12, the Secretary of Commerce issued on February 25, 2005, Federal Information Processing Standards Publication (FIPS PUB) 201, Personal Identity Verification of Federal Employees and Contractors, to establish a Governmentwide standard for secure and reliable forms of identification for Federal and contractor employees. FIPS PUB 201 is available at <http://csrc.nist.gov/publications/fips/index.html>. The Office of Management and Budget (OMB) associated guidance, M-05-24, dated August 5, 2005, can be found at <http://www.whitehouse.gov/omb/memoranda/fy2005/m05-24.pdf>.

In accordance with requirements in HSPD-12 and OMB Memorandum M-05-24, agencies—

(a) Must issue and require the use of identity credentials that are compliant with the technical requirements of FIPS PUB 201 and associated guidance issued by the National Institute for Standards and Technology in the areas of personal authentication, access controls and card management; and

(b) May acquire authentication products and services that are approved to be compliant with the FIPS PUB 201 through Special Item Number (SIN) 132-62, HSPD-12 Product and Service Components, made available by GSA under Federal Supply Schedule 70. GSA has developed an informational website (<http://www.idmanagement.gov/>) that will provide a one-stop shop for citizens, businesses, and government entities interested in identity management activities. The site provides information on HSPD-12 and eAuthentication acquisition vehicles and processes.

The rule amends the FAR by revising FAR Subpart 4.13 by adding two new sections on the scope of the subpart, and the acquisition of approved products and services; the existing subpart sections are revised and renumbered.

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

Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because HSPD-12 requires agencies to procure Personal Identity Verification (PIV) products and services that comply with the Federal Information Processing Standards Publication (FIPS PUB) 201 standard. NIST has established the NIST Personal Identity Verification Program (NPIVP) (<http://csrc.nist.gov/npivp>) to validate PIV components and subsystems required by FIPS PUB 201 that meet the NPIVP requirements. The validation tests are performed by third party laboratories that are accredited through NIST's National Voluntary Laboratory Accreditation Program.

Vendors are required to obtain validation testing and certification from an accredited laboratory. The testing is performed on a fee basis. The number and extent of testing will depend on the nature of the product or service being tested. The test protocols are still under development. The impact on small entities will, therefore, be variable depending on the nature of the product/service being validated. These standards and testing policies may affect small business concerns in terms of their ability to compete and win Federal contracts. The extent of the effect and impact on small business concerns is unknown and will vary by product and service due to the wide variances among product and service functionality and design.

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule. The Councils prepared a Final Regulatory Flexibility Analysis (FRFA), and it is summarized as follows:

1. Succinct statement of the need for, and the objectives of, the rule.

The rule implements the provisions of HSPD-12 that require agencies to purchase PIV products and services that are approved to comply with the FIPS PUB 201 standard and that are interoperable among agencies.

2. Summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments.

This final rule amends the Federal Acquisition Regulation to implement the provisions of Homeland Security Presidential Directive 12 (HSPD-12) and Federal Information Processing Standards Publication Number 201 (FIPS PUB 201). The

DAR Council and the CAAC published a proposed rule in the **Federal Register** at 71 FR 49405, August 23, 2006. Public comments were due on or before October 23, 2006, to be considered in the formulation of the final rule. No public comments were received.

3. Description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available.

The FAR rule requires that agencies acquire PIV products and services that comply with the FIPS PUB 201 standard. The impact on small entities will, therefore, vary depending on the approval process for vendor products and services.

4. Description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

The rule does not impose any new reporting, recordkeeping, or compliance requirements.

5. Description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency was rejected.

Vendors are required to obtain validation testing and certification from an accredited laboratory. The testing is performed on a fee basis. The number and extent of testing will depend on the nature of the product or service being tested. The test protocols are still under development. The impact on small entities will, therefore, be variable depending on the nature of the product/service being validated. These standards and testing policies may affect small business concerns in terms of their ability to compete and win Federal contracts. The extent of the effect and impact on small business concerns is unknown and will vary by product and service due to the wide variances among product and service functionality and design.

The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR Parts 4 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 2005-19, FAR Case 2005-017), 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 and 52

Government procurement.

Dated: July 30, 2007.

Al Matera,

Acting Director, Contract Policy Division.

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

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

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

PART 4—ADMINISTRATIVE MATTERS

■ 2. Revise subpart 4.13 to read as follows:

Subpart 4.13—Personal Identity Verification

Sec.

4.1300 Scope of subpart.

4.1301 Policy.

4.1302 Acquisition of approved products and services for personal identity verification.

4.1303 Contract clause.

Subpart 4.13—Personal Identity Verification**4.1300 Scope of subpart.**

This subpart provides policy and procedures associated with Personal Identity Verification as required by—

(a) Federal Information Processing Standards Publication (FIPS PUB) Number 201, “Personal Identity Verification of Federal Employees and Contractors”; and

(b) Office of Management and Budget (OMB) Guidance M–05–24, dated August 5, 2005, “Implementation of Homeland Security Presidential Directive (HSPD) 12—Policy for a Common Identification Standard for Federal Employees and Contractors.”

4.1301 Policy.

(a) Agencies must follow FIPS PUB Number 201 and the associated OMB implementation guidance for personal identity verification for all affected contractor and subcontractor personnel when contract performance requires contractors to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system.

(b) Agencies must include their implementation of FIPS PUB 201 and OMB Guidance M–05–24 in solicitations and contracts that require the contractor to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system.

(c) Agencies must designate an official responsible for verifying contractor employee personal identity.

4.1302 Acquisition of approved products and services for personal identity verification.

(a) In order to comply with FIPS PUB 201, agencies must purchase only approved personal identity verification products and services.

(b) Agencies may acquire the approved products and services from the GSA, Federal Supply Schedule 70, Special Item Number (SIN) 132–62, HSPD–12 Product and Service Components, in accordance with ordering procedures outlined in FAR Subpart 8.4.

(c) When acquiring personal identity verification products and services not using the process in paragraph (b) of this section, agencies must ensure that the applicable products and services are approved as compliant with FIPS PUB 201 including—

(1) Certifying the products and services procured meet all applicable Federal standards and requirements;

(2) Ensuring interoperability and conformance to applicable Federal standards for the lifecycle of the components; and

(3) Maintaining a written plan for ensuring ongoing conformance to applicable Federal standards for the lifecycle of the components.

(d) For more information on personal identity verification products and services see <http://www.idmanagement.gov>.

4.1303 Contract clause.

The contracting officer shall insert the clause at 52.204–9, Personal Identity Verification of Contractor Personnel, in solicitations and contracts when contract performance requires contractors to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system. The clause shall not be used when contractors require only intermittent access to Federally-controlled facilities.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.204–9 by—

■ a. Removing from the introductory text of the clause “4.1301” and adding “4.1303” in its place;

■ b. Revising the date of clause to read “(SEP 2007)”; and

■ c. Removing from paragraph (a) “as amended,” and “as amended”.

[FR Doc. 07–3795 Filed 8–16–07; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 12, 22 and 52**

[FAC 2005–19; FAR Case 2005–012; Item V; Docket 2006–0020; Sequence 1]

RIN 9000–AK31

Federal Acquisition Regulation; FAR Case 2005–012, Combating Trafficking in Persons (Revised Interim Rule)

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

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement 22 U.S.C. 7104(g). This statute requires that contracts must include a provision that authorizes the department or agency to terminate the contract, if the contractor or any subcontractor engages in trafficking in persons. This interim rule contains a clause to be used in all contracts.

DATES: *Effective Date:* August 17, 2007.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before October 16, 2007 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–19, FAR case 2005–012, by any of the following methods:

• Federal eRulemaking Portal:<http://www.regulations.gov>. Search for any document by first selecting the proper document types and selecting “Federal Acquisition Regulation” as the agency of choice. At the “Keyword” prompt, type in the FAR case number (for example, FAR Case 2006–001) and click on the “Submit” button. Please include your name and company name (if any) inside the document.

You may also search for any document by clicking on the “Advanced search/document search” tab at the top of the screen, selecting from the agency field “Federal Acquisition Regulation”, and typing the FAR case number in the keyword field. Select the “Submit” button.

• Fax: 202–501–4067.

• Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–19, FAR case 2005–012, 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. Ernest Woodson, Procurement Analyst, at (202) 501–3775 for clarification of content. Please cite FAC 2005–19, FAR case 2005–012. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

The Trafficking Victims Protection Reauthorization Act of 2003, as amended by the Trafficking Victims Protection Reauthorization Act of 2005, addresses the victimization of countless men, women, and children in the United States and abroad. In order to implement the law, DoD, GSA, and NASA published an interim rule in the **Federal Register** at 71 FR 20301, April 19, 2006 with request for comments by June 19, 2006. The interim rule implemented 22 U.S.C. 7104(g) by adding FAR Subpart 22.17 with an associated clause at 52.222–50 which address combating trafficking in persons. The interim rule applied to all contracts for services, other than commercial service contracts under FAR Part 12. The interim rule prohibited the contractor and contractor employees from engaging in or supporting severe forms of trafficking in persons, procurement of commercial sex acts, or use of forced labor during the performance of the contract.

The Councils have determined to issue a revised interim rule with request for comments. Changes implemented in this revised interim rule, which are being made as a result of the public comments and further discussions by the Councils, are summarized as follows:

Applicability of the rule. In revising the interim rule, the Councils noted that the statutory language at 22 U.S.C. 7104(g) contained no exceptions or limitations with regard to its application to Federal contracts. Therefore, while the interim rule only applied to contracts for services (other than commercial), this revised interim rule applies to all contracts, including

contracts for supplies, and all contracts for commercial items as defined at 2.101. Although the Federal Acquisition Streamlining Act (FASA) governs and limits the applicability of laws to commercial items, it also provides that if a provision of law contains criminal or civil penalties, or if the Federal Acquisition Regulatory Council determines that it is not in the best interest of the Federal Government to exempt commercial item contracts, then the provision of law will apply to contracts for commercial items.

Section 112 of the Trafficking Victims Protection Act of 2000 amended 18 U.S.C. Part 1 to provide for civil and criminal penalties for severe forms of trafficking in persons and use of forced labor. Therefore, consistent with FASA, the Councils have determined that the statutory requirements prohibiting such activities apply to contracts for commercial items.

Prohibited Activities. To accurately reflect the statutory language, the revised interim rule provides for contract termination for *engaging in* severe forms of trafficking in persons or procurement of a commercial sex act *during the period of performance of the contract*, and provides for contract termination for use of forced *labor in the performance of the contract*.

Employee Notification. The requirements for the contractor to establish policies and procedures and develop an awareness program have been replaced with the requirement to notify employees of the U.S. policy and actions that will be taken against them for violations. Additionally, the requirement to obtain written agreement from employees has been deleted.

Disposition of Comments received on the interim rule.

The Council received six responses with multiple comments on the interim rule (available at <http://www.regulations.gov>). The responses were from Government personnel and industry and are grouped into six categories. A summary of the comments and their respective dispositions are as follows:

Applicability of the Rule

Five comments were received concerning the rule's applicability:

Comment: One respondent questioned the rule's applicability to noncommercial purchases below the micro–purchase threshold.

Response: Because micro–purchases do not require provisions or clauses, except as provided at 4.1104 and 32.1110, the rule will not apply to

noncommercial purchases below the micro–purchase threshold.

Comment: One respondent suggested that the clause at 52.213–4, Terms and Conditions – Simplified Acquisitions (Other Than Commercial Items), be amended to include the new 52.222–50, Combating Trafficking in Persons.

Response: The Councils concur with the respondent's suggestion. The clause has been listed at 52.213–4(b)(vii), and provides for application to all contracts.

Comment: One respondent questioned the rule's applicability to all service contracts.

Response: The revised interim rule applies to all contracts, including all service contracts.

Comment: One respondent indicated that the Trafficking Victims Protection Reauthorization Act of 2003, the Trafficking Victims Protection Reauthorization Act of 2005, and 22 U.S.C. 7104 all state that the provisions apply to grants, contracts, and cooperative agreements to carry out activities abroad; and that the public laws and U.S. Code state that these provisions apply only to activities funded by budget category 150 regarding international affairs.

Response: The Trafficking Victims Protection Reauthorization Act of 2005 amended 22 U.S.C. 7104(g) to remove the language speaking to budget category 150 funds and activities performed abroad. Therefore, the statutory language is no longer limited by type of funds or location of performance.

Comment: One respondent strongly supported the exclusion for acquisitions of commercial services under FAR Part 12.

Response: Although the interim rule did not apply to commercial services, this revised interim rule applies to all contracts, including contracts for commercial items. The language in the statute does not indicate exceptions to the termination authority for engaging in the prohibited activities. The Councils note the criminal and civil penalties in Title 18 that apply to severe forms of trafficking in persons and the use of forced labor, and FASA does not provide an exception for commercial items in such a case.

Statutory Requirements

Several comments were received suggesting that the rule exceeds the statutory requirements of the Act and that the rule was overly broad and burdensome.

Comment: One respondent suggested that the rule goes beyond the statutory requirements and is overly broad and burdensome. In questioning the

statutory requirements, the respondent questioned why FAR Part 12 services are exempt.

Response: The Councils have made various revisions to the rule as a result of comments on the breadth of the rule and specific requirements of the rule. Such revisions include deletion of the requirement in the clause to obtain written agreement from the employee, deletion of the requirement in FAR Part 22 to monitor employees, replacement of the awareness program with a notification requirement to employees, and deletion of the requirement to identify all related U.S. and host country laws and regulations. The Councils have addressed the rule's application to FAR Part 12 services in the response provided above concerning the applicability of the rule.

Comment: One respondent suggested eliminating the condition of "supporting" or "promoting" trafficking, noting that the restriction does not appear in the statute and may interfere with scholarly social and behavioral research on such topics as the incidence or prevalence of sexually transmitted diseases among prostitutes.

Response: The Councils note the respondent's concerns as they relate to behavioral and scholarly research. The terms "supporting or promoting" have not been included in the revised interim rule. The revised interim rule reflects the terms used in the statute.

Comment: One respondent suggested revising the policy requirement at 22.1703(b) to prohibit engaging in the prescribed activities rather than expecting the institution to proactively combat trafficking.

Response: The policy in 22.1703(b) has been revised to reflect the requirements in the clause at 52.222-50(c). The revised interim rule requires that contractors notify employees of the U.S. policy and the actions that may be taken against them for violating the policy.

Comment: One respondent suggested that any and all references to contractor requirements and violations and the Government's remedies should clearly relate to the specific award. The problem is exacerbated by the current definition of employee which implies a broader application than the specific contract.

Response: The rule has been revised to align with the statutory language. The revised interim rule provides that requirements and remedies associated with engaging in severe forms of trafficking in persons and the procurement of commercial sex acts apply during the period of performance of the contract. The revised interim rule

provides that requirements and remedies associated with the use of forced labor apply in the performance of the contract. In regard to the definition of employee, the Councils note the respondent's concerns and have amended the definition to mean "an employee of the contractor directly engaged in performance of work under the contract who has other than a minimal impact or involvement in contract performance."

Comment: One respondent suggested adding the phrase "in the performance of this contract" at FAR 22.1703(b) and (c), and at FAR 52.222-50, at the prohibition on forced labor.

Response: The rule has been revised to reflect the statutory language prohibiting the use of forced labor in the performance of the contract.

Comment: One respondent suggested that FAR 22.1703(a)(2) and (a)(3) are not necessary in the rule as they are already included in the definition of "severe forms of trafficking in persons" in FAR 22.1702.

Response: The Councils believe the separate references are necessary in that the rule reflects the statutory prohibitions, which are listed separately at 22 U.S.C. 7104(g). Furthermore, the Councils note that the prohibited behavior in 22.1703(a)(2) and (a)(3) are not included in the definition of "severe forms of trafficking in persons." For example, the procurement of a commercial sex act (prohibited by 22.1703(a)(2)) for which the commercial sex act is not induced by force, fraud, or coercion, is not included within the definition of severe forms of trafficking in persons.

Comment: One respondent was concerned that certain types of sex acts are legal in several jurisdictions of the U.S. and in some foreign countries and urge that careful attention be given to how the remedies in this rule intersect with otherwise lawful conduct.

Response: The Trafficking Victims Protection Reauthorization Act of 2005 speaks to both "unlawful commercial sex acts" and "commercial sex acts." The section of the Act implemented by this rule, 22 U.S.C. 7104(g), speaks to "commercial sex acts," and is not qualified by the words "illegal" or "unlawful." Furthermore, the National Security Presidential Directive (NSPD) 22, which espouses the United States "zero tolerance policy" regarding trafficking in persons, states that "the United States Government opposes prostitution and related activities, including pimping, pandering, or maintaining brothels, as contributing to the phenomenon of trafficking in persons." The Councils believe that

Congress' intent is to reduce the demand for commercial sex acts, both lawful and unlawful, as such activities have contributed to the worldwide problem of trafficking in persons. Commercial sex venues are one of the prime areas in which trafficking victims are exploited, and customers are very often unable to tell the difference between an individual who has been trafficked and one who has not. Thus, Congress has made reducing the demand for commercial sex acts—both lawful and unlawful—a key component in the fight against human trafficking, not only in the statutory provision at issue here, but also in other provisions of the Trafficking Victims Protection Act (for example, 22 U.S.C. § 7106(b)(3) lists "measures to reduce the demand for commercial sex acts" as an indicator of a serious and sustained effort to eliminate trafficking; 22 U.S.C. § 7110(g) prohibits any U.S. anti-trafficking funds from going to an organization that "promotes, supports, or advocates the legalization or practice of prostitution."). Application of this aspect of the Trafficking Victims Protection Act to commercial items corresponds to the Government's zero tolerance policy. Therefore, neither the interim nor the revised interim rule differentiates between lawful and unlawful commercial sex acts.

Definitions in the Rule

Four comments were received concerning the definitions in the rule:

Comment: One respondent suggested that the definition of employee be revised to limit it only to the person's activities performing work under the award.

Response: The Councils believe that limiting the definition of employee in this manner would inadequately implement the statute since employee violations are more likely to occur after working hours. Furthermore, contractor employees are often perceived as representing the Government, and their actions reflect upon the Government's integrity and ethics. Therefore, to ensure that U.S. Government contracts do not contribute to trafficking in persons, the rule requires the contractor to notify its employees (as defined in the clause) of the U.S. zero tolerance policy, and take action against those employees who violate the U.S. policy.

Comment: One respondent suggested revising the definition of commercial sex act to add "in a manner that violates any applicable state or Federal law."

Response: The rule reflects the definition of commercial sex act at 22 U.S.C. 7102. As previously stated in the response to a comment concerning the

statutory requirements of the rule, 22 U.S.C. 7104(g) does not provide for limiting application of the rule to only unlawful commercial sex acts.

Comment: One respondent recommended revising “direct cost” to “direct charge” or alternatively delete the phrase “including all direct cost employees,” in the definition of employee at FAR 22.1702 and 52.222–50(b).

Response: The Councils concur with the respondent’s alternative recommendation and have revised the definition of employee by deleting the phrase “including all direct cost employees.”

Comment: One respondent was concerned that Section 22.1702 does not include a definition of “individual” although the term is defined in the clause at 52.222–50(a). The respondent recommends adding this as a defined term at the appropriate place.

Response: Revisions to the interim rule have eliminated the need to use the term “individual.” Therefore, the definition has been removed from the clause.

Awareness Program

Several respondents raised concerns that the rule’s requirements for an awareness program, certification of contractor’s employees and for the contractor to identify, interpret, analyze, and explain every host country law and regulation in which it may do business exceed the statutory requirements of 22 U.S.C. 7104(g).

Comment: One respondent questioned what constitutes a suitable awareness program, and recommended that the FAR establish program guidelines to meet the “suitable” definition.

Response: The Councils have replaced the requirement for an awareness program with a requirement to notify employees of the Government policy and actions that may be taken in response to violations.

Comment: One respondent was concerned that the requirements at FAR 22.17 and 52.222–50 to develop a policy, communicate the policy to employees, require certification of compliance from employees, and monitor and report violations to the Federal Government exceed the statutory requirements of 22 U.S.C. 7104(g).

Response: The Councils have replaced the requirement for the contractor to develop a policy and an awareness program with a requirement to notify employees of the Government’s policy and actions that may be taken in response to violations. Although the interim rule did not require

“certification of compliance from employees,” as stated by the respondent, it did require the contractor to obtain the employee’s written agreement. Based on the respondent’s comment and further discussion, the Councils determined that this requirement is overly burdensome and have therefore deleted the language from paragraph (c) of the clause. Additionally, the Councils recognize the respondent’s concerns related to monitoring employees and also noted that the requirement to monitor was stated in 22.1703(c), but not in the clause. Therefore, the requirement for monitoring that was included at 22.1703(c) has been removed from the revised interim rule.

Comment: One respondent recommended that the rule and clause be revised to simply prohibit the awardee and any sub-awardee and their respective employees from engaging in severe forms of trafficking in persons, procuring commercial sex acts, or using forced labor in the performance of the award.

Response: The Councils have made revisions to the rule as a result of this and other comments on the breadth of the rule and specific requirements. The revised interim rule prohibits engaging in severe forms of trafficking in persons and procurement of commercial sex acts during the performance period of the contract, and prohibits the use of forced labor in the performance of the contract. However, the Councils do not believe it is sufficient to simply state the prohibited behavior in the clause. As such, the revised interim rule replaces the requirement for an awareness program with a notification requirement to employees of the U.S. policy and actions that may be taken against employees for violating the U.S. policy.

Comment: One respondent was concerned that FAR 52.222–50(c)(2)(iii)(A) and (B) place an unrealistic burden on the contractor to correctly identify and actually obtain copies of every host country law and regulation in which it may do business and then interpret, analyze, and explain any and every such law or regulation.

Response: The Councils have considered this concern and deleted the requirement for the contractor to identify and inform employees of all host country laws and regulations, and all U.S. laws and regulations which may apply to its employees in the host country. The contractor is required to notify employees of the U.S. policy and the actions that may be taken against them for violation of the policy. The Councils have added an Alternate I to the clause for use in contracts

performed outside the U.S. when the contracting officer has been advised of specific directives or notices regarding combating trafficking in persons (such as lists of off-limits establishments) that are applicable to contractor employees performing at the contract place of performance.

Comment: One respondent suggested that if the awareness program continues to include applicable international laws, the Government should compile and provide the list of laws to the contractor. Presumably the U.S. Government will compile such information to inform and provide direction to U.S. Government employees working outside the U.S.

Response: In response to comments and concerns received about the burden involved in identifying host country laws and regulations, the Councils have deleted the requirement. The Councils have added an Alternate I to the clause as described in the response to the preceding comment.

Comment: One respondent suggested asking employees to enter into a separate contract with their employers respecting their obligations not to traffic in humans and not to procure commercial sex acts is unnecessary and overly intrusive in the employer–employee relationship.

Response: As discussed in the response to prior concern on the subject, this revised interim rule removes the requirement for the contractor to obtain the employee’s written agreement to abide by the U.S. zero tolerance policy. However, the contractor remains responsible for notifying its employees of the U.S. zero tolerance policy, as well as the actions that may be taken against them as a result of a violation.

Comment: One respondent suggested that a program of education and certification by direct cost employees increases administrative burden, is unnecessary, and represents a questionable intrusion by the Government in how institutions manage their employees’ conduct. The requirements in the clause are sufficient to educate employees.

Response: As discussed in the responses to a prior question in this category and another concerning definitions, the definition of employee has been revised and the requirement to obtain the employee’s signature is not included in the revised interim rule. Additionally, the requirement for an awareness program has been replaced by a requirement to notify employees of the U.S. policy, including the actions that may be taken against them as a result of violating the policy.

Enforcement Requirements

Six comments were received regarding the rule's enforcement requirements.

Comment: One respondent wanted to know what constitutes a violation of FAR 52.222-50, explaining that a company may not be aware of a violation unless it interferes with job performance and that a company should not be obligated to have knowledge of an incident nor be obligated to terminate the employee if the company does not deem termination appropriate.

Response: Failure to comply with the requirements of the clause constitutes a violation. Contractors must inform employees of the prohibited activities, and the actions that will be taken against them if they participate in the prohibited activities. The contractor is obligated to take appropriate action when it becomes aware of an employee violation. The clause does not require termination, but provides that termination of employment should be considered when appropriate.

Comment: One respondent indicated that the prime contractor cannot assure compliance by subcontractors and should not be held responsible or liable for the conduct of subcontractor employees.

Response: The prime contractor is responsible for determining the responsibility of its prospective subcontractors (FAR 9.104-4(a)), which includes determining that the subcontractor has a satisfactory record of integrity and business ethics (FAR 9.104-1(d)). Therefore, prime contractors should be selecting subcontractors that comply with laws and regulations, and exercise care when selecting individuals for employment. Upon award, the prime contractor is required to flow down the clause and take appropriate action against subcontractors when the prime becomes aware that a subcontractor or subcontractor employee has violated U.S. policy. The prime contractor is required to take action against those subcontractors that do not comply with the terms of the clause, including termination if the subcontractor fails to take corrective action. The prime contractor's failure to take action against a subcontractor that has violated U.S. policy, or evidence that the prime contractor failed to exercise due diligence in determining said subcontractor responsible prior to making the award, may result in the Government taking action against the prime contractor as a result of violations committed by the subcontractor. Although one respondent suggested that

certifications of compliance and reports would be necessary to "ensure" compliance, the Councils do not believe that such measures would further compliance with U.S. policy, and believe that it is sufficient to flow down the clause and require appropriate action and notification when instances of noncompliance have occurred.

Comment: One respondent suggested that the requirement in FAR 52.222-50(d)(1), for the Government to expect the reporting of allegations before those allegations are thoroughly investigated by the institution and found to be true, is inappropriate.

Response: Many allegations become a subject of interest outside the company or organization before they are thoroughly investigated. As a result, the contracting officer needs to be made aware of allegations of a violation of U.S. policy immediately after the contractor becomes aware.

Comment: One respondent was concerned that the requirement in Section 22.1704, providing that the contracting officer initiate actions after determining that "adequate evidence" exists to suspect any violation of the policy, be revised to provide that the standard for initiating action be based on "clear and convincing evidence."

Response: The Councils believe that receipt of "adequate evidence" is reasonable and sufficient for the contracting officer to take action. The phrase "clear and convincing" implies a much more stringent standard which the Councils believe would severely restrict the contracting officer's ability to take appropriate action within an appropriate timeframe.

Comment: One respondent was concerned that the contractor cannot "ensure" that no violation will occur, as required by FAR 52.222-50(b). The contractor can establish clear rules of conduct and impose penalties for violations.

Response: The Councils concur with the comment. The requirement has been removed and FAR 52.222-50(c) has been revised to require the contractor to notify employees of the U.S. policy and actions that may be taken against them for violation of the policy.

Remedies

Seven comments were received concerning the rule's requirement for remedies:

Comment: One respondent indicated that the laws and the U.S. Code state that violators will not be subject to any penalty besides termination of the contract or grant. FAR 52.222-50, paragraph (e), Remedies, applies penalties such as loss of award fee,

termination for default, suspension or debarment, suspension of contract payments, etc. These remedies are clearly penalties.

Response: 22 U.S.C. Section 7104(g) states that the contract shall include a condition that authorizes the department or agency to terminate the contract without penalty if the contractor engages in the prohibited acts. The term "without penalty" means that the Government is able to terminate without the Government incurring breach of contract damages, but does not affect other actions the Government may take under the clause.

Comment: One respondent suggested revising the language on remedies to state only that in addition to all other rights and remedies available, the Government may terminate the award, without penalty, if the awardee or any sub-awardee commits a violation during the period in which the award is in effect.

Response: Whereas the statutory language uses the phrase "period in which the award is in effect," the FAR rule uses the equivalent phrase currently used throughout the FAR, which is "period of performance," and the term "contract" rather than "award." This phrase is reflected in the final rule at 22.1703(a)(1), 22.1703(a)(2), 22.1704(a)(1), 22.1704(a)(2) and at paragraphs (b)(1) and (b)(2) of the clause.

Comment: One respondent suggested that the statute is directed toward the institution or organization as awardee and its sub-awardees. It is not appropriate to penalize the institution for activities of its employees outside of work under the Federal award or in their personal lives.

Response: The Government seeks to ensure that contractor employees who traffic in persons or procure commercial sex acts do not work on Government contracts. The clause requires the contractor to notify employees of the U.S. policy and actions that can be taken against employees for violating the policy. Should the contractor become aware that the employee has violated these terms, the Government requires the contractor to take appropriate action against the employee. The clause provides for remedies when the contractor fails to take appropriate action against an employee who has violated the policy.

Comment: One respondent was concerned that FAR 22.1703(c) should refer to remedies for violations of the statutory prohibitions, and should not refer to remedies for "supporting or promoting" the proscribed activities or for failing to "monitor" employees and

sub-awardees. The term "monitor" has a connotation of invading employee privacy, not merely supervising employees in the conduct of their work.

Response: The Councils have considered the comment and revised the language to be consistent with statute. The terms "supporting or promoting" and "monitor" are not included in the revised interim rule.

Comment: One respondent suggested that the FAR should not describe its expectations of remedies that the institution may pursue against employees who violate the policy. The respondent recommends deletion of the phrase "up to and including termination" from FAR 52.222-50(c)(4).

Response: The Councils believe it is important to provide examples of actions that are appropriate to be taken against employees who violate the policy. The clause provides the contractor discretion to determine the appropriate action based on the circumstances surrounding a violation.

Comment: One respondent requested that paragraph (3), suspension of contract payments, be deleted from the remedies at FAR 52.222-50(e).

Response: The Councils believe this is a suitable remedy for violations of U.S. policy on trafficking in persons. The authority to suspend payments is modeled after the remedies in paragraph (d) of the clause at FAR 52.223-6, Drug-Free Workplace. FAR 22.1704 requires that the contracting officer may pursue this remedy only after making a written determination that adequate evidence exists to suspect a violation of U.S. policy.

Comment: One respondent requested that FAR 52.222-50(f) exclude the flow down to subcontracts for commercial items awarded pursuant to FAR Part 12 as well as to subcontracts to "individuals" as defined in 52.222-50(a).

Response: The revisions to the rule result in this suggestion no longer being applicable. In accordance with the statute, the revised rule applies to all subcontracts.

This is a significant regulatory action and, therefore, was 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 revised interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the impact will be minimal unless the contractor or its

employees engage in forms of trafficking in persons, use forced labor, or procure commercial sex acts that are illegal within the U.S. Although not considered significant, additional impact may be associated with contract performance in counties/states and locations outside the U.S. where certain commercial sex acts are legal. However, the termination authorities at 22 U.S.C. 7104(g) apply to Government contracts performed in these areas. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 12, 22, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2005-19, FAR case 2005-012), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104-13) applies because the interim rule contains information collection requirements. Accordingly, the FAR Secretariat will forward a request for approval of a new information collection requirement concerning OMB Number 9000-00XX to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

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

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

The annual reporting burden is estimated as follows:

Respondents: 250

Responses per respondent: 1

Total annual responses: 250

Preparation hours per response: 1

Total response burden hours: 250

D. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than October 16, 2007 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000-00XX, Combating Trafficking in

Persons (FAR Case 2005-012), in all correspondence.

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

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

E. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the Trafficking Victims Protection Reauthorization Act of 2003 (Pub. L. 108-193), and the Trafficking Victims Protection Reauthorization Act of 2005 (Pub. L. 109-164) were effective upon enactment.

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

List of Subjects in 48 CFR Parts 12, 22 and 52

Government procurement.

Dated: July 30, 2007.

Al Matera,

Acting Director, Contract Policy Division.

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

■ 1. The authority citation for 48 CFR parts 12, 22 and 52 continues to read as follows:

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

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.503 [Amended]

■ 2. Amend section 12.503 by removing paragraph (a)(6).

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1700 [Amended]

■ 3. Amend section 22.1700 by removing “as amended by Pub. L. No. 108–193 and 109–164”.

■ 4. Amend section 22.1701 to read as follows:

22.1701 Applicability.

This subpart applies to all acquisitions.

■ 5. Amend section 22.1702 by revising the definition “Employee” to read as follows:

22.1702 Definitions.

* * * * *

Employee means an employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

* * * * *

■ 6. Revise section 22.1703 to read as follows:

22.1703 Policy.

The United States Government has adopted a zero tolerance policy regarding trafficking in persons. Government contracts shall—

(a) Prohibit contractors, contractor employees, subcontractors, and subcontractor employees from—

(1) Engaging in severe forms of trafficking in persons during the period of performance of the contract;

(2) Procuring commercial sex acts during the period of performance of the contract; and

(3) Using forced labor in the performance of the contract;

(b) Require contractors and subcontractors to notify employees of the prohibited activities described in paragraph (a) of this section and the actions that may be taken against them for violations; and

(c) Impose suitable remedies, including termination, on contractors that fail to comply with the requirements of paragraphs (a) and (b) of this section.

■ 7. Revise section 22.1704 to read as follows:

22.1704 Violations and remedies.

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

(1) The contractor, contractor employee, subcontractor, or subcontractor employee engages in severe forms of trafficking in persons during the period of performance of the contract;

(2) The contractor, contractor employee, subcontractor, or subcontractor employee procures a commercial sex act during the period of performance of the contract;

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

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

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

■ 8. Revise section 22.1705 to read as follows:

22.1705 Contract clause.

(a) Insert the clause at 52.222–50, Combating Trafficking in Persons, in all solicitations and contracts.

(b) Use the basic clause with its Alternate I when the contract will be performed outside the United States (as defined at 25.003) and the contracting officer has been notified of specific U.S. directives or notices regarding combating trafficking in persons (such as general orders or military listings of “off-limits” local establishments) that apply to contractor employees at the contract place of performance.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 9. Amend section 52.212–5 by—

■ a. Revising the date of the clause to read “(AUG 2007)”;

■ b. Redesignating paragraphs (b)(24) through (b)(37) as (b)(25) through (b)(38), respectively, and adding a new paragraph (b)(24); and

■ c. Redesignating paragraph (e)(1)(vii) as paragraph (e)(1)(viii); and adding a new paragraph (e)(1)(vii).

The revised text reads as follows:

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

* * * * *

(b) * * *

(24)(i) 52.222–50, Combating Trafficking in Persons (AUG 2007) (Applies to all contracts).

(ii) Alternate I (AUG 2007) of 52.222–50.

* * * * *

(e)(1) * * *

(vii) 52.222–50, Combating Trafficking in Persons (AUG 2007) (22 U.S.C. 7104(g)). Flow down required in accordance with paragraph (f) of FAR clause 52.222–50.

* * * * *

■ 10. Amend section 52.213–4 by revising the clause date to read “(AUG 2007)”; redesignating paragraphs (a)(1)(iv) through (a)(1)(vi) as paragraphs (a)(1)(v) through (a)(1)(vii); and adding a new paragraph (a)(1)(iv) to read as follows:

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

* * * * *

(a) * * *

(1) * * *

(iv) 52.222–50, Combating Trafficking in Persons (AUG 2007) (22 U.S.C. 7104(g)).

* * * * *

■ 11. Amend section 52.222–50 by ■ a. Amending the introductory text by removing “22.1705” and adding “22.1705(a)” in its place; and revising the date of the clause to read “(AUG 2007)”;

■ b. Amending paragraph (a) by revising the definition “Employee”, and removing the definition “Individual”; and

■ c. Revising paragraphs (b), (c), (d), (e), and (f), and adding Alternate I.

The revised text reads as follows:

52.222–50 Combating Trafficking in Persons.

* * * * *

Employee means an employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

* * * * *

(b) *Policy.* The United States Government has adopted a zero tolerance policy regarding trafficking in persons. Contractors and contractor employees shall not—

(1) Engage in severe forms of trafficking in persons during the period of performance of the contract;

(2) Procure commercial sex acts during the period of performance of the contract; or

(3) Use forced labor in the performance of the contract.

(c) *Contractor requirements.* The Contractor shall—

(1) Notify its employees of—
 (i) The United States Government's zero tolerance policy described in paragraph (b) of this clause; and
 (ii) The actions that will be taken against employees for violations of this policy. Such actions may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and
 (2) Take appropriate action, up to and including termination, against employees or subcontractors that violate the policy in paragraph (b) of this clause.
 (d) *Notification.* The Contractor shall inform the Contracting Officer immediately of—
 (1) Any information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, or

subcontractor employee has engaged in conduct that violates this policy; and
 (2) Any actions taken against Contractor employees, subcontractors, or subcontractor employees pursuant to this clause.
 (e) *Remedies.* In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (c), (d), or (f) of this clause may render the Contractor subject to—
 (1) Required removal of a Contractor employee or employees from the performance of the contract;
 (2) Required subcontractor termination;
 (3) Suspension of contract payments;
 (4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Contractor non-compliance;

(5) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or
 (6) Suspension or debarment.
 (f) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts.
 (End of clause)
Alternate I (AUG 2007). As prescribed in 22.1705(b), substitute the following paragraph in place of paragraph (c)(1)(i) of the basic clause:
 (i)(A) The United States Government's zero tolerance policy described in paragraph (b) of this clause; and
 (B) The following directive(s) or notice(s) applicable to employees performing work at the contract place(s) of performance as indicated below:

Document Title	Document may be obtained from:	Applies Performance to in/at:
_____	_____	_____
_____	_____	_____

[Contracting Officer shall insert title of directive/notice; indicate the document is attached or provide source (such as website link) for obtaining document; and, indicate the contract performance location outside the U.S. to which the document applies.]
 [FR Doc. 07-3796 Filed 8-16-07; 8:45 am]
BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 18

[FAC 2005-19; FAR Case 2005-038; Item VI; Docket 2006-0020; Sequence 5]

RIN 9000-AK50

Federal Acquisition Regulation; FAR Case 2005-038, Emergency Acquisitions

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 the

interim rule published in the **Federal Register** at 71 FR 38247 on July 5, 2006, as a final rule with changes. The final rule amends the Federal Acquisition Regulation (FAR) to provide a single reference to acquisition flexibilities that may be used to facilitate and expedite acquisitions of supplies and services during emergency situations.
DATES: Effective Date: September 17, 2007.

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 2005-19, FAR case 2005-038.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the FAR to provide a single reference to acquisition flexibilities that may be used to facilitate and expedite acquisitions of supplies and services during emergency situations.

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 71 FR 38247 on July 5, 2006, that created a new FAR Part 18 to provide a single reference to acquisition flexibilities available to facilitate contracting during emergencies. Five sources submitted comments on the interim rule. A discussion of those comments is provided below.

(1) *More detailed approach.* Two commenters were very supportive of the rule. However, one of those commenters recommended developing a more detailed, comprehensive approach. The commenter also said including the full text of every associated emergency authority could be unwieldy and might be counterproductive to the "ease of use" goal. Another commenter expressed support for the interim rule but recommended developing more detailed, comprehensive coverage, including guidance related to the proper administration and oversight of federal spending.

Response: Repeating the full text of every emergency acquisition flexibility in Part 18 would be redundant and difficult to maintain. More detailed, comprehensive procedures are better suited to guidebooks, not the acquisition regulations. The Councils note OFPP has updated its guidance on emergency acquisition flexibilities. That guidance includes more detailed, comprehensive procedures for emergency acquisitions.

(2) *Stress small business participation.* Two commenters recommended that the rule address the overall opportunities for small businesses in emergency acquisitions instead of just addressing the additional flexibilities unique to certain categories of small businesses (*i.e.*, ability to award on a sole source basis to 8(a) firms, Historically Underutilized Business Zone (HUBZone) small business

concerns, and service-disabled veteran-owned small business). The commenter stated that all small businesses should enjoy the same preferences under the rule to ensure the Government has access to the broadest base of qualified small businesses, and recommended revising the rule to encourage agencies to provide the maximum practicable opportunities to all small businesses as required by Part 19.

Response: The rule is not intended to give preference to any category of small businesses. However, it is intended to specify contracting tools available in emergencies and lists those applicable to certain small business categories. The Councils do not have the authority to extend these preferences to all small business categories.

(3) *Additional acquisition flexibilities.* Two commenters recommended referencing the additional flexibilities authorized by the Local Community Recovery Act of 2006 (Pub. L. 109–218) in FAR Part 18, noting that the Councils implemented the Local Community Recovery Act of 2006 at 70 FR 44546 on August 4, 2006. One of those commenters also recommended identifying the exceptions for mandatory sources of supplies and services for Federal Prison Industries, Inc. (FPI) at FAR 8.605 because FPI is not a mandatory source when public exigency requires immediate delivery or performance and certain other conditions are met. The commenter also recommended identifying the exceptions for Trade Agreements because the requirements of FAR 25.4, Trade Agreements, do not apply to acquisitions awarded using other than full and open competition (FAR Subparts 6.2 and 6.3) when the limitation of competition would preclude use of the Free Trade procedures or sole source acquisitions justified in accordance with FAR 13.501(a).

Response: The final rule addresses these additional acquisition flexibilities.

(4) *Reference Buy American Act.* One commenter recommended revising the rule to include a reference to the Buy American Act so contracting officers have a ready reference to the requirements even though emergency acquisitions are not exempt from the Buy American Act.

Response: The rule highlights additional acquisition flexibilities that can be used to facilitate and expedite emergency acquisitions. The rule is not intended to identify the acquisition policies and procedures that are not unique to emergency acquisitions.

(5) *Leasing motor vehicles.* One commenter recommended revising the

rule to identify the ability to lease motor vehicles for a period of less than 60 days without obtaining the certification required by FAR 8.1102(a) since this flexibility may be of interest in the immediate response to an emergency.

Response: The rule does not identify the exception to the certification because the exception is not affected by urgency. The referenced certification is required unless the lease is for types of motor vehicles that have been defined as fuel efficient or an agency has established procedures for advance approvals for leases of larger vehicles on a case-by-case basis.

(6) *Javits-Wagner-O'Day.* One commenter recommended revising FAR 18.106, Javits-Wagner-O'Day (JWOD) specification changes, to say “contracting officers need not comply with the notification requirements” instead of “contracting officers are not held to the notification required.”

Response: The commenter provided no rationale to justify the recommended change. The Councils believe the terminology used in the rule sufficiently conveys the intent of the requirement and therefore, did not revise the terminology.

(7) *Other acquisition flexibilities.* One commenter recommended revising the rule to also address the following in FAR Part 18—

(a) FAR 6.302–1, Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements,

(b) FAR Part 12, Acquisition of Commercial Items,

(c) FAR Part 13, Simplified Acquisition Procedures,

(d) FAR Part 14, Sealed Bidding,

(e) FAR 16.505(a)(3), Use of performance based acquisition methods to the maximum extent possible for orders under indefinite delivery contracts,

(f) Applicable provisions of the Homeland Security Act of 2002, and

(g) Modification of existing contracts.

Response: The commenter did not specify why these items should be addressed in FAR Part 18. The Councils are unaware of any additional flexibilities in the referenced parts and sections that should be addressed in Part 18. The authority under “Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements” is a valid exception to competition whether an emergency is declared or not. The use of FAR Part 12 procedures is not dependent on urgency. FAR Part 13 is addressed in 18.109. FAR Part 14 would not lend itself to Part 18, since sealed bidding procedures are extremely

inflexible. Performance based orders could be issued under indefinite delivery contracts whether an emergency was declared or not. The Homeland Security Act is addressed in FAR 18.204(a). Finally, modifying a contract is not dependent on an emergency or public exigency.

(8) *FAR supplements.* One commenter asked whether DoD and the military departments will need to develop supplemental coverage for their FAR supplements.

Response: DOD and civilian agencies that have additional acquisition flexibilities should address those in their FAR supplements in accordance with agency procedures.

(9) *DoD unique statutory acquisition limitations.* One commenter asked how DoD will ensure less experienced contracting officers are aware of, and will follow, the DoD unique statutory acquisition limitations such as the requirement imposed by Section 854 of the National Defense Authorization Act for Fiscal Year 2005 (Public Law 107–107) which requires DoD agencies to comply with certain review and approval requirements before using a non-DoD contract to procure supplies or services in amounts exceeding the simplified acquisition threshold. The commenter said contracting officers may rely on FAR Part 18 unaware that the Defense Federal Acquisition Regulation Supplement (DFARS) includes additional statutory limitations on the acquisition of supplies and services.

Response: FAR Part 18 is not a stand-alone document. Contracting officers must follow all the applicable requirements in the parts and sections cross referenced in Part 18.

(10) *Emergency acquisition flexibilities not covered in FAR.* One commenter recommended modifying Part 18 to also address the emergency acquisition flexibilities that are available to the United States Agency International Development (USAID) and other civilian agencies with foreign emergency responsibilities.

Response: As stated in the preamble to the interim rule, the rule provides a single reference to the acquisition flexibilities already available in the FAR. The international humanitarian and contingency operation flexibilities are not already available in the FAR. Any proposed FAR revisions to incorporate foreign emergency acquisition flexibilities should be prepared and forwarded to the Civilian Agency Acquisition Council in accordance with agency procedures.

(11) *Defense Production Act and the Defense Priorities and Allocations System.* One commenter supported the

reference to the Defense Production Act and the Defense Priorities and Allocations System (DPAS) in connection with emergency acquisitions because contracting officers are not aware of this flexibility. The commenter also recommended revising the rule to advise contracting officers that DPAS can also be used for protection and restoration of critical infrastructure pursuant to 50 U.S.C. App. 2152(14).

Response: The rule provides a single reference to the acquisition flexibilities already available in the FAR. The changes referenced above are not already available in the FAR and are therefore, beyond the scope of this rule. However, the Councils will consider whether additional changes are needed to implement the amended DPAS Regulations.

(12) *Miscellaneous.* (a) One commenter recommended revising the thresholds for the Davis Bacon Act and Service Contract Act to be consistent with other emergency threshold increases instead of waiving the requirements of these Acts during emergencies. The commenter said increasing the thresholds would not require further legislation. Two commenters recommended establishing pre-positioned contracts for registered small businesses. These commenters said the pre-positioned contracts should be open to all small businesses, and not just the ones with additional emergency acquisition flexibilities. Two commenters said the rule does not extend the same emergency acquisition flexibilities to prime contractors. One commenter said the FAR and the rule use multiple terms for urgent needs including “urgent and compelling needs,” “urgent and compelling,” and “unusual and compelling urgency” which is confusing. The commenter recommended selecting and using one term consistently in the rule and throughout the FAR. One commenter recommended supplementing FAR Part 18 with guidance regarding hiring adequate staff to meet increased acquisition demands, improving training for when and how to use emergency flexibilities, and providing comprehensive contract administration and oversight to reduce waste, fraud, and abuse during emergency acquisitions.

Response: The rule provides a single reference to the acquisition flexibilities already available in the FAR. The recommended policy changes are not included in the FAR and are therefore, beyond the scope of this rule. However, the Councils will consider the advisability of pursuing these recommendations to ensure all

appropriate flexibilities are available to respond to emergency acquisitions.

(b) Two commenters recommended providing regulatory authority for agencies to suspend small business contracting goals during the first 180 days following an emergency declaration or start of a contingency operation because being able to contract with a firm that can do the work should be the more urgent and compelling need in the immediate aftermath of a domestic disaster or contingency operation.

Response: The small business contracting goal is statutory and the Councils have no authority to suspend the program.

(13) *OFPP Guidebook.* One commenter said OFPP should promptly update their May 2003 “Guidance on the Use of Emergency Procurement Flexibilities.”

Response: OFPP has updated the Guide.

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

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule makes no change to contracting policy.

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 18

Government procurement.

Dated: July 30, 2007.

Al Matera,

Acting Director, Contract Policy Division.

Interim Rule Adopted as Final With Changes

■ Accordingly, the interim rule amending 48 CFR part 18, which was published in the **Federal Register** at 71 FR 38247, July 5, 2006, is adopted as a final rule with changes.

PART 18—EMERGENCY ACQUISITIONS

■ 1. The authority citation for 48 CFR part 18 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 18.000 by adding paragraph (c) to read as follows:

18.000 Scope of part.

* * * * *

(c) Additional flexibilities may be authorized in an executive agency supplement to the FAR.

18.117 through 18.124 [Redesignated as 18.119 through 18.126]

18.106 through 18.116 [Redesignated as 18.107 through 18.117]

■ 3. Redesignate sections 18.117 through 18.124 as 18.119 through 18.126, respectively, and 18.106 through 18.116 as 18.107 through 18.117, respectively.

18.106 and 18.118 [Added]

■ 4. Add new section 18.106 to read as follows:

18.106 Acquisitions from Federal Prison Industries, Inc. (FPI).

Purchase from FPI is not mandatory and a waiver is not required if public exigency requires immediate delivery or performance (see 8.605(b)).

■ 5. Add new section 18.118 to read as follows:

18.118 Trade agreements.

The policies and procedures of FAR 25.4 may not apply to acquisitions not awarded under full and open competition (see 25.401(a)(5)).

■ 6. Revise paragraph (b) of section 18.203 to read as follows:

18.203 Incidents of national significance, emergency declaration, or major disaster declaration.

* * * * *

(b) *Disaster or emergency assistance activities.* Preference will be given to local organizations, firms, and individuals when contracting for major disaster or emergency assistance activities when the President has made a declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. In addition, contracting officers may set aside solicitations to allow only offerors residing or doing business primarily in the area affected by such major disaster or emergency to compete. (See Subparts 6.6 and 26.2.)

* * * * *

■ 7. Amend section 18.204 by adding paragraph (b) to read as follows:

18.204 Resources.

* * * * *

(b) *OFPP Guidelines*. The Office of Federal Procurement Policy (OFPP) "Emergency Acquisitions Guide" is available at http://www.whitehouse.gov/omb/procurement/guides/emergency_acquisitions_guide.pdf. [FR Doc. 07-3797 Filed 8-16-07; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 19, 52, and 53**

[FAC 2005-19; FAR Case 2004-017; Item VII; Docket 2007-001; Sequence 6]

RIN 9000-AK18

**Federal Acquisition Regulation; FAR
Case 2004-017, Small Business Credit
for Alaska Native Corporations and
Indian Tribes**

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 702 of the Emergency Supplemental Act, 2002, as amended by section 3003 of the 2002 Supplemental Appropriations Act for Further Recovery From and Response to Terrorist Attacks on the United States. The law permits subcontracts awarded to Alaska Native Corporations (ANCs) and Indian tribes to be counted towards a contractor's goals for subcontracting with small business (SB) and small disadvantaged business (SDB) concerns.

DATES: *Effective Date:* September 17, 2007.

FOR FURTHER INFORMATION CONTACT: 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 2005-19, FAR case 2004-017.

SUPPLEMENTARY INFORMATION:**A. Background**

Section 702 of the Emergency Supplemental Act, 2002 (Public Law 107-117), as amended by section 3003 of the 2002 Supplemental Appropriations Act for Further Recovery From and Response to Terrorist Attacks on the United States (Public Law 107-206)(43 U.S.C. 1626), provides that subcontracts awarded to ANCs that are considered a minority and economically disadvantaged concern under the criteria at 43 U.S.C. 1626(e)(1), and any of their direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of 43 U.S.C. 1626(e)(2), shall be counted towards the satisfaction of a contractor's goal for subcontracting with SB and SDB concerns. The law also provides that subcontracts awarded to Indian tribes that are recognized by the Bureau of Indian Affairs in accordance with 25 U.S.C. 1452(c), and Indian-owned economic enterprises that meet the requirements of 25 U.S.C. 1452(e), may be counted towards the satisfaction of a contractor's goal for subcontracting with SB and SDB concerns. Such credit is taken even where the ANC or Indian tribe may be "other than small" under the Small Business Administration (SBA) regulations.

In addition, section 3003 provides that where lower-tier subcontracts exist, the ANC or Indian tribe shall designate the appropriate contractor or contractors to receive credit towards their SB and SDB subcontracting goals. Accordingly, the rule requires that, where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its SB and SDB subcontracting goals. In most cases, the appropriate contractor is the contractor that awarded the subcontract to the ANC or Indian tribe. To help avoid possible double counting, the rule requires the ANC or Indian tribe to provide a copy of its written designation to the contracting officer, the prime contractor, and any subcontractors between the prime contractor and ANC or Indian tribe within 30 days of date of award to the ANC or Indian tribe. If the contracting officer does not receive a copy of the ANC or Indian tribe's written designation within 30 days of the subcontract award, the contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated contractor.

The law does not require the ANC or Indian tribe to be eligible for SDB or 8(a)

certification. Similarly, the law does not provide for contractors to count subcontracts awarded to such an entity toward the evaluation of the extent of the participation of SDB concerns in the performance of certain North American Industry Classification System (NAICS) Industry codes unless the entity is certified as an SDB by SBA (FAR Subpart 19.12).

The Councils initially interpreted section 702 of Public Law 107-117, as amended by section 3003 of Public Law 107-206, to allow Indian tribes to be counted towards a contractor's goal for subcontracting with SB concerns but not SDB concerns. Upon further consideration, the Councils believe their initial interpretation was incorrect. Nothing in the plain language of the statute or the legislative history indicates that Congress intended to treat Indian tribes differently than ANCs. In addition, the Councils believe interpreting the statute to treat Indian tribes differently contradicts the intent of other laws (e.g., Small Business Act and Technical Corrections Act of 1994 (Public Law 103-263)) and longstanding Government policy that attempts to eliminate distinctions between the various Indian tribes, including ANCs and Indian-owned economic enterprises. Therefore, the rule allows Indian tribes to also be counted as SDBs.

In addition, the Councils initially interpreted the statute to allow certain entities owned and controlled by ANCs to also be counted towards a contractor's goal for subcontracting with SB and SDB concerns but did not believe the statute authorized entities owned and controlled by Indian tribes to be counted towards a contractor's goal for subcontracting with SB and SDB concerns. Upon further consideration, the Councils believe their initial interpretation was also incorrect. Section 16 of the Indian Reorganization Act of 1934 (25 U.S.C. 476), as amended, prohibits departments or agencies from promulgating any regulation or making any decision or determination that classifies, enhances, or diminishes the privileges and immunities available to an Indian tribe relative to other federally recognized tribes. Excluding entities owned and controlled by Indian tribes from the treatment afforded by section 702 of Public Law 107-117, as amended by section 3003 of Public Law 107-206 (43 U.S.C. 1626) to other federally recognized tribes diminishes the privileges available to entities owned and controlled by Indian tribes and enhances the privileges available to entities owned and controlled by ANCs. Therefore, the rule provides the same

treatment for entities owned and controlled by Indian tribes.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 70 FR 32553, June 3, 2005. Twenty-eight respondents submitted comments on the proposed rule which are discussed below.

a. *Comment:* Excluding Indian-owned economic enterprises contradicts the congressional intent underlying a plethora of laws and regulations generally applicable to tribes and Indian-owned economic enterprises. Distinguishing Indian-owned economic enterprises from Indian tribes is a departure from longstanding Government policy which consistently recognizes the practical necessity of tribes operating Indian-owned economic enterprises. Indian tribes only perform contracts through their legally distinct Indian-owned economic enterprises. Excluding these Indian-owned economic enterprises provides little productive assistance to Indian tribes.

Response: Section 16 of the Indian Reorganization Act of 1934 (25 U.S.C. 476), as amended, prohibits departments or agencies from promulgating any regulation or making any decision or determination that classifies, enhances, or diminishes the privileges and immunities available to an Indian tribe relative to other federally recognized tribes. Excluding Indian-owned economic enterprises from the treatment afforded by section 702 of Public Law 107-117, as amended by section 3003 of Public Law 107-206 (43 U.S.C. 1626) to other federally recognized tribes diminishes the privileges available to Indian-owned economic enterprises and enhances the privileges available to ANCs direct and indirect subsidiary corporations, joint ventures, and partnerships. The rule was revised to provide the same treatment for Indian-owned economic enterprises.

b. *Comment:* Allow Indian tribes and Indian-owned economic enterprises to be counted as SB or SDB like ANCs. Congress and the SBA have consistently provided ANC, Indian tribes, and entities they own and operate with comparable standing. Nothing in the statute suggests Congress intended to provide less help to Indian tribes.

Response: Nothing in the plain language of the statute or the legislative history indicates that Congress intended to treat Indian tribes differently than ANCs. Interpreting the statute to provide a different treatment for Indian tribes contradicts the intent of provisions of other laws (e.g., Small Business Act, Technical Corrections Act of 1994) and longstanding Government

policy that attempts to eliminate distinctions between the various Indian tribes, including ANCs and Indian-owned economic enterprises. The rule was revised to also allow Indian tribes to be counted as SDBs.

c. *Comment:* The rule says the contractor awarding the subcontract is, in most cases, the appropriate contractor to count the subcontract towards its SB or SDB goals. However, the rule does not provide any guidelines or criteria for determining when it might be appropriate to designate the award to a contractor other than the contractor awarding the subcontract. Recommend the Councils establish guidelines and criteria to ensure consistent and equitable decision making on the part of ANCs and Indian tribes.

Response: Neither the statute nor the legislative history addresses when it might be appropriate to designate the credit to a contractor other than the contractor awarding the subcontract and the Councils are unaware of specific situations where it would be appropriate to do so. However, the language of the statute is clear and unambiguous on this point by stating "where lower tier subcontractors exist, the entity shall designate the appropriate contractor or contractors to receive such credit." The Councils invited industry to comment on the feasibility of the proposed approach and any alternatives for complying with the law. No alternatives were identified. In accordance with the statute, the final rule requires the ANC or Indian Tribe to designate the contractor or contractors to receive credit for the award.

d. *Comment:* Identify the mechanism the ANCs and Indian tribes will use to communicate the contractor or contractors that have been designated to receive the small business and/or small disadvantaged business credit. Address whether the designated contractor or contractors are required to retain the designation document in their procurement records.

Response: The rule was revised to require the ANC or Indian tribe to provide copies of the written designation(s) to the contracting officer, prime contractor, and any subcontractors between the prime contractor and ANC or Indian tribe within 30 days of date of award to the ANC or Indian tribe. If the contracting officer does not receive a copy of the ANC or Indian tribe's written designation within 30 days of the subcontract award, the contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated contractor.

e. *Comment:* The instructions on the proposed Standard Forms (SF) 294 and 295 are ambiguous because the forms show inclusion of ANCs and Indian tribes in the HUBZone category but the language in the proposed rule makes no reference to this provision.

Response: SFs 294 and 295 have been revised and no longer include ANCs and Indian tribes in the HUBZone category.

f. *Comment:* The rule allows large ANCs and Indian tribes to be included in both the SB and Large Business (LB) concerns categories on SFs 294 and 295. This will distort the contractor's total subcontracting base dollars since "total" is calculated as "SB" plus "LB." Also, the performance percentages for the other subcategories of SB (e.g. service-disabled veteran-owned small business) will be negatively impacted because these figures are stated as a percentage of "total". Recommend that subcontract awards to large ANCs and Indian tribes be excluded from the LB category.

Response: The Councils revised SFs 294 and 295 to address this issue.

g. *Comment:* Allow contractors to take credit for awards to entities that obtain their ANC or federally-recognized tribal status in the middle of a Government reporting cycle.

Response: The entity's status at the time of subcontract award is the status to be reported in subsequent periods consistent with the treatment for reporting any other subcontract award.

h. *Comment:* In collaboration with the Bureau of Indian Affairs, develop a single source that identifies ANCs, Indian tribes, and Indian-owned economic enterprises to help industry locate the entities. In the interim, modify the Central Contractor Registration (CCR) database to capture these additional supplier designations.

Response: The Team believes industry can easily locate these entities using market research. In addition, the CCR database already has the necessary categories to capture this data under Native American entities. Vendors can register as Alaska Native Corporation Owned Firms, American Indian Owned, Indian Tribe (Federally Recognized), Tribally Owned Firms, etc. However, only prime contractors are required to be registered in the CCR.

i. *Comment:* Object to the rule. This rule is another step toward eliminating the truly small disadvantaged business in America. Over the past five years special legislation has exempted ANCs and tribally-owned businesses, many of which are multi-billion dollar corporations, from the rules that all other small disadvantaged businesses must comply with – size standards, affiliation rules, sole source limits –

making it difficult to compete with ANCs and tribally-owned businesses. This rule will extend the pattern of ANC dominance to the subcontracting arena. Treating ANCs and Indian Tribes as small businesses when they exceed the size standards for their applicable NAICS codes does a grave disservice to other small businesses that are required to function as large businesses when they exceed the size standard. Instead, the Government should develop new programs that help these entities compete with large business. SBA, GSA and other Government agencies do not monitor and enforce the regulations that provide additional benefits to ANCs. As a result, the benefits extended to ANCs are commonly abused and exaggerated. The rule provides additional benefits to ANCs that the Government is not prepared to monitor or enforce.

Response: This rule implements section 702 of Public Law 107-117, as amended by section 3003 of Public Law 107-206. It permits subcontracts awarded to certain ANCs and Indian tribes to be counted towards a contractor's SB and SDB goals even though those businesses may not be small or certified SDBs. We have modified SFs 294 and 295 to help ensure that subcontract award information is reported.

j. *Comment:* Restrict the percent of the SDB goal that can be satisfied by awards to ANCs to prevent a wholesale takeover of the SDB subcontracting program by ANCs.

Response: The statute contained no such limits. Therefore, the Councils have no authority to restrict the percent of the SDB goal that can be satisfied by awards to ANCs.

k. *Comment:* Allowing a contractor, other than the contractor awarding the subcontract, to receive SB or SDB credit for awards by one of its lower-tier subcontractors will be a disincentive to prime contractor's outreach efforts.

Response: The statute requires the ANC or Indian tribe to designate the appropriate contractor or contractors to receive credit towards their subcontracting goals.

l. *Comment:* The same rule should apply to Native Hawaiian Organizations (NHOs), Native Hawaiian-owned small businesses, Native Hawaiian-owned 8(a) small disadvantaged businesses and Native Hawaiian certified 8(a) firms. Under section 8021 of the 2004 Appropriations Act, NHOs were afforded the same eligibility for certain types of non-competitively awarded contracts as Alaska Native Corporations and Indian tribally-owned 8(a) firms.

Response: The statute only addressed ANC and Indian tribes. Statutory authority would be required to expand the authority to Hawaiian entities.

m. *Comment:* Distinguish the 562 not-for-profit Indian tribes from the 13 for-profit ANCs in the Regulatory Flexibility Act statement. The 562 federally recognized Indian tribes formed under the Indian Reorganization Act, as amended, are all *not-for-profit entities* organized under the *Federal Government*. An additional 13 regional ANC established pursuant to the Alaska Native Claims Settlement Act (ANSCA) of 1971, as amended, are *for-profit businesses* organized under the *State of Alaska laws*.

Response: Whether the Indian tribe or ANC is a not-for-profit entity or a for-profit business does not affect the implementation of section 702 of Public Law 107-117.

n. *Comment:* Require ANCs to provide the Indian tribe(s) within their region copies of the Subcontract Report on Individual Contracts (SF 294) because the tribes have an interest in ANC activities within their regions.

Response: The Indian tribes are not a party to the contracts that require submission of the SF 294. Therefore, the Councils lack the authority to require the ANCs to provide copies of the SF 294 to the Indian tribes.

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

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule. The Councils prepared a Final Regulatory Flexibility Analysis (FRFA), and it is summarized as follows:

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the law allows other than SB Federal contractors to receive SDB and SB subcontract credit for subcontracts awarded to Indian tribes and ANCs, regardless of whether they are a SB or are SDB certified. SBs and certified SDBs may be adversely impacted, to the extent that there are Indian tribes or ANCs that are large businesses and may now be more likely to be used as subcontractors or suppliers on Federal contracts.

Section 702 of Public Law 107-117, as amended by section 3003 of Public Law 107-206 (43 U.S.C. 1626) provides that subcontracts awarded to an ANC that is considered a minority and economically disadvantaged concern under the criteria at 43 U.S.C. 1626(e)(1), and any of its direct and

indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of 43 U.S.C. 1626(e)(2), or Indian tribes, and any Indian-owned economic enterprises meeting the requirements of 25 U.S.C. 1452 can be counted towards a contractor's goal for subcontracting with SB and SDB concerns. Such credit can be taken even where the ANC or Indian tribe may be "other than small" under the Small Business Administration (SBA) regulations or is not certified as an SDB pursuant to SBA's regulations.

According to the Department of Interior, there are approximately 550 Indian tribes and ANCs. Information was not available on the number of these entities that were large business, small business or small disadvantaged business. One comment received on the summary of the IRFA that was in the **Federal Register** Notice for the proposed rule was that there are 562 Indian tribes, some of which are Alaska Native and all of which are non-profit, and 12 ANCs, all of which are for profit. No information was provided in the comment on the number of Indian tribes or ANCs that are small entities.

The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR Parts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610, *et seq.* (FAC 2005-19, FAR Case 2004-017), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Public Law 104-13) applies because this final rule contains information collection requirements. Accordingly, the FAR Secretariat will forward a request for approval of a revision to the information collection requirements concerning OMB Clearances 9000-0006 (Standard Form 294) and 9000-0007 (Standard Form 295) to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Public comments concerning this request will be invited through a subsequent **Federal Register** Notice.

List of Subjects in 48 CFR Parts 19, 52, and 53

Government procurement.

Dated: July 30, 2007.

Al Matera,

Acting Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 19, 52, and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 19, 52, and 53 continues to read as follows:

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

PART 19—SMALL BUSINESS PROGRAMS

■ 2. Amend section 19.701 by adding in alphabetical order, the definitions “Alaska Native Corporation (ANC)” and “Indian tribe” to read as follows:

19.701 Definitions.

* * * * *

Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C.A. 1601, *et seq.*) and which is considered a minority and economically disadvantaged concern under the criteria at 43 U.S.C. 1626(e)(1). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of 43 U.S.C. 1626(e)(2).

* * * * *

Indian tribe means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act (43 U.S.C.A. 1601 *et seq.*), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with 25 U.S.C. 1452(c). This definition also includes Indian-owned economic enterprises that meet the requirements of 25 U.S.C. 1452(e).

* * * * *

■ 3. Amend section 19.703 in the introductory text of paragraph (a) by removing the word “To” and adding “Except as provided in paragraph (c) of this section to” in its place; by redesignating paragraph (c) as paragraph (d); and by adding new paragraph (c) to read as follows:

19.703 Eligibility requirements for participating in the program.

* * * * *

(c)(1) In accordance with 43 U.S.C. 1626, the following procedures apply:
(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.
(ii) Where one or more subcontractors are in the subcontract tier between the

prime contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate contractor is the contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each contractor. The sum of the amounts designated to various contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the contracting officer, the prime contractor, and the subcontractors in between the prime contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the contracting officer does not receive a copy of the ANC’s or the Indian tribe’s written designation within 30 days of the subcontract award, the contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated contractor.

(2) A contractor acting in good faith may rely on the written representation of an ANC or an Indian tribe as to the status of the ANC or Indian tribe unless an interested party challenges its status or the contracting officer has independent reason to question its status. In the event of a challenge of a representation of an ANC or Indian tribe, the interested parties shall follow the procedures at 26.103(b) through (e).

* * * * *

■ 4. Amend section 19.704 by revising paragraphs (a)(1), (a)(2), (a)(3), and (a)(6) to read as follows:

19.704 Subcontracting plan requirements.

(a) * * *

(1) Separate percentage goals for using small business (including ANCs and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business (including ANCs and Indian tribes) and women-owned small business concerns as subcontractors;
(2) A statement of the total dollars planned to be subcontracted and a statement of the total dollars planned to be subcontracted to small business (including ANCs and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small

disadvantaged business (including ANCs and Indian tribes) and women-owned small business concerns;

(3) A description of the principal types of supplies and services to be subcontracted and an identification of types planned for subcontracting to small business (including ANCs and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business (including ANCs and Indian tribes), and women-owned small business concerns;

* * * * *

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with small business (including ANCs and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business (including ANCs and Indian tribes), and women-owned small business concerns;

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Amend section 52.212–5 by revising the clause date and revising paragraph (b)(8)(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—COMMERCIAL ITEMS (SEP 2007)

* * * * *

(b) * * *
(8)(i) 52.219–9, Small Business Subcontracting Plan (SEP 2007) (15 U.S.C. 637(d)(4).)

* * * * *

■ 6. Amend section 52.219–9 by—
■ a. Revising the clause date;
■ b. Adding in paragraph (b), in alphabetical order, the definitions “Alaska native Corporation (ANC)” and “Indian tribe”; and
■ c. Revising paragraphs (d)(1), (d)(2)(ii) and (vi), and (d)(6)(i) and (v) to read as follows:

52.219–9 Small Business Subcontracting Plan.

* * * * *

SMALL BUSINESS SUBCONTRACTING PLAN (SEP 2007)

(b) * * *
Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group

Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*) and which is considered a minority and economically disadvantaged concern under the criteria at 43 U.S.C. 1626(e)(1). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of 43 U.S.C. 1626(e)(2).

* * * * *

Indian tribe means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act (43 U.S.C.A. 1601 *et seq.*), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with 25 U.S.C. 1452(c). This definition also includes Indian-owned economic enterprises that meet the requirements of 25 U.S.C. 1452(e).

* * * * *

(d) * * *

(1) In accordance with 43 U.S.C. 1626:

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business (SDB) concerns, regardless of the size or Small

Business Administration certification status of the ANC or Indian tribe.

(ii) Where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

(2) * * *

(ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);

* * * * *

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and

* * * * *

(6) * * *

(i) Small business concerns (including ANC and Indian tribes);

* * * * *

(v) Small disadvantaged business concerns (including ANC and Indian tribes); and

* * * * *

PART 53—FORMS

53.219 [Amended]

■ 7. Amend section 53.219 by removing from paragraphs (a) and (b) "SEP 2006" and adding (SEP 2007) in its place.

■ 8. Revise section 53.301-294 to read as follows:

BILLING CODE 6820-EP-S

53.301-294 Subcontracting Report for Individual Contracts.

SUBCONTRACTING REPORT FOR INDIVIDUAL CONTRACTS
(See instructions on reverse)

OMB No: 9000-0006
Expires: 08/31/2007

Public reporting burden for this collection of information is estimated to average 55.34 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VIR), Regulatory and Federal Assistance Division, GSA, Washington, DC 20405.

1. CORPORATION, COMPANY, OR SUBDIVISION COVERED			3. DATE SUBMITTED		
a. COMPANY NAME			4. REPORTING PERIOD FROM INCEPTION OF CONTRACT THRU: YEAR <input type="checkbox"/> MAR 31 <input type="checkbox"/> SEPT 30		
b. STREET ADDRESS					
c. CITY		d. STATE	e. ZIP CODE		5. TYPE OF REPORT <input type="checkbox"/> REGULAR <input type="checkbox"/> FINAL <input type="checkbox"/> REVISED
2. CONTRACTOR IDENTIFICATION NUMBER					
6. ADMINISTERING ACTIVITY (Please check applicable box)					
<input type="checkbox"/> ARMY		<input type="checkbox"/> GSA		<input type="checkbox"/> NASA	
<input type="checkbox"/> NAVY		<input type="checkbox"/> DOE		<input type="checkbox"/> OTHER FEDERAL AGENCY (Specify)	
<input type="checkbox"/> AIR FORCE		<input type="checkbox"/> DEFENSE CONTRACT MANAGEMENT AGENCY			
7. REPORT SUBMITTED AS (Check one and provide appropriate number)			8. AGENCY OR CONTRACTOR AWARDDING CONTRACT		
<input type="checkbox"/> PRIME CONTRACTOR		PRIME CONTRACT NUMBER		a. AGENCY'S OR CONTRACTOR'S NAME	
<input type="checkbox"/> SUBCONTRACTOR		SUBCONTRACT NUMBER		b. STREET ADDRESS	
9. DOLLARS AND PERCENTAGES IN THE FOLLOWING BLOCKS: <input type="checkbox"/> DO INCLUDE INDIRECT COSTS <input type="checkbox"/> DO NOT INCLUDE INDIRECT COSTS			c. CITY		d. STATE e. ZIP CODE

SUBCONTRACT AWARDS

TYPE	CURRENT GOAL		ACTUAL CUMULATIVE	
	WHOLE DOLLARS	PERCENT	WHOLE DOLLARS	PERCENT
10a. SMALL BUSINESS CONCERNS (Dollar Amount and Percent of 10c.) (SEE SPECIFIC INSTRUCTIONS)				
10b. LARGE BUSINESS CONCERNS (Dollar Amount and Percent of 10c.) (SEE SPECIFIC INSTRUCTIONS)				
10c. TOTAL (Sum of 10a and 10b.)		100.0%		100.0%
11. SMALL DISADVANTAGED BUSINESS (SDB) CONCERNS (Dollar Amount and Percent of 10c.) (SEE SPECIFIC INSTRUCTIONS)				
12. WOMEN-OWNED SMALL BUSINESS (WOSB) CONCERNS (Dollar Amount and Percent of 10c.) (SEE SPECIFIC INSTRUCTIONS)				
13. HISTORICALLY BLACK COLLEGES AND UNIVERSITIES (HBCU) AND MINORITY INSTITUTIONS (MI) (If applicable) (Dollar Amount and Percent of 10c.) (SEE SPECIFIC INSTRUCTIONS)				
14. HUBZone SMALL BUSINESS (HUBZone SB) CONCERNS (Dollar Amount and Percent of 10c.) (SEE SPECIFIC INSTRUCTIONS)				
15. VETERAN-OWNED SMALL BUSINESS CONCERNS (Dollar Amount and Percent of 10c.) (SEE SPECIFIC INSTRUCTIONS)				
16. SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS CONCERNS (Dollar Amount and Percent of 10c) (SEE SPECIFIC INSTRUCTIONS)				
17. ALASKA NATIVE CORPORATIONS (ANCs) AND INDIAN TRIBES THAT HAVE NOT BEEN CERTIFIED BY THE SMALL BUSINESS ADMINISTRATION AS SMALL DISADVANTAGED BUSINESSES (Dollar Amount) (SEE SPECIFIC INSTRUCTIONS)				
18. ALASKA NATIVE CORPORATIONS (ANCs) AND INDIAN TRIBES THAT ARE NOT SMALL BUSINESSES (Dollar Amount) (SEE SPECIFIC INSTRUCTIONS)				

19. REMARKS

20a. NAME OF INDIVIDUAL ADMINISTERING SUBCONTRACTING PLAN

20b. TELEPHONE NUMBER

AREA CODE

NUMBER

GENERAL INSTRUCTIONS

1. This report is not required for small businesses.
2. This report is not required for commercial items for which a commercial plan has been approved, nor from large businesses in the Department of Defense (DOD) Test Program for Negotiation of Comprehensive Subcontracting plans. The Summary Subcontract Report (SF 295) is required for contractors operating under one of these two conditions and should be submitted to the Government in accordance with the instructions on that form.
3. This form collects subcontract award data from prime contractors/ subcontractors that : (a) hold one or more contracts over \$550,000 (over \$1,000,000 for construction of a public facility); and (b) are required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), Women-Owned Small Business (WOSB), HUBZone Small Business (HUBZone SB), Veteran-Owned Small Business (VOSB) and Service-Disabled Veteran-Owned Small Business concerns under a subcontracting plan. For the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, this form also collects subcontract award data for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).
4. This report is required for each contract containing a subcontracting plan and must be submitted to the administrative contracting officer (ACO) or contracting officer if no ACO is assigned, semi-annually, during contract performance for the periods ended March 31st and September 30th. A separate report is required for each contract at contract completion. Reports are due 30 days after the close of each reporting period unless otherwise directed by the contracting officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or since the previous report.
5. Only subcontracts involving performance in the U.S. or its outlying areas should be included in this report.
6. Purchases from a corporation, company, or subdivision that is an affiliate of the prime/subcontractor are not included in this report.
7. Subcontract award data reported on this form by prime contractors/ subcontractors shall be limited to awards made to their immediate subcontractors. Credit cannot be taken for awards made to lower tier subcontractors unless you have been designated to receive an SB and SDB credit from an Alaska Native Corporation (ANC) or Indian tribe.
8. FAR 19.703 sets forth the eligibility requirements for participating in the subcontracting program.
9. Actual achievements must be reported on the same basis as the goals set forth in the contract. For example, if goals in the plan do not include indirect and overhead items, the achievements shown on this report should not include them either.

SPECIFIC INSTRUCTIONS

BLOCK 2: For the Contractor Identification Number, enter the nine-digit Data Universal Numbering System (DUNS) number that identifies the specific contractor establishment. If there is no DUNS number available that identifies the exact name and address entered in Block 1, contact Dun and Bradstreet Information Services at 1-866-705-5711 or via the Internet at <http://www.dnb.com>. The contractor should be prepared to provide the following information: (i) Company legal business name. (ii) Tradestyle, doing business, or other name by which your entity is commonly recognized. (iii) Company physical street address, city, state and ZIP Code. (iv) Company mailing address, city, state and ZIP Code (if separate from physical). (v) Company telephone number. (vi) Date the company was started. (vii) Number of employees at your location. (viii) Chief executive officer/key manager. (ix) Line of business (industry). (x) Company Headquarters name and address (reporting relationship within your entity).

BLOCK 4: Check only one. Note that all subcontract award data reported on this form represents activity since the inception of the contract through the date indicated on this block.

BLOCK 5: Check whether this report is a "Regular," "Final," and/or "Revised" report. A "Final" report should be checked only if the contractor has completed the contract or subcontract reported in Block 7. A "Revised" report is a change to a report previously submitted for the same period.

BLOCK 6: Identify the department or agency administering the majority of subcontracting plans.

BLOCK 7: Indicate whether the reporting contractor is submitting this report as a prime contractor or subcontractor and the prime contract or subcontract number.

BLOCK 8: Enter the name and address of the Federal department or agency awarding the contract or the prime contractor awarding the subcontract.

BLOCK 9: Check the appropriate block to indicate whether indirect costs are included in the dollar amounts in blocks 10a through 16. To ensure comparability between the goal and actual columns, the contractor may include indirect costs in the actual column only if the subcontracting plan included indirect costs in the goal.

BLOCKS 10a through 18: Under "Current Goal," enter the dollar and percent goals in each category (SB, SDB, WOSB, VOSB, service-disabled VOSB, and HUBZone SB) from the subcontracting plan approved for this contract. (If the original goals agreed upon at contract award have been revised as a result of contract modifications, enter the original goals in Block 19. The amounts entered in Blocks 10a through 16 should reflect the revised goals.) There are no goals for Blocks 17 and 18. Under "Actual Cumulative," enter actual subcontract achievements (dollars and percent) from the inception of the contract through the date of the report shown in Block 4. In cases where indirect costs are included, the amounts should include both direct awards and an appropriate prorated portion of indirect awards. However, the dollar amounts reported under "Actual Cumulative" must be for the same period of time as the dollar amounts shown under "Current Goal." For a contract with options, the current goal should represent the aggregate goal since the inception of the contract. For example, if the contractor is submitting the report during Option 2 of a multiple year contract, the current goal would be the cumulative goal for the base period plus the goal for Option 1 and the goal for Option 2.

BLOCK 10a: Report all subcontracts awarded to SBs including subcontracts to SDBs, WOSB, VOSB, service-disabled VOSB, and HUBZone SBs. For DOD, NASA, and Coast Guard contracts, include subcontracting awards to HBCUs and MIs. Include subcontracts awarded to ANCs and Indian tribes that are not small businesses and that are not certified by the SBA as SDBs where you have been designated to receive their SB and SDB credit. Where your company and other companies have been designated by an ANC or Indian tribe to receive SB and SDB credit for a subcontract awarded to the ANC or Indian tribe, report only the portion of the total amount of the subcontract that has been designated to your company.

BLOCK 10b: Report all subcontracts awarded to large businesses (LBs) and any other-than-small businesses. Do not include subcontracts awarded to ANCs and Indian tribes that have been reported in 10a above.

BLOCK 10c: Report on this line the total of all subcontracts awarded under this contract (the sum of lines 10a and 10b).

BLOCKS 11 - 16: Each of these items is a subcategory of Block 10a. Note that in some cases the same dollars may be reported in more than one block (e.g., SDBs owned by women or veterans).

BLOCK 11: Report all subcontracts awarded to SDBs (including WOSB, VOSB, service-disabled VOSBs, and HUBZone SB SDBs). Include subcontracts awarded to ANCs and Indian tribes that have not been certified by SBA as SDBs where you have been designated to receive their SDB credit. Where your company and other companies have been designated by an ANC or Indian tribe to receive their SDB credit for a subcontract awarded to the ANC or Indian tribe, report only the portion of the total amount of the subcontract that has been designated to your company. For DoD, NASA, and Coast Guard contracts, include subcontracting awards to HBCUs and MIs.

BLOCK 12: Report all subcontracts awarded to WOSBs (including SDBs, VOSBs (including service-disabled VOSBs), and HUBZone SBs that are also WOSBs).

BLOCK 13: (For contracts with DoD, NASA, and Coast Guard): Report all subcontracts with HBCUs/MIs. Complete the column under "Current Goal" only when the subcontracting plan establishes a goal.

BLOCK 14: Report all subcontracts awarded to HUBZone SBs (including WOSBs, VOSBs (including service-disabled VOSBs), and SDBs that are also HUBZone SBs).

BLOCK 15: Report all subcontracts awarded to VOSBs including service-disabled VOSBs (and including SDBs, WOSBs, and HUBZone SBs that are also VOSBs).

BLOCK 16: Report all subcontracts awarded to service-disabled VOSBs (including SDBs, WOSBs, and HUBZone SBs that are also service-disabled VOSBs).

BLOCK 17: Report all subcontracts awarded to ANCs and Indian tribes that are reported in Block 11, but have not been certified by SBA as SDBs.

BLOCK 18: Report all subcontracts awarded to ANCs and Indian tribes that are reported in Block 10a, but are not small businesses.

BLOCK 19: Enter a short narrative explanation if (a) SB, SDB, WOSB, VOSB, service-disabled VOSB, or HUBZone SB accomplishments fall below that which would be expected using a straight-line projection of goals through the period of contract performance; or (b) if this is a final report, any one of the six goals were not met.

DEFINITIONS

1. Direct Subcontract Awards are those that are identified with the performance of one or more specific Government contract(s).

2. Indirect costs are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

DISTRIBUTION OF THIS REPORT

For the Awarding Agency or Contractor:

The original copy of this report should be provided to the contracting officer at the agency or contractor identified in Block 8. For contracts with DOD, a copy should also be provided to the Defense Contract Management Agency (DCMA) at the cognizant Defense Contract Management Area Operations (DCMAO) office.

For the Small Business Administration (SBA):

A copy of this report must be provided to the cognizant Commercial Market Representative (CMR) at the time of a compliance review. It is NOT necessary to mail the SF 294 to SBA unless specifically requested by the CMR.

SUMMARY SUBCONTRACT REPORT
(See instructions on reverse)

OMB No.: 9000-0007
Expires: 2/28/2010

Public reporting burden for this collection of information is estimated to average 16.2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VIR), Regulatory and Federal Assistance Division, GSA, Washington, DC 20405.

1. CORPORATION, COMPANY OR SUBDIVISION COVERED			3. DATE SUBMITTED	
a. COMPANY NAME			4. REPORTING PERIOD: YEAR	
b. STREET ADDRESS				
c. CITY	d. STATE	e. ZIP CODE		
2. CONTRACTOR IDENTIFICATION NUMBER			5. TYPE OF REPORT	
			<input type="checkbox"/> OCT 1 - MAR 31 <input type="checkbox"/> OCT 1 - SEPT 30	
			<input type="checkbox"/> REGULAR <input type="checkbox"/> FINAL <input type="checkbox"/> REVISED	
6. ADMINISTERING ACTIVITY <i>(Please check applicable box)</i>				
ARMY	DEFENSE CONTRACT MANAGEMENT AGENCY	DOE		
NAVY	NASA	OTHER FEDERAL AGENCY <i>(Specify)</i>		
AIR FORCE	GSA			
7. REPORT SUBMITTED AS <i>(Check one)</i>		8. TYPE OF PLAN		
PRIME CONTRACTOR		INDIVIDUAL	IF PLAN IS A COMMERCIAL PLAN, SPECIFY THE PERCENTAGE OF THE DOLLARS ON THIS REPORT ATTRIBUTABLE TO THIS AGENCY.	
SUBCONTRACTOR		COMMERCIAL PRODUCTS		
BOTH				
9. CONTRACTOR'S MAJOR PRODUCTS OR SERVICE LINES				
a.		b.		

CUMULATIVE FISCAL YEAR SUBCONTRACT AWARDS *(Report cumulative figures for reporting period in Block 4)*

TYPE	WHOLE DOLLARS	PERCENT (To nearest tenth of a %)
10a. SMALL BUSINESS CONCERNS <i>(Dollar Amount and Percent of 10c)</i> . (SEE SPECIFIC INSTRUCTIONS)		
10b. LARGE BUSINESS CONCERNS <i>(Dollar Amount and Percent of 10c)</i> . (SEE SPECIFIC INSTRUCTIONS)		
10c. TOTAL <i>(Sum of 10a and 10b)</i> .		100.0%
11. SMALL DISADVANTAGED BUSINESS CONCERNS (SDB) <i>(Dollar Amount and Percent of 10c)</i> . (SEE SPECIFIC INSTRUCTIONS)		
12. WOMEN-OWNED SMALL BUSINESS (WOSB) CONCERNS <i>(Dollar Amount and Percent of 10c)</i> . (SEE SPECIFIC INSTRUCTIONS)		
13. HISTORICALLY BLACK COLLEGES AND UNIVERSITIES (HBCU) AND MINORITY INSTITUTIONS <i>(If Applicable) (Dollar Amount and Percent of 10c)</i> . (SEE SPECIFIC INSTRUCTIONS)		
14. HUBZONE SMALL BUSINESS (HUBZone SB) CONCERNS <i>(Dollar Amount and Percent of 10c)</i> . (SEE SPECIFIC INSTRUCTIONS)		
15. VETERAN-OWNED SMALL BUSINESS (VOSB) CONCERNS <i>(Dollar Amount and Percent of 10c)</i> . (SEE SPECIFIC INSTRUCTIONS)		
16. SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS CONCERNS <i>(Dollar Amount and Percent of 10c)</i> . (SEE SPECIFIC INSTRUCTIONS)		
17. ALASKA NATIVE CORPORATIONS (ANCs) AND INDIAN TRIBES THAT HAVE NOT BEEN CERTIFIED BY THE SMALL BUSINESS ADMINISTRATION AS SMALL DISADVANTAGED BUSINESSES <i>(Dollar Amount)</i> (SEE SPECIFIC INSTRUCTIONS)		
18. ALASKA NATIVE CORPORATIONS (ANCs) AND INDIAN TRIBES THAT ARE NOT SMALL BUSINESSES <i>(Dollar Amount)</i> (SEE SPECIFIC INSTRUCTIONS)		

19. CONTRACTOR'S OFFICIAL WHO ADMINISTERS SUBCONTRACTING PROGRAM

a. NAME	b. TITLE	c. TELEPHONE NUMBER	
		AREA CODE	NUMBER

20. REMARKS

21. CHIEF EXECUTIVE OFFICER	
a. NAME	c. SIGNATURE
b. TITLE	d. DATE

GENERAL INSTRUCTIONS

1. This report is not required from small businesses.
2. This form collects subcontract data from prime contractors/subcontractors that: (a) hold one or more contracts over \$550,000 (over \$1,000,000 for construction of a public facility); and (b) are required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), Women-Owned Small Business (WOSB), Veteran-Owned Small Business (VOSB), Service-Disabled Veteran Owned Small Business, and HUBZone Small Business (HUBZone SB) concerns under a subcontracting plan. For the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, this form also collects subcontract award data for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).
3. This report must be submitted semi-annually (for the six months ended March 31st and the twelve months ended September 30th) for contracts with the Department of Defense (DOD) and annually (for the twelve months ended September 30th) for contracts with civilian agencies, except for contracts covered by an approved Commercial Plan (see special instructions in right-hand column). Reports are due 30 days after the close of each reporting period.
4. This report may be submitted on a corporate, company, or subdivision (e.g., plant or division operating on a separate profit center) basis, unless otherwise directed by the agency awarding the contract.
5. If a prime contractor/subcontractor is performing work for more than one Federal agency, a separate report shall be submitted to each agency covering only that agency's contracts, provided at least one of that agency's contracts is over \$550,000 (over \$1,000,000 for construction of a public facility) and contains a subcontracting plan. (Note that DOD is considered to be a single agency; see next instruction).
6. For DOD, a consolidated report should be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DOD prime contractors. However, DOD contractors involved in construction and related maintenance and repair must submit a separate report for each DOD component.
7. Only subcontracts involving performance in the U.S. or its outlying areas should be included in this report.
8. Purchases from a corporation, company, or subdivision that is an affiliate of the prime/subcontractor are not included in this report.
9. Subcontract award data reported on this form by prime contractors/subcontractors shall be limited to awards made to their immediate subcontractors. Credit cannot be taken for awards made to lower tier subcontractors unless you have been designated to receive SB and SDB credit from an Alaska Native Corporation (ANC) or Indian tribe.
10. FAR 19.703 sets forth the eligibility requirements for participation in the subcontracting program.
11. See special instructions in right-hand column for Commercial Plans.

SPECIFIC INSTRUCTIONS

BLOCK 2: For the Contractor Identification Number, enter the nine-digit Data Universal Numbering System (DUNS) number that identifies the specific contractor establishment. If there is no DUNS number available that identifies the exact name and address entered in Block 1, contact Dun and Bradstreet Information Services at 1-866-705-5711 or via the Internet at <http://www.dnb.com>. The contractor should be prepared to provide the following information: (i) Company legal business name. (ii) Tradestyle, doing business, or other name by which your entity is commonly recognized. (iii) Company physical street address, city, state and ZIP Code. (iv) Company mailing address, city, state and ZIP Code (if separate from physical). (v) Company telephone number. (vi) Date the company was started. (vii) Number of employees at your location. (viii) Chief executive officer/key manager. (ix) Line of business (industry). (x) Company Headquarters name and address (reporting relationship within your entity).

BLOCK 4: Check only one. Note that March 31 represents the six months from October 1st and that September 30th represents the twelve months from October 1st. Enter the year of the reporting period.

BLOCK 5: Check whether this report is a "Regular," "Final," and/or "Revised," report. A "Final" report should be checked only if the contractor has completed all the contracts containing subcontracting plans awarded by the agency to which it is reporting. A "Revised" report is a change to a report previously submitted for the same period.

BLOCK 6: Identify the department or agency administering the majority of subcontracting plans.

BLOCK 7: This report encompasses all contracts with the Federal Government for the agency to which it is submitted, including subcontracts received from other large businesses that have contracts with the same agency. Indicate in this block whether the contractor is a prime contractor, subcontractor, or both (check only one).

BLOCK 8: Check only one. Check "Commercial Plan" only if this report is under an approved Commercial Plan. For a Commercial Plan, the contractor must specify the percentage of dollars in Blocks 10a through 16 attributable to the agency to which this report is being submitted.

BLOCK 9: Identify the major product or service lines of the reporting organization.

BLOCKS 10a through 18: These entries must include all subcontract awards resulting from contracts or subcontracts, regardless of dollar amount, received from the agency to which this report is submitted. If reporting as a subcontractor, report all subcontracts awarded under prime contracts. Amounts must include both direct awards and an appropriate prorated portion of indirect awards. (The indirect portion is based on the percentage of work being performed for the organization to which the report is being

submitted in relation to other work being performed by the prime contractor/subcontractor). Do not include awards made in support of commercial business unless "Commercial" is checked in Block 8 (see Special Instructions for Commercial Plans in right hand column). Report only those dollars subcontracted this fiscal year for the period indicated in Block 4.

BLOCK 10a: Report all subcontracts awarded to SBs including subcontracts to SDBs, WOSBs, VOSBs, service-disabled VOSBs, and HUBZone SBs. Include subcontracts awarded to ANCs and Indian tribes that are not small businesses and that are not certified by the SBA as SDBs where you have been designated to receive their SB and SDB credit. Where your company and other companies have been designated by an ANC or Indian tribe to receive SB and SDB credit for a subcontract awarded to the ANC or Indian tribe, report only the portion of the total amount of the subcontract that has been designated to your company. For DOD, NASA, and Coast Guard contracts, include subcontracting awards to HBCUs and MIs.

BLOCK 10b: Report all subcontracts awarded to large businesses and any other-than-small businesses. Do not include subcontracts awarded to ANCs and Indian tribes that have been reported in 10a above.

BLOCK 10c: Report on this line the grand total of all subcontracts (the sum of lines 10a and 10b).

BLOCKS 11 through 16: Each of these items is a subcategory of Block 10a. Note that in some cases the same dollars may be reported in more than one block (e.g., SDBs owned by women); likewise subcontracts to HBCUs or MIs should be reported on both Block 11 and 13.

BLOCK 11: Report all subcontracts awarded to SDBs (including WOSB, VOSB, service-disabled VOSBs, and HUBZone SB SDBs). Include subcontracts awarded to ANCs and Indian tribes that have not been certified by SBA as SDBs where you have been designated to receive their SDB credit. Where your company and other companies have been designated by an ANC or Indian tribe to receive SDB credit for a subcontract awarded to the ANC or Indian tribe, report only the portion of the total amount of the subcontract that has been designated to your company. For DOD, NASA, and Coast Guard contracts, include subcontract awards to HBCUs and MIs.

BLOCK 12: Report all subcontracts awarded to WOSBs (including SDBs, VOSBs (including service-disabled VOSBs), and HUBZone SBs that are also WOSBs).

BLOCK 13: (For contracts with DOD, NASA and Coast Guard): Enter the dollar value of all subcontracts with HBCUs/MIs.

BLOCK 14: Report all subcontracts awarded to HUBZone SBs (including WOSBs, VOSBs (including service-disabled VOSBs), and SDBs that are also HUBZone SBs).

BLOCK 15: Report all subcontracts awarded to VOSBs, including service-disabled VOSBs (and including SDBs, WOSBs, and HUBZone SBs that are also VOSBs).

BLOCK 16: Report all subcontracts awarded to service-disabled VOSBs (including SDBs, WOSBs, and HUBZone SBs that are also service-disabled VOSBs).

BLOCK 17: Report all subcontracts awarded to ANCs and Indian tribes that are reported in Block 11, but have not been certified by SBA as SDBs.

BLOCK 18: Report all subcontracts awarded to ANCs and Indian tribes that are reported in Block 10a but are not small businesses.

SPECIAL INSTRUCTIONS FOR COMMERCIAL PLANS

1. This report is due on October 30th each year for the previous fiscal year ending September 30th.
2. The annual report submitted by reporting organizations that have an approved company-wide annual subcontracting plan for commercial items shall include all subcontracting activity under commercial plans in effect during the year and shall be submitted in addition to the required reports for other-than-commercial items, if any.
3. Enter in Blocks 10a through 16 the total of all subcontract awards under the contractor's Commercial Plan. Show in Block 8 the percentage of this total that is attributable to the agency to which this report is being submitted. This report must be submitted to each agency from which contracts for commercial items covered by an approved Commercial Plan were received.

DEFINITIONS

1. Direct Subcontract Awards are those that are identified with the performance of one or more specific Government contract(s).
2. Indirect Subcontract Awards are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

SUBMITTAL ADDRESSES FOR ORIGINAL REPORT

For DOD contractors, send reports to the cognizant contract administration office as stated in the contract.

For Civilian Agency Contractors, send reports to the awarding agency:

1. NASA: Forward reports to NASA, Office of Procurement (HS), Washington, DC 20546
2. OTHER FEDERAL DEPARTMENTS OR AGENCIES: Forward report to the OSDDBU Director unless otherwise provided for in instructions by the Department or Agency.

FOR ALL CONTRACTORS:

SMALL BUSINESS ADMINISTRATION (SBA): Send "info copy" to the cognizant Commercial Market Representative (CMR) at the address provided by SBA. Call SBA Headquarters in Washington, DC at (202) 205-6475 for the correct address if unknown.

[FR Doc. 07-3798 Filed 8-16-07; 8:45 am]

BILLING CODE 6820-EP-C

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 22, 25, and 52****[FAC 2005-19; FAR Case 2006-028; Item VIII; Docket 2007-0001, Sequence 01]**

RIN 9000-AK77

Federal Acquisition Regulation; FAR Case 2006-028, New Designated Countries—Bulgaria, Dominican Republic, and Romania**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).**ACTION:** Interim rule with request for comments.**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement the Dominican Republic—Central America—United States Free Trade Agreement with respect to the Dominican Republic. The rule also adds Bulgaria and Romania to the list of World Trade Organization Government Procurement Agreement countries.**DATES:** *Effective Date:* August 17, 2007.*Comment Date:* Interested parties should submit written comments to the FAR Secretariat on or before October 16, 2007 to be considered in the formulation of a final rule.**ADDRESSES:** Submit comments identified by FAC 2005-19, FAR case 2006-028, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Search for any document by first selecting the proper document types and selecting “Federal Acquisition Regulation” as the agency of choice. At the “Keyword” prompt, type in the FAR case number (for example, FAR case 2006-028) and click on the “Submit” button. Please include your name and company name (if any) inside the document.

You may also search for any document by clicking on the “Advanced search/document search” tab at the top of the screen, selecting from the agency field “Federal Acquisition Regulation”,

and typing the FAR case number in the keyword field. Select the “Submit” button.

- Fax: 202-501-4067.
- Mail: General Services

Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005-19, FAR case 2006-028, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, Procurement Analyst, at (202) 208-6925 for clarification of content. Please cite FAC 2005-19, FAR case 2006-028. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755.

SUPPLEMENTARY INFORMATION:**A. Background**

This rule amends FAR Part 25 and the corresponding clauses in Part 52 to implement the Dominican Republic—Central America—United States Free Trade Agreement (CAFTA-DR) with respect to the Dominican Republic. Congress approved this trade agreement in the Dominican Republic—Central America—United States Free Trade Agreement Implementation Act (Public Law 109-53). This trade agreement waives the applicability of the Buy American Act for some foreign supplies and construction materials from the Dominican Republic and specifies procurement procedures designed to ensure fairness in the acquisition of supplies and services.

This interim rule adds the Dominican Republic to the definition of “Free Trade Agreement country.” The rule also deletes the Dominican Republic from the definition of “Caribbean Basin country” because, in accordance with Section 201(a)(3) of Pub. L. 109-53, when the CAFTA-DR agreement enters into force with respect to a country, that country is no longer designated as a beneficiary country for purposes of the Caribbean Basin Economic Recovery Act.

The Councils changed the heading for excluded service on line 6 of the table at 25.401(b) to read “Transportation, travel, and relocation services. . .” as being reflective of the wording of the majority of the Free Trade Agreements, including the CAFTA-DR.

The Dominican Republic has the same thresholds as the other CAFTA-DR

countries (\$64,786 for supply and service contracts, \$7,407,000 for construction contracts).

This rule also adds Bulgaria and Romania to the list of World Trade Organization Government Procurement Agreement countries in wherever it appears, whether as a separate definition, part of the definition of designated countries, or as part of the list of countries exempt from the prohibition of acquisition of products produced by forced or indentured child labor (22.1503, 25.003, 52.222-19, 52.225-5, and 52.225-11).

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

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Although the rule opens up Government procurement to the goods and services of Bulgaria, the Dominican Republic, and Romania, the Councils do not anticipate any significant economic impact on U.S. small businesses. The Department of Defense only applies the trade agreements to the non-defense items listed at DFARS 225.401-70, and acquisitions that are set aside for small businesses are exempt. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 22, 25, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 2005-19, FAR case 2006-028), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Numbers 9000-0025, 9000-0130, 9000-0136, and 9000-0141 respectively. The interim rule affects the certification and information collection requirements in the provisions at FAR 52.212-3, 52.225-4, 52.225-6, and 52.225-11.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense

(DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the CAFTA-DR took effect with respect to the Dominican Republic on March 1, 2007. Bulgaria and Romania became parties to the WTO GPA on January 1, 2007.

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

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

Government procurement.

Dated: July 30, 2007.

Al Matera,

Acting Director, Contract Policy Division.

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

1. The authority citation for 48 CFR parts 22, 25, and 52 continues to read as follows:

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

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1503 [Amended]

2. Amend section 22.1503 in paragraph (b)(4) by adding "Bulgaria," and "Romania," in alphabetical order.

PART 25—FOREIGN ACQUISITION

25.003 [Amended]

3. Amend section 25.003 by—
a. Removing from the definition "Caribbean Basin country", "Dominican Republic,";
b. Amending the definition "Designated country" by—
1. Adding to paragraph (1) "Bulgaria," and "Romania," in alphabetical order;
2. Adding to paragraph (2) "Dominican Republic," in alphabetical order; and
3. Removing from paragraph (4) "Dominican Republic,";
c. Amending the definition "Free Trade Agreement country", by adding "Dominican Republic," in alphabetical order; and
d. Amending the definition "World Trade Organization Government Procurement Agreement (WTO GPA) country", by adding "Bulgaria," and "Romania," in alphabetical order.

25.402 [Amended]

4. Amend section 25.402(b), in the table, by adding after "El Salvador," the entry "Dominican Republic,".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Amend section 52.212-3 by revising the date of the clause and the last sentence of paragraph (g)(1)(i) to read as follows:

52.212-3 Offeror Representations and Certifications—Commercial Items.

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS
(AUG 2007)

(g)(1) * * *
(i) * * * The terms "Bahrainian or Moroccan end product," "component," "domestic end product," "end product," "foreign end product," "Free Trade Agreement country," "Free Trade Agreement country end product," "Israeli end product," and "United States" are defined in the clause of this solicitation entitled "Buy American Act—Free Trade Agreements—Israeli Trade Act."

52.212-5 [Amended]

6. Amend section 52.212-5 by—
a. Revising the date of clause to read "(AUG 2007)";
b. Removing from paragraph (b)(17) "(JAN 2006)" and adding "(AUG 2007)" in its place; and
c. Removing from paragraphs (b)(27)(i) and (b)(28) "(NOV 2006)" and adding "(AUG 2007)" in its place.

52.222-19 [Amended]

7. Amend section 52.222-19 by revising the date of clause to read "(AUG 2007)"; and in paragraph (a)(4) by adding "Bulgaria," and "Romania," in alphabetical order.
8. Amend section 52.225-3 by—
a. Revising the date of clause;
b. Revising the introductory text of the definition "Bahrainian end product", and adding to paragraphs (1) and (2) "or Morocco" after Bahrain;
c. Amending the definition "Free Trade Agreement country" by adding "Dominican Republic," in alphabetical order;
d. Removing the definition "Moroccan end product"; and
e. Removing from paragraph (c) "Morocco FTA" and adding "Morocco FTAs" in its place.

The revised text reads as follows:

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

BUY AMERICAN ACT—FREE TRADE AGREEMENTS—ISRAELI TRADE ACT
(AUG 2007)

Bahrainian or Moroccan end product means an article that—

52.225-4 [Amended]

9. Amend section 52.225-4 by revising the date of clause to read "(AUG 2007)"; and adding to paragraph (a) "or Moroccan" after "Bahrainian" and by removing the term "Moroccan end product,".

52.225-5 [Amended]

10. Amend section 52.225-5 by—
a. Revising the date of clause to read "(AUG 2007)"; and
b. Amending, in paragraph (a), the definition "Designated country" by—
1. Adding to paragraph (1) "Bulgaria," and "Romania," in alphabetical order;
2. Adding to paragraph (2) "Dominican Republic," in alphabetical order; and
3. Removing from paragraph (4) "Dominican Republic,".
11. Amend section 52.225-11 by—
a. Revising the date of clause;
b. Amending the definition "Designated country" by—
1. Adding to paragraph (1) "Bulgaria," and "Romania," in alphabetical order;
2. Adding to paragraph (2) "Dominican Republic," in alphabetical order; and
3. Removing from paragraph (4) "Dominican Republic,"; and
c. In Alternate I by revising the introductory text and the definition "Bahrainian construction material"; and by removing the definition "Mexican construction material".

The revised text reads as follows:

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

BUY AMERICAN ACT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS
(AUG 2007)

Alternate I "(AUG 2007)". As prescribed in 25.1102(c)(3), add the following definition of "Bahrainian or Mexican construction material" to paragraph (a) of the basic clause, and substitute the following paragraphs (b)(1) and (b)(2) for paragraphs (b)(1) and (b)(2) of the basic clause:

Bahrainian or Mexican construction material means a construction material that—
(1) Is wholly the growth, product, or manufacture of Bahrain or Mexico; or
(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain or Mexico into a new and different construction material distinct

from the materials from which it was transformed.

* * * * *

■ 12. Amend section 52.225–12 by revising the introductory text of Alternate II to read as follows:

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

* * * * *

Alternate II (“AUG 2007”). As prescribed in 25.1102(d)(3), add the definition of “Bahrainian or Mexican construction material” to paragraph (a) and substitute the following paragraph (d) for paragraph (d) of the basic provision:

* * * * *

[FR Doc. 07–3799 Filed 8–16–07; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Part 23

[FAC 2005–19; FAR Case 2006–025; Item IX; Docket 2007–0001, Sequence 3]

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: 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 prescription for use of clauses for the use of EPA-designated products and toxic chemical release reporting.

DATES: Effective Date: August 17, 2007.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before October 16, 2007 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–19, FAR case 2006–025, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Search for any document by first selecting the proper

document types and selecting “Federal Acquisition Regulation” as the agency of choice. At the “Keyword” prompt, type in the FAR case number (for example, FAR Case 2006–025) and click on the “Submit” button. Please include your name and company name (if any) inside the document.

You may also search for any document by clicking on the “Advanced search/document search” tab at the top of the screen, selecting from the agency field “Federal Acquisition Regulation”, and typing the FAR case number in the keyword field. Select the “Submit” button.

- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–19, FAR case 2006–025, 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. Ernest Woodson, Procurement Analyst, at (202) 501–3775 for clarification of content. Please cite FAC 2005–19, FAR case 2006–025. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

FAR Subpart 4.12, Annual Representations and Certifications, prescribes policies and procedures for prospective offerors to submit annual representations via the Online Representations and Certifications Application (ORCA). ORCA, located at <http://orca.bpn.gov>, eliminates the administrative burden of submitting the same information to various contracting offices and establishes a common source for the Government to obtain the information. FAR 4.1201 requires prospective contractors to complete annual representations and certifications in ORCA (and update them as necessary, but at least annually) in conjunction with their required registration in the Central Contractor Registration (CCR) database.

FAR 4.1104 requires (with few exceptions as listed at FAR 4.1102) the use of FAR clause 52.204–7, Central Contractor Registration, which requires the contractor to register in CCR. FAR 4.1202 lists twenty-six representations and certifications that are included in

ORCA and are therefore not to be included in solicitations that include the clause at 52.204–7, Central Contractor Registration.

Of the twenty-six representations and certifications, the prescriptions for use of two associated clauses, (1) 52.223–9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products, and (2) 52.223–14, Toxic Chemical Release Reporting, were determined to be problematic. The prescriptions for use of the clauses were dependent upon the associated provisions at 52.223–4, Recovered Material Certification, and 52.223–13, Certification of Toxic Chemical Release Reporting, being included in the solicitation. In instances where CCR is required, the annual certification in ORCA applies, and therefore neither provision will be included in the solicitation. Therefore, when applicable to the resultant contract, the Government may fail to include the associated clause because the provision was not included in the solicitation. Failure to include the clause may preclude receipt of information or certification required by statute.

This interim rule amends FAR 23.406 and 23.906, both titled Solicitation provision and contract clause, to revise the prescriptions for the use of 52.223–9 and 52.223–14 to provide for use under the same circumstances as the prescription for use of their associated provisions. These revisions ensure compliance with the statutory requirements of 40 CFR part 247 and 42 U.S.C. 11023.

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 the rule revises language that the Office of Management and Budget 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. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities

concerning the affected FAR Part 23 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 2005–19, FAR case 2006–025), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Numbers 9000–0134 and 9000–0139.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the rule amends the FAR to address necessary changes to the prescriptions for the use of FAR clauses, allowing the proper receipt of certification information and ensuring compliance with the statutory requirements of 40 CFR part 247 and 42 U.S.C. 11023. 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 Part 23

Government procurement.

Dated: July 30, 2007.

Al Matera,

Acting Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 23 as set forth below:

PART 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

■ 1. The authority citation for 48 CFR part 23 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 23.406 by revising the first sentence of paragraph (b) to read as follows:

23.406 Solicitation provision and contract clause.

* * * * *

(b) Insert the clause at 52.223–9, Estimate of Percentage of Recovered

Material Content for EPA-Designated Products, in solicitations and contracts exceeding \$100,000 that are for, or specify the use of, EPA-designated products containing recovered materials. * * *

■ 3. Amend section 23.906 by revising paragraph (b) to read as follows:

23.906 Solicitation provision and contract clause.

* * * * *

(b) Insert the clause at 52.223–14, Toxic Chemical Release Reporting, in competitively awarded contracts exceeding \$100,000 and competitively awarded 8(a) contracts, except when the determination at 23.905(b) has been made.

[FR Doc. 07–3800 Filed 8–16–07; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 2005–19; FAR Case 2006–006; Item X; Docket 2006–0020; Sequence 7]

RIN 9000–AK49

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

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed to adopt the interim rule published in the **Federal Register** at 71 FR 36935, June 28, 2006, as a final rule without change. This final rule amends the Federal Acquisition Regulation (FAR) to implement the Dominican Republic—Central America—United States Free Trade Agreement with respect to El Salvador, Honduras, and Nicaragua.

DATES: *Effective Date:* August 17, 2007.

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 2005–19, FAR case 2006–006.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 71 FR 36935 on June 28, 2006, to implement the Dominican Republic—Central America—United States Free Trade Agreement (CAFTA-DR) with respect to El Salvador, Honduras, and Nicaragua (Public Law 109–53). No comments were received by the close of the public comment period on August 28, 2006. Therefore, the Councils agreed to convert the interim rule to a final rule without change.

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

B. Regulatory Flexibility Act

The 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.* Although the rule opens up Government procurement to the products of El Salvador, Honduras, and Nicaragua, the Councils do not anticipate any significant economic impact on U.S. small businesses. The Department of Defense only applies the trade agreements to the non-defense items listed at DFARS 225.401–70, and acquisitions that are set-aside for small businesses are exempt.

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 9000–0139, 9000–0025, and 9000–0141.

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: July 30, 2007

Al Matera,

Acting Director, Contract Policy Division.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 25 and 52, which was published at 71 FR 36935,

June 28, 2006, is adopted as a final rule without change.

[FR Doc. 07-3801 Filed 8-16-07; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 2005-19; FAR Case 2006-017; Item XI; Docket 2006-0020; Sequence 11]

RIN 9000-AK61

Federal Acquisition Regulation; FAR Case 2006-017, Free Trade Agreements-Bahrain and Guatemala

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 the interim rule published in the **Federal Register** at 71 FR 67776, November 22, 2006, as a final rule without change. This final rule amends the Federal Acquisition Regulation (FAR) to implement the Dominican Republic-Central America-United States Free Trade Agreement with respect to Guatemala and the United States-Bahrain Free Trade Agreement.

DATES: Effective Date: August 17, 2007.

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 2005-19, FAR case 2006-017.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 71 FR 67776, November 22, 2006. The interim rule amended FAR Part 25 and the corresponding clauses in FAR Part 52 to implement the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) with respect to Guatemala and the United States-Bahrain Free Trade Agreement (FTA). Congress approved these trade agreements in the Dominican Republic-Central America-

United States Free Trade Agreement Implementation Act (Pub. L. 109-53) and the United States-Bahrain Free Trade Agreement Implementation Act (Pub. L. 109-169), respectively. These trade agreements waive the applicability of the Buy American Act for some foreign supplies and construction materials from Guatemala and Bahrain and specify procurement procedures designed to ensure fairness in the acquisition of supplies and services.

The interim rule added Bahrain and Guatemala to the definition of "Free Trade Agreement country." The rule also deleted Guatemala from the definition of "Caribbean Basin country" because, in accordance with Section 201(a)(3) of Pub. L. 109-53, when the CAFTA-DR agreement enters into force with respect to a country, that country is no longer designated as a beneficiary country for purposes of the Caribbean Basin Economic Recovery Act. The Councils received no comments on the interim rule; therefore, the Councils have agreed to implement the interim rule as a final rule without change.

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

B. Regulatory Flexibility Act

The 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.* Although the rule opens up Government procurement to the goods and services of Guatemala and Bahrain, the Councils do not anticipate any significant economic impact on U.S. small businesses. The Department of Defense only applies the trade agreements to the non-defense items listed at DFARS 225.401-70, and acquisitions that are set aside for small businesses are exempt. No comments were received with regard to 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 9000-0025, 9000-0130, 9000-0136, and 9000-0141.

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: July 30, 2007.

Al Matera,

Acting Director, Contract Policy Division.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 25 and 52, which was published in the **Federal Register** at 71 FR 67776, November 22, 2006, is adopted as a final rule without change.

[FR Doc. 07-3802 Filed 8-16-07; 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 2005-19; FAR Case 2006-027; Item XII; 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: 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 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 and after January 1, 2008.

DATES: Effective Date: August 17, 2007.

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 U.S. or under the control of any agency or instrumentality of the U.S. The clause shall be placed in all such solicitations and contracts on and after the effective date of this rule.

Applicable existing contracts whose period of performance extends beyond January 1, 2008 shall be modified to include the clause.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before October 16, 2007 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–19, FAR case 2006–027, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Search for any document by first selecting the proper document types and selecting “Federal Acquisition Regulation” as the agency of choice. At the “Keyword” prompt, type in the FAR case number (for example, FAR Case 2006–001) and click on the “Submit” button. Please include your name and company name (if any) inside the document.

You may also search for any document by clicking on the “Advanced search/document search” tab at the top of the screen, selecting from the agency field “Federal Acquisition Regulation”, and typing the FAR case number in the keyword field. Select the “Submit” button.

- Fax: 202–501–4067.
- Mail: General Services

Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–19, FAR case 2006–027, 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. 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 2005–19, FAR case 2006–027.

SUPPLEMENTARY INFORMATION:

A. Background

This interim 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. 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.

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 receiving and dispensing the new coins as part of business operations should not add to workload or expense. For vending machines already configured to accept and dispense the Sacagawea \$1 coin, which has been in circulation since January, 2000, there will be no need to change or modify equipment.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 37 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 2005–19, FAR case 2006–027), 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 to implement the Presidential \$1 Coin Act of 2005 which 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. Issuance of an interim rule is necessary to ensure that the appropriate clause is included in solicitations and contracts to permit compliance with this requirement by January 1, 2008, in accordance with the Act. In addition, modifications to existing covered contracts will be needed in order to comply with the mandated date. 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 37 and 52

Government procurement.

Dated: July 30, 2007.

Al Matera,

Acting Director, Contract Policy Division.

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

■ 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. Add sections 37.116, 37.116-1, and 37.116-2 to read as follows:

37.116 Accepting and Dispensing of \$1 Coin.

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

This section implements Section 104 of the Presidential \$1 Coin Act of 2005 (31 U.S.C. 5112(p)(1)), which seeks to remove barriers to the circulation of \$1 coins. Section 104 requires that business operations performed on United States Government premises provide for accepting and dispensing of existing and proposed \$1 coins as part of operations on and after January 1, 2008.

37.116–2 Contract clause.

Insert the clause at 52.237–11, Accepting and Dispensing of \$1 Coin, in solicitations and contracts for the provision of services 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.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.212–5 by revising the date of the clause and adding paragraph (c)(5) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (AUG 2007)

* * * * *

(c) * * *

(5) 52.237–11, Accepting and Dispensing of \$1 Coin (AUG 2007)(31 U.S.C. 5112(p)(1)).

* * * * *

■ 4. Add section 52.237–11 to read as follows:

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

As prescribed in 37.116–2, insert the following clause:

ACCEPTING AND DISPENSING OF \$1 COIN (AUG 2007)

(a) This clause applies to service contracts that involve business operations conducted in U.S. coin 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. All such business operations must be compliant with the requirements in paragraphs (b) and (c) of this clause on and after January 1, 2008.

(b) All business operations conducted under this contract that involve coins or currency, including vending machines, shall be fully capable of accepting and dispensing \$1 coins in connection with such operations.

(c) The Contractor shall ensure that signs and notices are displayed denoting the capability of accepting and dispensing \$1 coins with business operations on all premises where coins or currency are accepted or dispensed, including on each vending machine.

(End of clause)

[FR Doc. 07–3803 Filed 8–16–07; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 31, 32, and 52**

[FAC 2005–19; Item XIII; Docket FAR–2007–0003; Sequence 2]

Federal Acquisition Regulation; Technical Amendments

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

ACTION: Final rule.

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

DATES: Effective Date: August 17, 2007.

FOR FURTHER INFORMATION CONTACT The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. Please cite FAC 2005–19, Technical Amendments.

List of Subjects in 48 CFR Parts 31, 32, and 52

Government procurement.

Dated: July 30, 2007.

Al Matera,*Acting Director, Contract Policy Division.*

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 31, 32, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 31, 32, 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 31—CONTRACT COST PRINCIPLES AND PROCEDURES**31.201–5 [Amended]**

■ 2. Amend section 31.201–5 by removing “31.205–6(j)(4)” and adding “31.205–6(j)(3)” in its place.

PART 32—CONTRACT FINANCING

■ 3. Amend section 32.006–1 by revising the first sentence of paragraph (a); and by removing from paragraph (b) “10 U.S.C. 2307(h)(2)” and adding “10 U.S.C. 2307(i)(2)” in its place. The revised text reads as follows:

32.006–1 General.

(a) Under Title 10 of the United States Code, the statutory authority

implemented by this section is available to the Department of Defense and the National Aeronautics and Space Administration; this statutory authority is not available to the United States Coast Guard. * * *

* * * * *

32.006–2 [Amended]

■ 4. Amend section 32.006–2 by removing “10 U.S.C. 2307(h)(10)” and adding “10 U.S.C. 2307(i)(10)” in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**52.212–5 [Amended]**

■ 5. Amend section 52.212–5 by—

■ a. Revising the date of clause to read “(AUG 2007)”;

■ b. Adding “(AUG 2006)” after the word “Set-Aside” in newly designated paragraph (b)(30); and

■ c. Adding “(AUG 2006)” after the word “Area” in newly designated paragraph (b)(31).

52.232–16 [Amended]

■ 6. Amend section 52.232–16 by removing from the introductory text of paragraph (c) “acquisitions” and adding “actions” in its place.

52.245–1 [Amended]

■ 7. Amend section 52.245–1 by removing from paragraph (e)(3)(iii) “(e)(3)(i)” and adding “(e)(3)(iii)” in its place.

[FR Doc. 07–3804 Filed 8–16–07; 8:45 am]

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DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Chapter 1**

[Docket FAR–2007–0002, Sequence 4]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–19; 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) 2005–19 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 2005–19 which precedes this document. These documents are also available via

the Internet at <http://www.regulations.gov>.

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

LIST OF RULES IN FAC 2005–19

Item	Subject	FAR case	Analyst
I	Reporting of Purchases from Overseas Sources	2005–034	Murphy.
II	Changes to Lobbying Restrictions	2005–035	Woodson.
III	Online Representations and Certifications Application Archiving Capability	2005–025	Woodson.
*IV	Requirement to Purchase Approved Authentication Products and Services	2005–017	Jackson.
V	Combating Trafficking in Persons (Interim)	2005–012	Woodson.
VI	Emergency Acquisitions	2005–038	Clark.
*VII	Small Business Credit for Alaska Native Corporations and Indian Tribes	2004–017	Cundiff.
VIII	New Designated Countries—Bulgaria, Dominican Republic, and Romania (Interim)	2006–028	Murphy.
IX	Online Representations and Certifications Application Review (Interim)	2006–025	Woodson.
X	Free Trade Agreements— El Salvador, Honduras, and Nicaragua	2006–006	Murphy.
XI	Free Trade Agreements—Bahrain and Guatemala	2006–017	Murphy.
XII	Accepting and Dispensing of \$1 Coin (Interim)	2006–027	Jackson.
XIII	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 2005–19 amends the FAR as specified below:

Item I—Reporting of Purchases from Overseas Sources (FAR Case 2005–034)

This final rule converts the interim rule to a final rule with a minor change. The interim rule amended FAR Part 25 and added a provision (52.225–18, Place of Manufacture) to implement Section 837 of Division A of the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006 (Pub. L. 109–115). Section 837 requires the head of each Federal agency to submit a report to Congress relating to acquisitions of articles, materials, or supplies that are manufactured outside the United States. The new provision requests from offerors necessary data regarding place of manufacture. The new provision will require an offeror to indicate whether the place of manufacture of the end products it expects to provide in response to the solicitation is predominantly inside or outside the United States. Whenever the place of manufacture for a contract is coded outside the United States, the contracting officer will be required to enter into FPDS the reason for buying items manufactured outside the United States. In addition, the rule clarifies

different tests used to determine the country of origin (FAR 25.001) under the Buy American Act and the Trade Agreements Act.

Item II—Changes to Lobbying Restrictions (FAR Case 2005–035)

This final rule amends the FAR in order to be consistent with the Lobbying Disclosure Act of 1995 and the OMB Interim Final Guidance, and to improve clarity of the regulation through improved use of plain language and compliance with FAR drafting conventions. Among the changes, this final rule—

Includes the new concept of “lobbying contact” and brings in the concept of registrants under the Lobbying Act of 1995;

Includes the OMB guidance that the term “appropriated funds” does not include profit or fee from a covered Federal action and that to the extent the contractor can demonstrate that the contractor has sufficient monies, other than Federal appropriated funds, the Government will assume that these other monies were spent for any influencing activities that would be unallowable if paid for with Federal appropriated funds;

Formalizes in the regulations the changes that were already incorporated in the OMB Form Standard Form LLL, Disclosure of Lobbying Activities;

Removes 31 U.S.C. 1352, Limitations on Payment to Influence Certain Federal Transactions), from the list of laws that are inapplicable to subcontracts for the acquisition of commercial item; and

Makes the text, provisions, and clauses easier to understand, for both contracting officers and offerors/contractors.

Item III—Online Representations and Certifications Application Archiving Capability (FAR Case 2005–025)

This final rule amends the FAR to eliminate confusion between the FAR record retention requirements at FAR 4.803 and the requirements at FAR Subpart 4.12 requiring contractors to submit Annual Representations and Certifications via the Online Representations and Certifications Application (ORCA), a part of the Business Partner Network. Using ORCA eliminates the administrative burden for contractors of submitting the same information to various contracting offices, and establishes a common source for this information to procurement offices throughout the Government. The interim rule published at 71 FR 57362, September 28, 2006, is adopted as final without change.

Item IV—Requirement to Purchase Approved Authentication Products and Services (FAR Case 2005–017)

This final rule amends the Federal Acquisition Regulation (FAR) to address the acquisition of products and services for personal identity verification that comply with requirements in Homeland Security Presidential Directive (HSPD) 12, “Policy for a Common Identification Standard for Federal Employees and Contractors,” and Federal Information Processing Standards Publication (FIPS PUB) 201, “Personal Identity

Verification of Federal Employees and Contractors.”

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

This revised interim rule amends the Federal Acquisition Regulation (FAR) to implement 22 U.S.C. 7104(g). This statute requires that contracts must include a clause that authorizes the department or agency to terminate the contract, if the contractor, contractor employee, subcontractor, or subcontractor employee engages in trafficking in persons. To accurately reflect the statutory language, the revised interim rule provides for contract termination for engaging in severe forms of trafficking in persons or procurement of a commercial sex act during the period of performance of the contract, and provides for contract termination for use of forced labor in the performance of the contract. While the interim rule only applied to contracts for services (other than commercial), this revised interim rule applies to all contracts, including contracts for supplies, and all contracts for commercial items as defined at 2.101.

Item VI—Emergency Acquisitions (FAR Case 2005–038)

This final rule converts the interim rule published at 71 FR 38247, July 5, 2006, to a final rule with changes. This final rule amends the Federal Acquisition Regulation (FAR) to provide a consolidated reference to acquisition flexibilities that may be used during emergency situations. This change improves the contracting officer's ability to expedite acquisition of supplies and services during emergency situations. The final rule makes no change to existing contracting policy.

Item VII—Small Business Credit for Alaska Native Corporations and Indian Tribes (FAR Case 2004–017)

This final rule amends the Federal Acquisition Regulation (FAR) to provide that contractors may count subcontracts awarded to Alaskan Native Corporations (ANCs) and Indian tribes towards the satisfaction of goals for subcontracting with small business (SB) and small disadvantaged business (SDB) concerns, regardless of their size. This rule implements Section 702 of Pub. L. 107–117, as amended by Section 3003 of Pub. L. 107–206. These changes are

expected to increase subcontracting opportunities for ANCs and Indian tribes, and improve Government and contractor subcontracting performance with these entities.

Item VIII—New Designated Countries—Bulgaria, Dominican Republic, and Romania (FAR Case 2006–028) (Interim)

This interim rule allows contracting officers to purchase the goods and services of Bulgaria, the Dominican Republic, and Romania without application of the Buy American Act if the acquisition is subject to the Free Trade Agreements. This trade agreement with the Dominican Republic joins the North American Free Trade Agreement (NAFTA), the Australia, Bahrain, Chile, Morocco, and Singapore Free Trade Agreements, and the CAFTA-DR with respect to El Salvador, Guatemala, Honduras, and Nicaragua, which are already in the FAR. The threshold for applicability of the Dominican Republic—Central America—United States Free Trade Agreement is \$64,786 for supplies and services (the same as other Free Trade Agreements to date except Morocco, Bahrain, Israel, and Canada) and \$7,407,000 for construction (the same as all other Free Trade Agreements to date except NAFTA and Bahrain). Bulgaria and Romania have become parties to the World Trade Organization Government Procurement Agreement, so they are now designated countries.

Item IX—Online Representations and Certifications Application (ORCA) Review (FAR Case 2006–025) (Interim)

This interim rule amends FAR 23.406 and 23.906, both titled Solicitation provision and contract clause, to revise the prescriptions for the use of 52.223–9 and 52.223–14 to provide for use under the same circumstances as the prescription for use of their associated provisions. These revisions allow the proper receipt of certification information and ensure compliance with the statutory requirements of 40 CFR Part 247 and 42 U.S.C. 11023.

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

This final rule converts the interim rule published at 71 FR 36935, June 28, 2006, to a final rule without change.

This rule allows contracting officers to purchase the products of El Salvador, Honduras, and Nicaragua without application of the Buy American Act if the acquisition is subject to the Dominican Republic—Central America—United States Free Trade Agreement (CAFTA-DR). The CAFTA-DR took effect with respect to El Salvador on March 1, 2006. It took effect with respect to Honduras and Nicaragua on April 1, 2006. This agreement joins the North American Free Trade Agreement (NAFTA) and the Australia, Chile, Morocco, Bahrain, and Singapore Free Trade Agreements which are already in the FAR. The threshold for applicability of the CAFTA-DR is \$64,786 for supplies and services, and \$7,407,000 for construction.

Item XI—Free Trade Agreements—Bahrain and Guatemala (FAR Case 2006–017)

This final rule converts the interim rule published at 71 FR 67776, November 22, 2006, to a final rule without change. The rule allows contracting officers to purchase the goods and services of Bahrain and Guatemala without application of the Buy American Act if the acquisition is subject to the Free Trade Agreements. These trade agreements with Bahrain and Guatemala join the North American Free Trade Agreement (NAFTA), the Australia, Chile, Morocco, and Singapore Free Trade Agreements, and the CAFTA-DR with respect to El Salvador, Honduras, and Nicaragua that are already in the FAR. The threshold for applicability of the Dominican Republic—Central America—United States Free Trade Agreement is \$64,786 for supplies and services (the same as other Free Trade Agreements to date except Morocco and Canada) and \$7,407,000 for construction (the same as all other Free Trade Agreements to date except NAFTA). The threshold for applicability of the Bahrain Free Trade Agreement is \$193,000 (the same as the Morocco FTA and the WTO GPA) and \$8,422,165 for construction (the same as NAFTA).

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

This interim 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.

Item XIII—Technical Amendments

Editorial changes are made at FAR 31.201–5, 32.006–1, 32.006–2, 52.212–5, 52.232–16, and 52.245–1 in order to update references.

Dated: July 30, 2007.

Al Matera,

Acting Director, Contract Policy Division.

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