

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES  
ADMINISTRATION**

**NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

**48 CFR Chapter 1**

[Docket FAR 2010–0076, Sequence 5]

**Federal Acquisition Regulation;  
Federal Acquisition Circular 2005–43;  
Introduction**

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

and National Aeronautics and Space  
Administration (NASA).

**ACTION:** Summary presentation of rules.

**SUMMARY:** This document summarizes  
the Federal Acquisition Regulation  
(FAR) rules agreed to by the Civilian  
Agency Acquisition Council and the  
Defense Acquisition Regulations  
Council (Councils) in this Federal  
Acquisition Circular (FAC) 2005–43. A  
companion document, the *Small Entity  
Compliance Guide* (SECG), follows this  
FAC. The FAC, including the SECG, is  
available via the Internet at [http://  
www.regulations.gov](http://www.regulations.gov).

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

**FOR FURTHER INFORMATION CONTACT:** The  
analyst whose name appears in the table  
below in relation to each FAR case.  
Please cite FAC 2005–43 and the  
specific FAR case numbers. For  
information pertaining to status or  
publication schedules, contact the  
Regulatory Secretariat at (202) 501–  
4755.

**LIST OF RULES IN FAC 2005–43**

Item	Subject	FAR Case	Analyst
I .....	Government Property .....	2008–011	Parnell
II .....	Registry of Disaster Response Contractors .....	2008–035	Gary
III .....	Recovery Act Subcontract Reporting Procedures (Interim) .....	2010–008	Morgan
IV .....	Clarification of Criteria for Sole Source Awards to Service-disabled Veteran-owned Small Business Concerns.	2008–023	Cundiff
V .....	Trade Agreements Thresholds (Interim) .....	2009–040	Davis

**SUPPLEMENTARY INFORMATION:**

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

FAC 2005–43 amends the FAR as  
specified below:

**Item I—Government Property (FAR  
Case 2008–011)**

This final rule amends the FAR to  
revise FAR part 45 and its associated  
clauses. Changes are being made to FAR  
parts 2, 4, 15, 32, 42, 45, and 52. These  
changes are to clarify and correct the  
previous FAR rule for part 45,  
Government Property, published under  
Federal Acquisition Circular 2005–17,  
FAR case 2004–025, May 15, 2007, (72  
FR 27364). Minor changes are made to  
the proposed rule published August 6,  
2009 (74 FR 39262).

The rule specifically impacts  
contracting officers, property  
administrators, and contractors  
responsible for the management of  
Government property. The rule does not  
affect the method of managing  
Government property. The rule merely  
clarifies and corrects the previous FAR  
rule.

**Item II—Registry of Disaster Response  
Contractors (FAR Case 2008–035)**

This final rule adopts, without  
change, the interim rule implementing  
Public Law 109–295, the Department of

Homeland Security Appropriations Act,  
2007, section 697, which requires the  
establishment and maintenance of a  
registry of disaster response contractors.  
The Disaster Response Registry is  
located at <http://www.ccr.gov>. The  
Federal Emergency Management Agency  
(within the Department of Homeland  
Security) has a link to the registry for  
vendors on its Web site at [http://  
www.fema.gov/business/  
contractor.shtm](http://www.fema.gov/business/<br/>contractor.shtm). The Registry covers  
domestic disaster and emergency relief  
activities.

**Item III—Recovery Act Subcontract  
Reporting Procedures (FAR Case 2010–  
008) (Interim)**

This interim rule amends the FAR to  
revise the clause at FAR 52.204–11,  
American Recovery and Reinvestment  
Act—Reporting Requirements. The  
revised clause will require first-tier  
subcontractors with Recovery Act  
funded awards of \$25,000 or more, to  
report jobs information to the prime  
contractor for reporting into  
*FederalReporting.gov*. It also will  
require the prime contractor to submit  
its first report on or before the 10th day  
after the end of the calendar quarter in  
which the prime contractor received the  
award, and quarterly thereafter.

The revised clause will be used for all  
new solicitations and awards issued on  
or after the effective date of this interim  
rule. This clause is not required for any  
existing contracts, or task and delivery  
orders issued under a contract, that

contain the original clause FAR 52.204–  
11 (March 2009). Therefore, this interim  
rule does not require renegotiation of  
existing Recovery Act contracts that  
include the clause dated March 2009.

**Item IV—Clarification of Criteria for  
Sole Source Awards to Service-  
Disabled Veteran-Owned Small  
Business Concerns (FAR Case 2008–  
023)**

This final rule amends FAR  
19.1406(a) to clarify the criteria that  
need to be met in order to conduct a  
sole source service-disabled veteran-  
owned small business (SDVOSB)  
concern acquisition. The FAR language  
is amended to be consistent with the  
Veterans Benefit Act of 2003 (15 U.S.C.  
657f) and the Small Business  
Administration’s regulation (13 CFR  
125.20) that implements the Act. This  
final rule also amends FAR 19.1306(a)  
to clarify the criteria that need to be met  
in order to conduct a sole source for  
Historically Underutilized Business  
Zone (HUBZone) small business  
concern acquisitions. These  
amendments to the FAR alleviate  
confusion for contracting officers on the  
appropriate use of the criteria needed to  
conduct sole source HUBZONE small  
business and SDVOSB concern  
acquisitions.

**Item V—Trade Agreements Thresholds  
(FAR Case 2009–040) (Interim)**

This interim rule adjusts the  
thresholds for application of the World

Trade Organization Government Procurement Agreement and the free trade agreements as determined by the United States Trade Representative, according to a pre-determined formula under the agreements.

Dated: June 25, 2010.

**Edward Loeb,**

*Director, Acquisition Policy Division.*

### Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005–43 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 2005–43 is effective July 2, 2010, except for Items I, II, and IV which are effective August 2, 2010.

Dated: June 24, 2010.

**Shay D. Assad,**

*Director, Defense Procurement and Acquisition Policy.*

Dated: June 24, 2010.

**Rodney P. Lantier,**

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

Dated: June 23, 2010.

**William P. McNally,**

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

[FR Doc. 2010–15913 Filed 7–1–10; 8:45 am]

**BILLING CODE 6820–EP–P**

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 2, 4, 15, 31, 32, 42, 45, and 52

[FAC 2005–43; FAR Case 2008–011; Item I; Docket 2009–0029; Sequence 1]

RIN 9000–AL41

#### Federal Acquisition Regulation; FAR Case 2008–011, Government Property

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

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council

(Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to revise FAR part 45, Government Property, and its associated clauses.

**DATES:** *Effective Date:* August 2, 2010.

#### FOR FURTHER INFORMATION CONTACT:

Ms. Jeritta Parnell, Procurement Analyst, at (202) 501–4082, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–43, FAR Case 2008–011.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 74 FR 39262, August 6, 2009. This rule clarifies and corrects the previous FAR rule for part 45, Government Property, published under FAC 2005–17, FAR Case 2004–025, May 15, 2007 (72 FR 27364).

Sixteen respondents submitted 106 comments. The comments received were grouped under 31 general topics. A discussion of the comments and the changes to the rule as a result of these comments are provided below:

##### 1. Access

There is no revision to the proposed rule based on this category of comment. One respondent recommended revising FAR 52.245–1(g)(4) to provide Government access to contractor site locations at reasonable times. The Councils did not agree. Similar language is already contained in the proposed rule at FAR 52.245–1(g)(1). The proposed FAR language at 52.245–1(g)(1) provides for Government access to all contractor site locations, prime and subcontractor (with prime contractor consent). This language was merely consolidated. The language consolidated and relocated subsections 52.245–1(g)(1) and 52.245–1(g)(4) into one subsection.

##### 2. Closeout

There is no revision to the proposed rule based on this comment category. One respondent suggested adding a new paragraph after FAR 52.245–1(f)(x) entitled Disposition of contractor inventory. The Councils noted the issue raised by the commenter. The recommendations are outside the scope of this particular case.

##### 3. Commingling

There is no revision to the proposed rule based on this comment category. Two respondents suggested that commingling Government and

contractor material should not occur. One respondent questioned whether equipment can be commingled by being located with similar equipment. Another respondent recommended revising FAR 52.245–1(f)(1)(viii)(B) to address commingling while in storage or in stockrooms. The Councils do not agree. The practice of commingling only applies to material. Equipment, special tooling, and special test equipment can be co-located, but by their nature are not commingled. The Councils see no need to limit the applicability of commingling to a particular location(s).

##### 4. Contractor Records

There is no revision to the proposed rule based on this comment category. Two respondents submitted three comments on contractor records. Two comments requested clarification on retention periods in FAR 4.705–3(h). In addition, one commenter requested clarification of the term “property records” in FAR 4.705–3(h). Another respondent recommended removal of language “consisting of equipment usage and status reports” from FAR 4.705–3(c). The Councils disagree. The beginning of the retention period is defined in FAR 4.704(a). The definition of property records is in the proposed rule at FAR 45.101. The recommendation for removal of language from FAR 4.705–3(c) is outside the scope of this particular case and will be considered in the formulation of a new case.

##### 5. Corrective Action

There is a revision to the proposed rule at FAR 52.245–1(g)(3) based on this comment category.

Two respondents recommended revising the action required for corrective action. One respondent recommended additional language to distinguish between the lines of authority and responsibility as follows: “ \* \* \* the contractor shall immediately take all necessary corrective actions and shall prepare a corrective action plan at the request of the Property Administrator.” The Councils partially agree. The language at FAR 52.245–1(g)(3) is revised to add “ \* \* \* the contractor shall prepare a corrective action plan when requested by the Property Administrator and take all necessary corrective actions as specified by the schedule within the corrective action plan.” The second respondent suggested that there needs to be a better audit protocol and due process in property management practices. The Councils noted the issues raised by this respondent and the respondent’s recommended revisions to FAR 52.245–1(g)(3). These revisions are outside the

scope of this case and will be considered in the formulation of a new FAR case.

#### 6. Definitions

There are revisions to the proposed rule based on this comment category. Twenty-two comments were received from five respondents regarding definitions. One respondent recommended changing the definition of "cannibalize" to read as "Cannibalization means the unauthorized permanent removal of parts from Equipment, Special Tooling or Special Test Equipment in order to install them on other Government equipment." The Councils disagree. The current definition is meant to convey only the act of cannibalization itself, notwithstanding whether or not the act is authorized, or whether the removal of parts is temporary or permanent.

One respondent recommended that FAR part 45.101 include a Web site for 41 CFR 102-71.20, thus providing easier access to the term "Real Property." The Councils disagree. The Code of Federal Regulations is already easily accessible through most on-line search engines. Moreover, in general, the Councils wish to avoid adding unnecessary hyperlinks to the FAR due to their potentially transient nature.

One respondent recommended that the last sentence of the definition of "Equipment" be expanded to include special test equipment and special tooling in the exclusions. The Councils agree.

One respondent recommended revision of the definition to read: "Cannibalize means to remove worthwhile parts from property for probable use or installation on other property." The Councils disagree. The Councils revised the definition to limit cannibalization of parts to Government property. The use of cannibalization is governed by its application (*i.e.*, by the terms and conditions of the contract).

One respondent recommended revision of the definition of Government Furnished Property in both FAR 45.101 and 52.245-1. The Councils partially agree. The Councils revised the language to include "Government-furnished property also includes contractor-acquired property if the contractor-acquired property is a deliverable under a cost contract when accepted by the Government for continued use under the contract".

One respondent recommended a new definition of "Property Loss." The Councils noted the issue raised by the commenter. The recommendation is outside the scope for the proposed rule. The Councils will consider adding this

new definition as part of a future proposed rule.

One respondent recommended adding a definition of "Prime Property Administrator." The Councils noted the issue raised by the commenter. The recommendation is outside the scope for the proposed rule. The Councils will consider adding this proposal as part of a future proposed rule.

One respondent agreed with the proposed rule in regard to the definitions of "Equipment," "Material," "Plant equipment," "Government property," "Real property," "Plant equipment," and "Property records." The same respondent also agreed with the proposed changes to the definition of "Plant clearance officer" in FAR 2.101.

#### 7. Disposal Schedules

There is a revision to the proposed rule based on this comment category. One respondent submitted five comments on disposal schedules. In one comment, the respondent requested amending the language at FAR 52.245-1(j)(1)(i)(B) to eliminate submission of inventory schedules for property that requires demilitarization; is classified, hazardous or dangerous; and for precious metals. The respondent recommended the use of a list in accord with the contractor's plans or by approval of the property administrator or contracting officer. The Councils noted the issue raised by the commenter. The recommendation is outside of the scope of this case. The proposed revision will be considered in the formulation of a new case.

The respondent, in two comments, agreed with the proposed language in FAR 52.245-1(j)(1)(i)(C) and 52.245-1(j)(3)(iv).

The respondent recommended deletion of paragraph FAR 52.245-1(j)(3)(iv)(A). The Councils agree. The respondent recommended deletion of paragraph FAR 52.215-1(j)(3)(iv)(F). The Councils do not agree. The language is retained and moved to paragraph (A). This language allows the flexibility to determine whether there may be further use of the property.

#### 8. Evaluation

There is no revision to the proposed rule based on this category of comment. One respondent recommended revising FAR 45.202(a) to read: "(a) The contracting officer shall consider any potentially unfair competitive advantage that may result from the prospective contractor possessing Government property. This shall be done by adjusting the offers by applying, for evaluation purposes only, a rental equivalent evaluation factor." The

Councils noted the issue raised by the commenter. The recommendation is outside the scope for the proposed rule. The Councils will consider adding this proposal as part of a future proposed rule.

#### 9. Fair Value

There is no revision to the proposed rule based on this category of comment. One respondent recommended replacement of the term "acquisition cost" in FAR 45.602-3(b) and in 52.245-1(d)(2)(i)(B) with the term "fair market value". The Councils note the issue raised by the commenter. The recommendation is outside of the scope of this case. The proposed revision will be considered in the formulation of a new case.

#### 10. Guidance

There is no revision to the proposed rule based on this comment category. One respondent recommended revising 42.302(a)(30)(iii) to add the following language "and guidance at FAR 45.103(a)(4) with the maximum use of Government property already in the contractor's possession." The Councils disagree. The intent of this paragraph is to address the use of the clause at FAR 52.245-9, Use and Charges. The use of Government property already in the possession of the contractor to its maximum extent is adequately addressed at FAR 45.103(a)(4) and is not appropriately referenced in this paragraph.

#### 11. Item Unique

There is a revision to the proposed rule based on this comment category. The proposed rule language in FAR 45.201, 52.245-1(f)(1)(iii)(A)(4) and 52.245-1(f)(1)(vi)(B)(4) was deleted and the current FAR language is retained.

Three respondents with five comments recommend changing the proposed rule to use the term "unique item identifier (UII)" in place of "item unique." One comment recommended a general overall change to UII, two comments recommended revising 52.245-1(f)(1)(iii)(A)(4) to use the term "unique item identifier (UII)" in place of "item unique," one comment suggested that the term "item unique identifier" is a DoD term and that "asset identifier" is a more widely recognized term, and one comment suggested changing "Item unique" identifier to "Unique item" identifier as prescribed in Defense Acquisition Regulation Supplement (DFARS) 252.211-7007. The Councils agree with the proposal to retain the current FAR language of "unique item" identifier. The Councils did not agree with the term "asset identifier." The

Councils believe that unique item identifier is used across industry and is reflected in industry practices and standards.

#### 12. Liability

There is no revision to the proposed rule based on this comment category. One respondent, with two comments, recommended revising the language associated with relief of stewardship responsibility to add the term liability (see FAR 52.245–1(f)). One comment recommended adding new language to read: “(vii) Relief of Liability. The Contractor shall have a process to enable the prompt disclosure and reporting of all instances of loss, theft, damage, and destruction of Government property, including Government property in the possession of contractors.” The second comment recommended moving 52.245–1(f)(vi)(A) and (B) to the new paragraph (vii). The Councils noted the issues raised by the commenter. The recommendations are outside of the scope of this case. These recommendations will be considered in the formulation of a new case.

#### 13. Location

There is no revision to the proposed rule based on this comment category. One respondent recommended revising FAR 45.501 and the amended FAR 45.502 to read as follows: “45.501 Prime contractor alternate locations. (a) The property administrator assigned to the prime contract may request support property administration from another contract administration office, for purposes of evaluating prime contractor management of property located at the prime contractor’s alternate locations. (b) Prime contractor consent is not required for support delegations involving prime contractor alternate locations. FAR section 45.502 Subcontractor locations. (c) The prime property administrator shall accept the findings of the delegated support property administrator and advise the prime contractor of the results of property management reviews, including deficiencies found with the subcontractor’s property management system.” The Councils did not agree. The Government is not required to seek prime contractor consent to conduct property reviews at alternate locations of the prime contractor.

#### 14. Lost Property

There is no revision to the proposed rule based on this comment category. Twenty-one comments were received from two respondents regarding lost property.

(a) One respondent provided two comments requesting consistency in the use of language throughout the FAR regarding loss (loss, theft, destruction, or damage).

(b) One respondent provided eighteen comments recommending that “loss, theft, destruction, or damage” be replaced with “lost” only.

(c) One respondent recommended that “loss, theft, destruction, or damage” be replaced with “lost” only and that “all” be removed at 52.245–1(f)(1)(x) from “inventorying all property.”

The Councils recommend no change to the proposed rule. The Councils noted the recommendations for a new definition of “loss.” As a result, the Councils recommend including the definition of “loss” in a separate case. The Councils do not agree with the deletion of “all” at 52.245–1(f)(1)(x). The clause at FAR 52.245–1(b)(1) already allows “the contractor to initiate and maintain the processes, systems, procedures, records, and methodologies necessary for the effective control of Government property consistent with voluntary consensus standards and industry leading practices and standards.” This requirement extends to the physical inventory required at FAR 52.245–1(f)(1)(x).

#### 15. Management Plan

There is a revision to the proposed rule based on this comment category. One respondent recommended revising FAR 52.245–1(g)(1) to allow for multiple contractor property plans. The Councils agree. The language at FAR 52.245–1(g)(1) is revised to allow for multiple plans by revising “plan” to “plan(s).”

#### 16. Management System

There is a revision to the proposed rule based on this comment category.

Two respondents submitted four comments on this category. One respondent suggested that FAR 45.201(c)(4) be replaced with the following: “A description of their Property Management System and the voluntary consensus standards or industry leading practices and standards to be used in the management of Government Property.” Another comment recommended revising FAR 45.105(b) to change “provide a schedule for their completion” to “request prompt correction of deficiencies and a schedule for their completion.” Another comment recommended revising FAR 52.245–1(f)(1)(iii)(B) to delete the language “when approved by the Property Administrator.” Another comment recommended revising FAR 45.105(b) to amend the proposed rule to provide more effective property

management. The Councils disagree with the change to FAR 45.201(c)(4). This recommendation is outside the scope of this case. The Councils partially agree with the recommendation of one respondent to change FAR 45.105(b) and partially concur with another respondent to provide a schedule of completion; therefore, the language in FAR 45.105(b) is revised. The Councils disagree with the recommended request to delete the language “when approved by the Property Administrator.” The Councils believe it is in the best interest of the Government for such approvals by the Government to be made on a contract by contract basis.

#### 17. Markings

There is a revision to the proposed rule based on this comment category. One respondent recommended deleting “Government-affixed” at FAR 52.245–1(j)(8)(ii). The Councils agree.

#### 18. New Coverage

There is no revision to the proposed rule based on this category of comment. Three respondents submitted four comments for this category of comments. One respondent recommended new coverage in FAR 45.103 to cover the contract award process when considering competitive advantage. The Councils disagree. The scope of the effort on the contract or type of contract (e.g., A&E, construction) should not be the consideration for inclusion of the clauses at FAR 52.245–1 and 52.245–9. The sole consideration for use of these clauses is whether Government property is to be provided.

One respondent suggested making all references to “property” consistent by changing the term to “Government property.” The Councils disagree. The Councils believe that all references to property in FAR part 45 inherently mean Government property (see FAR 45.000 Scope of part), and no further clarification is needed.

One respondent submitted two comments proposing new coverage. The first comment recommended new coverage in FAR 45.103 to cover the contract award process when considering competitive advantage. The second comment requested a rewrite of FAR 45.603. The Council noted the issues raised by the commenter. The recommendations are outside of the scope of this case. The proposed revisions will be considered in the formulation of a new case.

#### 19. Policy

There is no revision to the proposed rule based on this category of comment.

Two respondents submitted four comments for this comment category.

One respondent agrees with the revision.

Two respondents proposed coverage outside of the scope of this case. The Councils noted the comments. The proposed revisions are outside of the scope of this case. The proposed revisions will be considered in the formulation of a new case.

One respondent recommended adding a new paragraph (e) in FAR 45.102 to read: "Intangible property, *e.g.*, intellectual property, software, etc., are not subject to this requirements of this FAR part or the Government property clauses found at 52.245." The Councils disagree. The issue of whether Intellectual property is covered under FAR contract property regulations is addressed in the scope of part in FAR 45.000 and in the definitions in FAR 45.101.

#### 20. Profit and Fee

There is a revision to the proposed rule based on this comment category. The proposed language in FAR 15.404-4(a)(3) is relocated to FAR 15.404-4(c)(3) and revised. Nine comments were received from eight respondents regarding profit and fee.

One respondent suggests removal of the proposed language in 15.404-4(a)(3) and inclusion of new language in 15.404-4(c)(3) that "instructs contracting officers to exclude the costs of contractor-acquired property from pre-negotiation cost objectives when calculating the Government's pre-negotiation profit or fee objective, unless the contractor acquired property is a deliverable under the contract." The Councils partially agree with this recommendation and the language is revised accordingly.

One respondent requests clarification of the language added in 15.404-4. The Councils agree with this recommendation.

One respondent suggests that requirement of the language added to 15.404-4(a)(3) will be burdensome and require auditing to ensure zero profit; instead of this method, the respondent suggests that the contracting officer take the value of the contractor acquired property in consideration when negotiating profits. The Councils partially agree with this suggestion. The Councils disagree with the assertion that the requirement is burdensome. The language has been modified to clarify its use and limit its applicability to equipment as defined in FAR 45.101.

One respondent suggests changing the weighted guidelines to address the value of contractor acquired property.

The Councils disagree with this suggestion; however, the revised language provides direction to the contracting officer as to how equipment should be treated within the current guidelines.

Four respondents suggest removal of the language added in 15.404-4(a)(3). The Councils disagree with these suggestions.

One respondent believes there is no basis to eliminate profit on any allowable element of the contract cost, especially property that is required in the performance of a Government contract but not incorporated into the end item deliverable or listed as a deliverable. The Councils disagree with this suggestion. The language is revised to assure that it applies only to equipment as defined in FAR 45.101.

The language has been revised and moved to 15.404-4(c)(3). The revision does not change, expand or constrict existing contracting policy. Rather, the purpose of the revised language is to clarify policy, and ensure its awareness within the acquisition community.

Prior to the publication of FAR Case 2004-025, June 2007, FAR 45.302-2(c) and FAR 45.302-3(c) contained language intended to prevent contractors from acquiring facilities and treating the facilities in the same manner as a contract line item deliverable with associated profit or fee. FAR Case 2004-025 deleted this language. The requirements of this language were added to the proposed rule in FAR 15.404-4 because the policy still applies.

While the application of this policy tended to be obfuscated by the term "facilities," the underlying principle was clear—that when the contractor buys equipment or acquires real property on a "pass through" basis, *i.e.*, when not part of a deliverable, it is the Government—not the contractor—who assumes the risk. Moreover, it is generally held that upon contract award, contractors are required to furnish all property necessary to perform Government contracts (FAR Part 45.102) as well as all the necessary resources needed for contract performance (FAR 9.104-1(f), General standards).

Accordingly, it is not appropriate for the Government to include the cost of contractor acquired property (equipment) when calculating the Government's pre-negotiation profit or fee objective. Including such costs would unduly compensate the contractor for obtaining equipment it should already have; and for risks it did not incur. This is a long held view; however, up until the publication of the proposed rule FAR Case 2008-011, it

had not been adequately addressed in the FAR.

This policy does not exclude the otherwise allowable cost of depreciation under FAR 31.205-11.

#### 21. Rental

There is no revision to the proposed rule based on this category of comment. One respondent submitted two comments recommending amending FAR 45.301 and 45.303. One comment recommended amending FAR 45.301 by inserting a comma after the word "authorized" in paragraph (b) and making two sentences out of paragraph (b) so that it reads as follows: "(b) Rental charges, to the extent authorized, do not apply to Government property that is left in place or installed on contractor-owned property for mobilization or future Government production purposes; (c) Rental charges shall apply to property to be used for non-government commercial purposes." The second comment recommended amending FAR 45.303 to read "The contracting officer may authorize a contractor to use the property on an independent research and development (IR&D) program rent free, if—

(a) Such use will not conflict with the primary use of the property or enable the contractor to retain property that could otherwise be released;

(b) The contractor agrees not to claim rental value against any Government contract for the property; and

(c) Estimated rental proceeds are immaterial or rental cost to the contractor would subsequently, in a substantial way, be charged back to the Government as part of indirect cost."

The Councils note the issue raised by the commenter. The recommendations are outside of the scope of this case. The proposed revisions will be considered in the formulation of a new case.

#### 22. Responsibility vs. Liability

There is no revision to the proposed rule based on this category of comment. One respondent recommended moving the coverage in FAR 52.245-1(f)(vii) to FAR 45.104 or moving this paragraph to FAR 52.245-1(h)(1) and being repeated in 45.104, or replace the word "responsibility" with "liability." The Councils note the issue raised by the commenter. The recommendations are outside of the scope of this case. The proposed revisions will be considered in the formulation of a new case.

#### 23. Sale

One respondent agreed with the proposed language in FAR 45.604-3.

#### 24. Scrap List

There is no revision to the proposed rule based on this category of comment. One respondent requested that the paragraph (FAR 45.606–1(b)) be revised as follows: “For scrap from other than production or testing, the contractor may prepare scrap lists in lieu of inventory disposal schedules (provided such lists are consistent with the property management plan or approvals by the property administrator or contracting officer). The Councils note the issue raised by the commenter. The recommendations are outside of the scope of this case. The proposed revisions will be considered in the formulation of a new case.

#### 25. Screening

One respondent agreed with the proposed language at FAR 45.602–3(b)(3).

#### 26. Storage

One respondent agreed with the proposed language at FAR 52.245–1(j)(7)(ii).

#### 27. Supply Source

One respondent agreed with the proposed language at FAR 52.251–1.

#### 28. Title

There is no revision to the proposed rule based on this category of comment. The respondent agrees, in two comments, with the proposed language at FAR 52.245–1(e)(2)(ii) and (iii).

The respondent also proposes revising FAR 45.402(a). The Councils note the issue raised by the commenter. The recommendations are outside of the scope of this case. The proposed revisions will be considered in the formulation of a new case.

#### 29. Use

One respondent agreed with the proposed language at FAR 52.245–1(c).

#### 30. Administrative

One respondent agreed with the proposed language at FAR 52.245–1.

#### 31. Wrong Case

One respondent submitted one comment opposing FAR 2009–005.

Summary of Proposed Rule Changes. The Councils made the following changes to the proposed rule as a result of the public comments.

Revised FAR 45.101 and 52.245–1 to clarify the definition of “equipment” by including special test equipment and special tooling in the exclusions.

Revised FAR 45.101 and 52.245–1 to clarify the definition of “cannibalize.”

Revised FAR 45.101 and 52.245–1 to clarify the definition of “Government-furnished property.”

Revised FAR 45.105 and FAR 52.245–1(g)(3) to clarify language necessary for contractors to take the necessary corrective action as specified by the schedule within the corrective action plan.

Revised FAR 52.245–1(j)(3)(iv)(A) to delete the language as proposed in the proposed rule and by moving and retaining the language at FAR 52.245–1(j)(3)(iv)(F) as paragraph (A).

Revised FAR 45.201, FAR 52.245–1(f)(1)(iii)(A)(4) and FAR 52.245–1(f)(1)(vi)(B)(4) to delete the proposed rule language and retain the current FAR language.

Revised FAR 52.245–1(j)(8)(ii) by deleting the language “Government-affixed.”

Revised FAR 52.245–1(a) by removing language duplicating the definition of contractor’s managerial personnel.

Revised FAR 15.404–4(a)(3) by relocating the language to FAR 15.404(c)(3) and clarifying that contracting officers shall exclude the cost of contractor-acquired property when calculating the Government’s pre-negotiation profit or fee objective.

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 does not impose any additional requirements on small businesses. The rule does not affect the method of managing Government property. The rule merely clarifies and corrects the previous FAR rule.

#### 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 9000–0075.

#### List of Subjects in 48 CFR Parts 2, 4, 15, 31, 32, 42, 45, and 52

Government procurement.

Dated: June 25, 2010.

**Edward Loeb,**

*Director, Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 4, 15, 31, 32, 42, 45, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 4, 15, 31, 32, 42, 45, and 52 continues to read as follows:

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

#### PART 2—DEFINITIONS OF WORDS AND TERMS

##### 2.101 [Amended]

■ 2. Amend section 2.101, in paragraph (b)(2), by removing from the definition “Plant clearance officer” the words “plants and Federal installations” and adding “plants, Federal installations, and Federal and non-Federal industrial operations,” in its place; and removing from the definition “Special tooling” the words “test equipment, and” and adding “tooling, and” in its place.

#### PART 4—ADMINISTRATIVE MATTERS

■ 3. Amend section 4.705–3 by adding paragraph (h) to read as follows:

##### 4.705–3 Acquisition and supply records.

\* \* \* \* \*

(h) Property records (see FAR 45.101 and 52.245–1): Retain 4 years.

#### PART 15—CONTRACTING BY NEGOTIATION

■ 4. Amend section 15.404–4 by adding a sentence after the first sentence of paragraph (c)(3) to read as follows:

##### 15.404–4 Profit.

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \* Before applying profit or fee factors, the contracting officer shall exclude from the pre-negotiation cost objective amounts the purchase cost of contractor-acquired property that is categorized as equipment, as defined in FAR 45.101, and where such equipment is to be charged directly to the contract.

\* \* \*

\* \* \* \* \*

#### PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

##### 31.205–19 [Amended]

■ 5. Amend section 31.205–19(e)(2)(iv)(C) by removing “52.245–1(h)(1)(ii)” and adding “52.245–1(a)” in its place.

**PART 32—CONTRACT FINANCING**

**32.503–16 [Amended]**

■ 6. Amend section 32.503–16 by removing from paragraph (a) “loss, theft, destruction, or damage to” and adding “lost, stolen, damaged, or destroyed” in its place.

**32.1010 [Amended]**

■ 7. Amend section 32.1010 by removing from paragraph (a) “loss, theft, destruction, or damage to property affected by the clause” and adding “lost, stolen, damaged, or destroyed property” in its place.

**PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES**

■ 8. Amend section 42.302 by revising paragraphs (a)(30)(iii) and (a)(30)(v) to read as follows:

**42.302 Contract administration functions.**

- (a) \* \* \*
- (30) \* \* \*

(iii) Evaluate the use of Government property on a non-interference basis in accordance with the clause at 52.245–9, Use and Charges;

\* \* \* \* \*

(v) Modify contracts to reflect the addition of Government-furnished property and ensure appropriate consideration.

\* \* \* \* \*

**PART 45—GOVERNMENT PROPERTY**

■ 9. Amend section 45.101 by—  
■ a. Revising the definitions “Cannibalize”, “Equipment”, “Government-furnished property”, and “Government property”;

■ b. Removing from the definition “Material” the words “and special test equipment” and adding “special test equipment or real property” in its place;

■ c. Removing the definition “Plant equipment”;

■ d. Adding the definition “Property records”; and

■ e. Revising the definition “Real property.”

■ The revised and added text reads as follows:

**45.101 Definitions.**

\* \* \* \* \*

*Cannibalize* means to remove parts from Government property for use or for installation on other Government property.

\* \* \* \* \*

*Equipment* means a tangible item that is functionally complete for its intended purpose, durable, nonexpendable, and

needed for the performance of a contract. Equipment is not intended for sale, and does not ordinarily lose its identity or become a component part of another article when put into use. Equipment does not include material, real property, special test equipment or special tooling.

*Government-furnished property* means property in the possession of, or directly acquired by, the Government and subsequently furnished to the contractor for performance of a contract. Government-furnished property includes, but is not limited to, spares and property furnished for repair, maintenance, overhaul, or modification. Government-furnished property also includes contractor-acquired property if the contractor-acquired property is a deliverable under a cost contract when accepted by the Government for continued use under the contract.

*Government property* means all property owned or leased by the Government. Government property includes both Government-furnished property and contractor-acquired property. Government property includes material, equipment, special tooling, special test equipment, and real property. Government property does not include intellectual property and software.

\* \* \* \* \*

*Property records* means the records created and maintained by the contractor in support of its stewardship responsibilities for the management of Government property.

\* \* \* \* \*

*Real property.* See Federal Management Regulation 102–71.20 (41 CFR 102–71.20).

\* \* \* \* \*

■ 10. Amend section 45.102 by revising paragraph (d) to read as follows:

**45.102 Policy.**

\* \* \* \* \*

(d) *Exception.* Property provided under contracts for repair, maintenance, overhaul, or modification is not subject to the requirements of paragraph (b) of this section.

■ 11. Amend section 45.104 by revising the introductory text of paragraph (a) to read as follows:

**45.104 Responsibility and liability for Government property.**

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

\* \* \* \* \*

■ 12. Amend section 45.105 by revising the first sentence of paragraph (b);

revising paragraph (b)(1); and removing from paragraph (d) “damage, destruction or theft” and adding “theft, damage or destruction” in its place.

The revised text reads as follows:

**45.105 Contractors’ property management system compliance.**

\* \* \* \* \*

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

(1) Revocation of the Government’s assumption of risk for loss, theft, damage or destruction; and/or

\* \* \* \* \*

**45.201 [Amended]**

■ 13. Amend section 45.201 by removing from paragraph (d) “When use of property on more than one contract is anticipated, any” and adding “Any” in its place.

■ 14. Amend section 45.402 by revising paragraph (a) to read as follows:

**45.402 Title to contractor-acquired property.**

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

\* \* \* \* \*

■ 15. Revise section 45.502 to read as follows:

**45.502 Subcontractor and alternate prime contractor locations.**

(a) To ensure subcontractor compliance with Government property administration requirements, and with prime contractor consent, the property administrator assigned to the prime contract may request support property administration from another contract

administration office. If the prime contractor does not provide consent to support property administration at subcontractor locations, the property administrator shall refer the matter to the contracting officer for resolution.

(b) The prime property administrator shall accept the findings of the delegated support property administrator and advise the prime contractor of the results of property management reviews, including deficiencies found with the subcontractor's property management system.

(c) Prime contractor consent is not required for support delegations involving prime contractor alternate locations.

#### 45.602-3 [Amended]

■ 16. Amend section 45.602-3 by removing from paragraph (b)(3) "North Capitol and H Streets" and adding "732 North Capitol Street" in its place.

■ 17. Revise section 45.604-3 to read as follows:

#### 45.604-3 Sale of surplus personal property.

Policy for the sale of surplus personal property is contained in the Federal Management Regulation, at Part 102-38 (41 CFR Part 102-38). Agencies may specify implementing procedures.

■ 18. Amend section 45.606-1 by revising paragraph (b) and adding paragraph (c) to read as follows:

#### 45.606-1 Contractor with an approved scrap procedure.

\* \* \* \* \*

(b) For scrap from other than production or testing, the contractor may prepare scrap lists in lieu of inventory disposal schedules (provided such lists are consistent with the approved scrap procedures).

(c) Inventory disposal schedules shall be submitted for all aircraft regardless of condition, flight safety critical aircraft parts, and scrap that—

- (1) Requires demilitarization;
- (2) Is a classified item;
- (3) Is generated from classified items;
- (4) Contains hazardous materials or hazardous wastes;
- (5) Contains precious metals that are economically beneficial to recover; or
- (6) Is dangerous to the public health, safety, or welfare.

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

#### 52.232-16 [Amended]

■ 19. Amend section 52.232-16 by—

■ a. Removing from the clause heading "(JUL 2009)" and adding "(AUG 2010)" in its place;

■ b. Removing from paragraph (d)(2)(ii) "under any other clause of this contract";

■ c. Removing from paragraph (d)(3) "or special tooling"; and

■ d. Removing from paragraph (e) "is damaged, lost, stolen, or" and adding "is lost, stolen, damaged, or" in its place.

#### 52.232-32 [Amended]

■ 20. Amend section 52.232-32 by—

■ a. Removing from the clause heading "(JAN 2008)" and adding "(AUG 2010)" in its place;

■ b. Removing from paragraph (f)(2)(ii) "under any other clause of this contract";

■ c. Removing from paragraph (f)(3) "or special tooling"; and

■ d. Removing from paragraph (g) "is damaged, lost, stolen, or" and adding "is lost, stolen, damaged, or" in its place.

■ 21. Amend section 52.245-1 by—

■ a. Revising the date of the clause;

■ b. In paragraph (a) by—

■ i. Revising the definitions "Cannibalize" and "Equipment";

■ ii. Adding two sentences to the end of the definition "Government-furnished property";

■ iii. Adding two sentences to the end of the definition "Government property";

■ iv. Removing from the definition "Material" the word "end-item" and adding the words "end item" in its place; and removing the words "and special test equipment" and adding the words "special test equipment or real property" in its place;

■ v. Removing the definition "Plant equipment";

■ vi. Adding, in alphabetical order, the definition "Property records"; and

■ vii. Revising the definition "Real property";

■ c. Revising the first sentence of paragraph (b)(2), and paragraphs (c), and (e)(2)(ii);

■ d. Removing from paragraphs (e)(2)(iii) and (f)(1)(i) the word "material" and adding the word "property" wherever it occurs (8 times);

■ e. Revising paragraph (f)(1)(v)(A), introductory text of paragraph (f)(1)(vi), paragraphs (f)(1)(vi)(A), (f)(1)(vi)(B)(4), (f)(1)(vi)(B)(10), (f)(1)(vii)(A), (f)(1)(viii)(B), (f)(1)(x), (g), introductory text of paragraph (h)(1), paragraphs (h)(1)(ii) and (h)(1)(iii), the first sentence of paragraph (h)(2), (h)(3), introductory text of paragraph (i), and paragraph (j)(1)(i)(B);

■ f. Add paragraph (j)(1)(i)(C);

■ g. Revise paragraphs (j)(3)(iii)(E) and (j)(3)(iv);

■ h. Add paragraphs (j)(3)(v) and (j)(3)(vi);

■ i. Remove from paragraph (j)(7)(ii) the word "facility" and add the word "area" in its place;

■ j. Revise second sentence of paragraph (j)(8)(ii); and

■ k. In Alternate I, revise the date of the alternate, and the first sentence of paragraph (h)(1).

The added and revised text reads as follows:

#### 52.245-1 Government Property.

\* \* \* \* \*

#### GOVERNMENT PROPERTY (AUG 2010)

(a) \* \* \*

\* \* \* \* \*

*Cannibalize* means to remove parts from Government property for use or for installation on other Government property.

\* \* \* \* \*

*Equipment* means a tangible item that is functionally complete for its intended purpose, durable, nonexpendable, and needed for the performance of a contract. Equipment is not intended for sale, and does not ordinarily lose its identity or become a component part of another article when put into use. Equipment does not include material, real property, special test equipment or special tooling.

*Government-furnished property* \* \* \* Government-furnished property includes, but is not limited to, spares and property furnished for repair, maintenance, overhaul, or modification. Government-furnished property also includes contractor-acquired property if the contractor-acquired property is a deliverable under a cost contract when accepted by the Government for continued use under the contract.

*Government property* \* \* \* Government property includes material, equipment, special tooling, special test equipment, and real property. Government property does not include intellectual property and software.

\* \* \* \* \*

*Property records* means the records created and maintained by the contractor in support of its stewardship responsibilities for the management of Government property.

\* \* \* \* \*

*Real property.* See Federal Management Regulation 102-71.20 (41 CFR 102-71.20).

\* \* \* \* \*

(b) \* \* \*

(2) The Contractor's responsibility extends from the initial acquisition and receipt of property, through stewardship, custody, and use until formally relieved of responsibility by authorized means, including delivery, consumption, expending, sale (as surplus property), or other disposition, or via a completed investigation, evaluation, and final determination for lost, stolen, damaged, or destroyed property. \* \* \*

\* \* \* \* \*

(c) *Use of Government property.* (1) The Contractor shall use Government property, either furnished or acquired under this contract, only for performing this contract,

unless otherwise provided for in this contract or approved by the Contracting Officer.

(2) Modifications or alterations of Government property are prohibited, unless they are—

(i) Reasonable and necessary due to the scope of work under this contract or its terms and conditions;

(ii) Required for normal maintenance; or

(iii) Otherwise authorized by the Contracting Officer.

(3) The Contractor shall not cannibalize Government property unless otherwise provided for in this contract or approved by the Contracting Officer.

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

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

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

(v) \* \* \*

(A) The Contractor shall award subcontracts that clearly identify assets to be provided and shall ensure appropriate flow down of contract terms and conditions (e.g., extent of liability for loss, theft, damage or destruction of Government property).

\* \* \* \* \*

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

(A) Loss, theft, damage or destruction. Unless otherwise directed by the Property Administrator, the Contractor shall investigate and promptly furnish a written narrative of all incidents of loss, theft, damage or destruction to the property administrator as soon as the facts become known or when requested by the Government.

(B) \* \* \*

(4) Unique-item Identifier (if available).

\* \* \* \* \*

(10) A statement that the Government will receive any reimbursement covering the loss, theft, damage or destruction in the event the Contractor was or will be reimbursed or compensated.

\* \* \* \* \*

(vii) \* \* \*

(A) Consumed or expended, reasonably and properly, or otherwise accounted for, in

the performance of the contract, including reasonable inventory adjustments of material as determined by the Property Administrator; or a Property Administrator granted relief of responsibility for loss, theft, damage or destruction of Government property;

\* \* \* \* \*

(viii) \* \* \*

(B) Unless otherwise authorized in this contract or by the Property Administrator the Contractor shall not commingle Government material with material not owned by the Government.

\* \* \* \* \*

(x) *Property closeout.* The Contractor shall promptly perform and report to the Property Administrator contract property closeout, to include reporting, investigating and securing closure of all loss, theft, damage or destruction cases; physically inventorying all property upon termination or completion of this contract; and disposing of items at the time they are determined to be excess to contractual needs.

\* \* \* \* \*

(g) *Systems analysis.* (1) The Government shall have access to the Contractor's premises and all Government property, at reasonable times, for the purposes of reviewing, inspecting and evaluating the Contractor's property management plan(s), systems, procedures, records, and supporting documentation that pertains to Government property. This access includes all site locations and, with the Contractor's consent, all subcontractor premises.

(2) Records of Government property shall be readily available to authorized Government personnel and shall be appropriately safeguarded.

(3) Should it be determined by the Government that the Contractor's (or subcontractor's) property management practices are inadequate or not acceptable for the effective management and control of Government property under this contract, or present an undue risk to the Government, the Contractor shall prepare a corrective action plan when requested by the Property Administrator and take all necessary corrective actions as specified by the schedule within the corrective action plan.

(h) *Contractor Liability for Government Property.*

(1) Unless otherwise provided for in the contract, the Contractor shall not be liable for loss, theft, damage or destruction to the Government property furnished or acquired under this contract, except when any one of the following applies—

\* \* \* \* \*

(ii) The loss, theft, damage or destruction is the result of willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(iii) The Contracting Officer has, in writing, revoked the Government's assumption of risk for loss, theft, damage or destruction, due to a determination under paragraph (g) of this clause that the Contractor's property management practices are inadequate, and/or present an undue risk to the Government, and the Contractor failed to take timely corrective action. If the Contractor can establish by clear and convincing evidence

that the loss, theft, damage or destruction of Government property occurred while the Contractor had adequate property management practices or the loss, theft, damage or destruction of Government property did not result from the Contractor's failure to maintain adequate property management practices, the Contractor shall not be held liable.

(2) The Contractor shall take all reasonable actions necessary to protect the Government property from further loss, theft, damage or destruction. \* \* \*

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

\* \* \* \* \*

(i) *Equitable adjustment.* Equitable adjustments under this clause shall be made in accordance with the procedures of the Changes clause. However, the Government shall not be liable for breach of contract for the following:

\* \* \* \* \*

(j) \* \* \*

(1) \* \* \*

(i) \* \* \*

(B) For scrap from other than production or testing the Contractor may prepare scrap lists in lieu of inventory disposal schedules (provided such lists are consistent with the approved scrap procedures).

(C) Inventory disposal schedules shall be submitted for all aircraft regardless of condition, flight safety critical aircraft parts, and scrap that—

(1) Requires demilitarization;

(2) Is a classified item;

(3) Is generated from classified items;

(4) Contains hazardous materials or hazardous wastes;

(5) Contains precious metals that are economically beneficial to recover; or

(6) Is dangerous to the public health, safety, or welfare.

\* \* \* \* \*

(3) \* \* \*

(iii) \* \* \*

(E) Precious metals in raw or bulk form;

\* \* \* \* \*

(iv) The Contractor shall provide the information required by FAR 52.245-1(f)(1)(iii) along with the following:

(A) Any additional information that may facilitate understanding of the property's intended use.

(B) For work-in-progress, the estimated percentage of completion.

(C) For precious metals, the type of metal and estimated weight.

(D) For hazardous material or property contaminated with hazardous material, the type of hazardous material.

(E) For metals in mill product form, the form, shape, treatment, hardness, temper, specification (commercial or Government) and dimensions (thickness, width and length).

(v) Property with the same description, condition code, and reporting location may be grouped in a single line item.

(vi) Scrap should be reported by "lot" along with metal content, estimated weight and estimated value.

\* \* \* \* \*

(8) \* \* \*

(ii) \* \* \* Unless otherwise directed by the Contracting Officer or by the Plant Clearance Officer, the Contractor shall remove and destroy any markings identifying the property as U.S. Government-owned property prior to its disposal.

\* \* \* \* \*

Alternate I (AUG 2010). \* \* \*

(h)(1) The Contractor assumes the risk of, and shall be responsible for, any loss, theft, damage or destruction of Government property upon its delivery to the Contractor as Government-furnished property. \* \* \*

\* \* \* \* \*

■ 22. Amend section 52.245-2 by revising the date of the clause, and the first two sentences of paragraph (b) to read as follows:

**52.245-2 Government Property Installation Operation Services.**

\* \* \* \* \*

**GOVERNMENT PROPERTY  
INSTALLATION OPERATION SERVICES  
(AUG 2010)**

\* \* \* \* \*

(b) The Government bears no responsibility for repair or replacement of any lost, stolen, damaged or destroyed-Government property. If any or all of the Government property is lost, stolen, damaged or destroyed or becomes no longer usable, the Contractor shall be responsible for replacement of the property at Contractor expense. \* \* \*

\* \* \* \* \*

■ 23. Amend section 52.245-9 by revising the date of the clause, and the introductory text of paragraph (a); and removing the definitions "Acquisition cost", "Government property", "Plant equipment", and "Real property".

The revised text reads as follows:

**52.245-9 Use and Charges.**

\* \* \* \* \*

**USE AND CHARGES (AUG 2010)**

(a) *Definitions.* Definitions applicable to this contract are provided in the clause at 52.245-1, Government Property. Additional definitions as used in this clause include:

\* \* \* \* \*

■ 24. Amend section 52.251-1 by revising the date of the clause, and the last sentence of the clause to read as follows:

**52.251-1 Government Supply Sources.**

\* \* \* \* \*

**GOVERNMENT SUPPLY SOURCES (AUG 2010)**

\* \* \* The provisions of the clause entitled "Government Property," at 52.245-1, shall

apply to all property acquired under such authorization.

[FR Doc. 2010-15918 Filed 7-1-10; 8:45 am]

BILLING CODE 6820-EP-P

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES  
ADMINISTRATION**

**NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

**48 CFR Parts 2, 4, 7, 10, 13, 18, 26, and 52**

[FAC 2005-43; FAR Case 2008-035; Item II; Docket 2009-0033, Sequence 1]

RIN 9000-AL30

**Federal Acquisition Regulation; FAR Case 2008-035, Registry of Disaster Response Contractors**

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

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have adopted, as final without change, the interim rule amending the Federal Acquisition Regulation (FAR) to implement the Department of Homeland Security Appropriations Act, 2007, section 697, which requires the establishment and maintenance of a registry of disaster response contractors.

**DATES:** *Effective Date:* August 2, 2010.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Millisa Gary, Procurement Analyst, at (202) 501-0699. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-43, FAR case 2008-035.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Public Law 109-295, the Department of Homeland Security Appropriations Act, 2007, section 697, requires the establishment and maintenance of a registry of contractors willing to perform debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities. In addition, contracting officers are required to consult the registry during market research and acquisition planning.

The interim rule was published in the **Federal Register** on October 14, 2009 (74 FR 52847). The public comment

period closed on December 14, 2009. No comments were received in response to the interim rule.

In the interim rule, the Councils amended the language at FAR 2.101 to add a definition of "Disaster Response Registry," and at FAR 4.1104, 18.102, and 26.205 to require contracting officers to consult the registry at <http://www.ccr.gov>. In addition, a requirement was added to FAR 10.001 to require contracting officers to take advantage of commercially available market research methods to identify capabilities to meet agency requirements for disaster relief.

The Disaster Response Registry is located at [www.ccr.gov](http://www.ccr.gov). The Federal Emergency Management Agency (within the Department of Homeland Security) has a link to the registry for vendors on its Web site <http://www.fema.gov/business/contractor.shtm>. The Registry covers disaster and emergency relief activities inside the United States and its outlying areas only. Major disaster and emergency declarations are published in the **Federal Register** and are available at <http://www.fema.gov/news/disasters.fema>.

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 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 this rule does not revise or change existing regulations pertaining to small business concerns seeking Government contracts. In addition, the Councils sought comments from small businesses on the affected FAR parts at the publication of the interim rule. No comments were received.

**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. Chapter 35, *et seq.*

**List of Subjects in 48 CFR Parts 2, 4, 7, 10, 13, 18, 26, and 52**

Government procurement.

Dated: June 25, 2010.

**Edward Loeb,**

*Director, Acquisition Policy Division.*

### Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR parts 2, 4, 7, 10, 13, 18, 26, and 52, which was published in the **Federal Register** at 74 FR 52847 on October 14, 2009, is adopted as a final rule without change.

[FR Doc. 2010-15914 Filed 7-1-10; 8:45 am]

BILLING CODE 6820-EP-P

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 4 and 52

[FAC 2005-43; FAR Case 2010-008; Item III; Docket 2010-0008, Sequence 1]

RIN 9000-AL63

### Federal Acquisition Regulation; FAR Case 2010-008, Recovery Act Subcontract Reporting Procedures

**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 clause at FAR 52.204-11. This interim rule does not require renegotiation of existing Recovery Act contracts that include the clause dated March 2009. This change will require first-tier subcontractors with Recovery Act funded awards of \$25,000 or more, to report jobs information to the prime contractor for reporting into <http://FederalReporting.gov>. It also will require the prime contractor to submit its first report on or before the 10th day after the end of the calendar quarter in which the prime contractor received the award, and quarterly thereafter.

**DATES:** *Effective Date:* July 2, 2010.

*Applicability Date:* The changes to the original clause will be used for all new solicitations and contracts issued on or after the effective date of this interim rule. This change is not required for task and delivery orders where the original

clause dated March 2009 is already in the underlying task and delivery order contract. This change is not required when modifying existing contracts that contain the clause dated March 2009. Therefore, this interim rule does not require renegotiation of existing Recovery Act contracts that include the clause dated March 2009.

*Comment Date:* Interested parties should submit written comments to the Regulatory Secretariat on or before August 31, 2010 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAC 2005-43, FAR case 2010-008, by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2010-008" under the heading "Enter Keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "FAR Case 2010-008." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2010-008" on your attached document.

- *Fax:* 202-501-4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

*Instructions:* Please submit comments only and cite FAC 2005-43, FAR case 2010-008, 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. Karlos Morgan, Procurement Analyst, at (202) 501-2364 for clarification of content. Please cite FAC 2005-43, FAR case 2010-008. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

On February 17, 2009, the President signed Public Law 111-5, the American Recovery and Reinvestment Act of 2009 (the "Recovery Act"), including a number of provisions to be implemented in Federal Government contracts. On March 31, 2009, the Councils published FAR Case 2009-009 in the **Federal Register**, (74 FR 14639) as an interim rule amending the FAR to implement section 1512 of the Recovery Act, which requires contractors to report

on their use of Recovery Act funds. A correction was published May 14, 2009 (74 FR 22810). The FAR interim rule added a new subpart 4.15, and a new clause, 52.204-11, requiring contracting officers to include the clause in solicitations and contracts funded in whole or in part with Recovery Act funds, except classified solicitations and contracts.

This new interim rule revises the clause and instructs contracting officers to include the clause in all new solicitations and contracts issued on or after the effective date of this interim rule. This revised clause is not required for any existing contracts, or task and delivery orders issued under a contract, that contain the original clause FAR clause 52.204-11 dated March 2009. Therefore, no renegotiation is required. However, the revised clause will be required for any new Recovery Act funded task or delivery orders if the underlying task or delivery order contract does not contain FAR clause 52.204-11, dated March 2009.

The revised clause requires first-tier subcontractors to report jobs information to the prime contractor for reporting into <http://FederalReporting.gov>. It also requires prime contractors to submit their first quarterly report into <http://FederalReporting.gov> on or before the 10th day following the end of the calendar quarter in which the prime contractor received its award and submit quarterly thereafter. The revised clause also refers contractors and their first-tier subcontractors to a set of Frequently Asked Questions (FAQs) available online. Contractors subject to 52.204-11 were initially notified of the FAQs through a **Federal Register** notice (74 FR 48971), published on September 25, 2009.

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

This interim rule 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 it requires quarterly reporting on subcontractor jobs under newly awarded Recovery Act funded contracts.

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared. The analysis is summarized as follows:

1. Reasons for the action.

This action is being implemented to obtain jobs information on first-tier subcontracts of \$25,000 or more funded by the Recovery Act.

2. Objectives of, and legal basis for, the rule.

The FAR Council has authority to promulgate regulations it believes are necessary. OMB has determined that obtaining publicly reported jobs information at the subcontractor level on new contracts is desirable. This interim rule also requires that prime contractors begin to report in the calendar quarter in which the contract was awarded, even if no invoice has been submitted.

3. Description and estimate of the number of small entities to which the rule will apply.

The rule revises the clause requiring quarterly reporting of direct jobs for prime contractors and all first-tier subcontracts of \$25,000 or more, funded by the Recovery Act. The clause also requires the first quarterly report to be submitted on or before the 10th day following the end of the calendar quarter in which the prime contractor was awarded the Recovery Act funded contract. This revised clause will only be required in new solicitations and contracts issued on or after the effective date of the interim rule. The revised clause is not required for task and delivery orders where the underlying task or delivery order contract already contains the original clause FAR 52.204-11 dated March 2009. This clause is not required for any existing contracts, or task and delivery orders issued under a contract, that contain the original clause FAR 52.204-11 (March 2009). Therefore, the interim rule does not require renegotiation of any existing awards that already contain the original clause. The original clause imposed a public reporting burden on prime contractors and, in a more limited way, on their first-tier subcontractors. This interim rule will increase the burden on both prime contractors and first-tier subcontractors who receive new awards. However, because the Federal Government estimates it has already obligated the majority of the Recovery Act funded contracts (80 percent), the impact is more limited. According to the Federal Procurement Data System (FPDS), there are currently 23,346 Recovery Act-funded contract awards. If that number represents 80 percent of all awards, then there are an estimated 5,833 Recovery Act-funded actions left to be awarded. FPDS further shows that of the 23,346 awards already made, 41 percent of them have been to small businesses (this reflects the percentage of awards, not dollars obligated which is currently 29 percent). Therefore, of the 5,833 contracts remaining to be awarded, 2,392 will be awarded to small business.

The number of first-tier subcontractors estimated to participate in Recovery Act awards is estimated at 7,874. This is based on an assumption that there will be more first-tier subcontractors for higher dollar awards. It is estimated that there will be three first-tier subcontractors for each award of \$550,000 or more; two first-tier subcontractors for each award between \$100,000 and \$449,999; and one first-tier subcontractor for each award between \$25,000 and \$100,000. By analyzing FPDS

data, we determined that the highest dollar range represents 21 percent of all Recovery awards with the middle and lowest ranges representing 25 percent and 22 percent, respectively. The remaining 32 percent is made up of awards of \$25,000 or below. Of the 7,874 first-tier subcontractors it is estimated that 25 percent, or 1,969, will be small businesses.

Based on the above, including the assumption that awards under \$25,000 will have no subcontractors, the total number of small businesses, prime and subcontractors, to which this interim rule will apply is estimated at 3,595 and the total number of other than small businesses to which this rule will apply is estimated at 8,245.

4. Description of 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.

This interim rule applies to all Federal contractors regardless of size or business ownership. It is in addition to what was previously required of all Federal contractors and first-tier subcontractors, requiring the quarterly reporting of jobs information for all first-tier subcontracts of \$25,000 or more. Such reporting would probably be prepared by a company contract administrator or contract manager or a company subcontract administrator. The information necessary to calculate the jobs is primarily information that companies would maintain for their own business purposes. The reporting burden is quarterly.

5. Relevant Federal rules which may duplicate, overlap, or conflict with the rule.

FAR Case 2009-009, American Recovery and Reinvestment Act of 2009 (Recovery Act)—Reporting Requirements, is related to this rule (*see* 74 FR 16469, published on March 31, 2009).

6. Description of any significant alternatives to the rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the rule on small entities.

The interim rule does not require that first-tier subcontractors enter their jobs information directly into <http://FederalReporting.gov>, which eliminates the burden associated with Central Contractor Registration (CCR). CCR is required in order to use <http://FederalReporting.gov>. It also eliminates the burdens associated with registering in <http://FederalReporting.gov> and other burdens associated with the use of that system. The prime contractor will input the first-tier subcontractor's jobs information into <http://www.FederalReporting.gov>. However, the first-tier subcontractor will have to calculate the number of jobs that are funded by the Recovery Act each calendar quarter and report that information to the prime contractor in sufficient time that the prime contractor can submit the report. To help alleviate some of the burden, a set of Frequently Asked Questions is available at [http://www.whitehouse.gov/omb/recovery\\_faqs\\_contractors](http://www.whitehouse.gov/omb/recovery_faqs_contractors). One of these FAQs provides a detailed example on how to calculate the jobs funded by the Recovery Act.

The Regulatory Secretariat will be submitting a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the Regulatory Secretariat. The Councils invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

The Councils will also consider comments from small entities concerning the existing regulations in parts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005-43, FAR Case 2010-008) 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 Regulatory Secretariat forwarded an emergency information collection request for approval of a new information collection requirement to the Office of Management and Budget under 44 U.S.C. Chapter 35, *et seq.* OMB approved the new information collection requirement as OMB Control No. 9000-0176, Quarterly Reporting for First-tier Subcontractors. Comments on the interim rule as well as the information collection will be considered in the revisions to both the rule and the information collection.

Any award funded by the Recovery Act that was awarded prior to the effective date of this interim rule contained the original clause at 52.204-11, dated March 2009. Any award funded by the Recovery Act that is awarded on or after the effective date of this interim rule will contain the revised clause at 52.204-11. The revised clause imposes additional collection requirements not contained in the original clause at 52.204-11 dated March 2009. The revised clause requires first-tier subcontractors with Recovery Act funded awards of \$25,000 or more, to report jobs to the prime contractor for reporting into <http://FederalReporting.gov>. It also requires the prime contractor to submit its first report on or before the 10th day after the end of the calendar quarter in which the prime contractor received the award, and quarterly thereafter.

Because the Federal Government estimates it has already awarded the majority of the Recovery Act funded contracts (80 percent), the impact of this collection is limited. According to the Federal Procurement Data System (FPDS), there are currently 23,346

Recovery Act-funded contract awards. If that number represents 80 percent of all awards, then there are an estimated 5,833 Recovery Act-funded actions left to be awarded. FPDS further shows that of the 23,346 awards already made, 41 percent of them have been to small businesses (this reflects the percentage of awards, not dollars obligated which is currently 29 percent). Therefore, of the 5,833 contracts remaining to be awarded, an estimated 2,392 will be awarded to small business.

The number of first-tier subcontractors estimated to participate in Recovery Act awards is estimated at 7,874. This is based on an assumption that there will be more first-tier subcontractors for higher dollar awards. It is estimated that there will be three first-tier subcontractors for each award of \$550,000 or more; two first-tier subcontractors for each award between \$100,000 and \$449,999; and one first-tier subcontractor for each award between \$25,000 and \$100,000. By analyzing FPDS data, we determined that the highest dollar range represents 21 percent of all Recovery awards with the middle and lowest ranges representing 25 percent and 22 percent, respectively. The remaining 32 percent is made up of awards of \$25,000 or below. Of the 7,874 first-tier subcontractors, it is estimated that 25 percent, or 1,969, will be small businesses.

Based on the above, including the assumption that awards under \$25,000 will have no subcontractors, the total number of small businesses, prime and subcontractors, to which this interim rule will apply is estimated at 3,595 and the total number of other than small businesses to which this rule will apply is estimated at 8,245.

Though Section 1512 requires that the reports be completed by the prime contractor for all data elements, for practical purposes, the prime contractor will have to obtain certain information from their first-tier subcontractors, hence the need for the revised flow-down requirements in paragraph (d)(10). In addition to the burden of first-tier subcontractors having to collect and report jobs information to the prime contractor, there is also the burden on the prime contractor for preparing and monitoring subcontractors who will have to collect and report this information to the prime.

#### *Annual Reporting Burden*

We estimate the total annual public cost burden for these elements to be \$2,950,792, 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:*

*First-tier Subcontract Respondents:* 7,874.

*Responses per respondent:* 4 (reflects quarterly reports).

*Total annual responses:* 31,496.

*Preparation hours per response:* 1.0.

*Total response burden hours:* 31,496.

*Average hourly wages (\$50.00 + 36.35 percent overhead):* \$68.00.

*Estimated cost to the public:* \$2,141,728.

*Prime Contract Respondents:* 3,966.

*Responses per respondent:* 4 (reflects quarterly reports).

*Total annual responses:* 15,864.

*Preparation hours per response:* .75.

*Total response burden hours:* 11,898.

*Average hourly wages (\$50.00 + 36.35 percent overhead):* \$68.00.

*Estimated cost to the public:* \$809,064.

#### **D. Request for Comments Regarding Paperwork Burden**

Submit comments, including suggestions for reducing this burden, not later than August 31, 2010 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite the applicable OMB Control No.: 9000-0176 and FAR Case 2010-008, Recovery Act Subcontract Reporting Procedures, 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, Regulatory Secretariat (MVCB), Room 4041, Washington, DC 20405, telephone (202) 501-4755. Please cite the applicable OMB Control No.: 9000-0176 and FAR Case 2010-008, Recovery Act Subcontract Reporting Procedures, 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 most of the funds provided under the American Recovery and Reinvestment Act of 2009 for obligation on Federal contracts, must be obligated by September 2010. In order to obtain the additional information on jobs prior to the statutory requirement to obligate most Recovery funds on contracts by September 2010, the requirements must be implemented immediately. However, pursuant to 41 U.S.C 418b and FAR 1.501-3(b), 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 4 and 52**

Government procurement.

Dated: June 25, 2010.

**Edward Loeb,**

*Director, Acquisition 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 section 4.1502 to read as follows:

##### **4.1502 Contract clause.**

Insert the clause at 52.204-11, American Recovery and Reinvestment Act—Reporting Requirements in all solicitations and contracts funded in whole or in part with Recovery Act funds, except classified solicitations and contracts. This includes, but is not limited to, Governmentwide Acquisition Contracts (GWACs), multi-agency contracts (MACs), Federal Supply Schedule (FSS) contracts, or agency indefinite-delivery/indefinite-quantity (ID/IQ) contracts that will be funded with Recovery Act funds. Contracting officers shall include this clause in any existing contract or order that will be funded with Recovery Act funds. Contracting officers may not use Recovery Act funds on existing

contracts and orders if the clause at 52.204-11 is not incorporated. This clause is not required for any existing contracts, or task and delivery orders issued under a contract, that contains the original clause FAR 52.204-11 (March 2009).

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 3. Amend section 52.204-11 by—
  - a. Removing from the clause heading “(MAR 2009)” and adding “(JUL 2010)” in its place;
  - b. Revising paragraphs (a) and (c);
  - c. Revising paragraph (d)(7) introductory text;
  - d. Removing from paragraph (d)(7)(i) the word “contractor’s” and adding the word “Contractor’s” in its place;
  - e. Revising paragraphs (d)(7)(ii) and (d)(10) introductory text; and
  - f. Adding paragraph (d)(10)(xii).

The added and revised text reads as follows:

### 52.204-11 American Recovery and Reinvestment Act—Reporting Requirements.

\* \* \* \* \*

(a) *Definitions.* For definitions related to this clause (e.g., contract, first-tier subcontract, total compensation etc.) see the Frequently Asked Questions (FAQs) available at [http://www.whitehouse.gov/omb/recovery\\_faqs\\_contractors](http://www.whitehouse.gov/omb/recovery_faqs_contractors). These FAQs are also linked under <http://www.FederalReporting.gov>.

\* \* \* \* \*

(c) Reports from the Contractor for all work funded, in whole or in part, by the Recovery Act, are due no later than the 10th day following the end of each calendar quarter. The Contractor shall review the Frequently Asked Questions (FAQs) for Federal Contractors before each reporting cycle and prior to submitting each quarterly report as the FAQs may be updated from time-to-time. The first report is due no later than the 10th day after the end of the calendar quarter in which the Contractor received the award. Thereafter, reports shall be submitted no later than the 10th day after the end of each calendar quarter. For information on when the Contractor shall submit its final report, see [http://www.whitehouse.gov/omb/recovery\\_faqs\\_contractors](http://www.whitehouse.gov/omb/recovery_faqs_contractors).

(d) \* \* \*

(7) A narrative description of the employment impact of work funded by the Recovery Act. This narrative should be cumulative for each calendar quarter and address the impact on the Contractor’s and first-tier subcontractors’ workforce for all first-tier subcontracts valued at \$25,000 or more. At a minimum, the Contractor shall provide—

\* \* \* \* \*

(ii) An estimate of the number of jobs created and jobs retained by the prime Contractor and all first-tier subcontracts valued at \$25,000 or more, in the United

States and outlying areas. A job cannot be reported as both created and retained. See an example of how to calculate the number of jobs at [http://www.whitehouse.gov/omb/recovery\\_faqs\\_contractors](http://www.whitehouse.gov/omb/recovery_faqs_contractors).

\* \* \* \* \*

(10) For any first-tier subcontract funded in whole or in part under the Recovery Act, that is valued at \$25,000 or more and not subject to reporting under paragraph 9, the Contractor shall require the subcontractor to provide the information described in paragraphs (d)(1)(i), (ix), (x), (xi), and (xii) of this section to the Contractor for the purposes of the quarterly report. The Contractor shall advise the subcontractor that the information will be made available to the public as required by section 1512 of the Recovery Act. The Contractor shall provide detailed information on these first-tier subcontracts as follows:

\* \* \* \* \*

(xii) A narrative description of the employment impact of work funded by the Recovery Act. This narrative should be cumulative for each calendar quarter and address the impact on the subcontractor’s workforce. At a minimum, the subcontractor shall provide—

(A) A brief description of the types of jobs created and jobs retained in the United States and outlying areas (see definition in FAR 2.101). This description may rely on job titles, broader labor categories, or the subcontractor’s existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work; and

(B) An estimate of the number of jobs created and jobs retained by the subcontractor in the United States and outlying areas. A job cannot be reported as both created and retained. See an example of how to calculate the number of jobs at [http://www.whitehouse.gov/omb/recovery\\_faqs\\_contractors](http://www.whitehouse.gov/omb/recovery_faqs_contractors).

\* \* \* \* \*

### 52.212-5 [Amended]

- 4. Amend section 52.212-5 by removing from the clause heading “(June 2010)” and adding “(JUL 2010)” in its place; and removing from paragraph (b)(4) “MAR 2009” and adding “(JUL 2010)” in its place.

[FR Doc. 2010-15908 Filed 7-1-10; 8:45 am]

BILLING CODE 6820-EP-P

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 19

[FAC 2005-43; FAR Case 2008-023; Item IV; Docket 2009-0017, Sequence 1]

RIN 9000-AL29

### Federal Acquisition Regulation; FAR Case 2008-023, Clarification of Criteria for Sole Source Awards to Service-Disabled Veteran-Owned Small Business Concerns

**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) are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to clarify the criteria that need to be met in order to conduct a sole source Service-disabled Veteran-owned Small Business (SDVOSB) concern acquisition.

**DATES:** *Effective Date:* August 2, 2010

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Rhonda Cundiff, Procurement Analyst, at (202) 501-0044. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-43, FAR Case 2008-023.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

The Councils published a proposed rule in the **Federal Register** at 74 FR 23373 on May 19, 2009, to revise the language in FAR 19.1406(a)(1) to clarify the criteria that need to be met in order to conduct a sole source SDVOSB concern acquisition. The final rule contains language that more closely mirrors the Veterans Benefit Act of 2003 (15 U.S.C. 657f). The final rule revises the language in FAR 19.1306(a)(1), which deals with sole source awards to Historically Underutilized Business Zone (HUBZone) small business concerns based on 15 U.S.C. 657a(b), to match the language in FAR 19.1406(a)(1) to alleviate confusion on the appropriate use of the criteria needed to conduct a sole source SDVOSB concern acquisition.

The public comment period for the FAR proposed rule closed July 20, 2009. Eight respondents submitted comments to the proposed rule. A discussion of the comments and the changes made to the rule as a result of those comments is provided below. Three respondents concurred with the proposed changes to clarify the criteria that needed to be met in order to conduct a sole source SDVOSB concern acquisition.

1. *Comment: Increase knowledge of the marketplace and SDVOSB advocacy.* One respondent expressed concern that the contracting officer does not have sufficient knowledge of the marketplace to make a sole-source determination without the advice of the U.S. Department of Veterans Affairs, the Small Business Administration (SBA), or other entities that advocate for the veteran community. The respondent further added that the regulatory language needs to mandate that the contracting officer exercise a higher level of advocacy for service-disabled veteran-owned firms to ensure these firms receive greater representation in the procurement process.

*Response:* The purpose of this regulatory change is to clarify the circumstances under which a contracting officer may award a sole-source contract to a small business concern owned and controlled by a service-disabled veteran. This case does not address market research or advocacy; therefore the respondent's comments are considered outside the scope of this case.

2. *Comment: Correction to FAR 19.1306(a)(2).* One respondent requested an additional review be conducted regarding FAR 19.1306(a)(2), because paragraph (c) does not exist.

*Response:* The reference to paragraph (c) is deleted.

3. *Comment: Revise the language in FAR 19.1306(a) and 19.1406(a).* Two respondents recommended revising paragraph (a) of FAR 19.1406 Sole Source Awards to Service-disabled Veterans-owned Small Business concerns to match the language in paragraph (a) of FAR 19.1306 by adding the language: "(a) A participating agency contracting office may award contracts to a service-disabled Veteran-owned small business concern on a sole source basis without considering small business set-asides provided-".

*Response:* FAR 19.1406(a) has been revised to be consistent with FAR 19.1306(a).

4. *Comment: Revise the SDVOSB language to mirror the 8(a) language.* One respondent recommended that the language in the FAR for SDVOSB sole

source criteria mirror the language of the 8(a) criteria.

*Response:* The SDVOSB program and the 8(a) Business Development Program were established under two separate statutes with different sole-source award requirements. The statute for the SDVOSB program does not require the FAR language to be similar to the FAR language for the 8(a) Business Development Program.

5. *Comment: Raise the prescribed \$3 million threshold to \$3.5 million.* One respondent recommended that the dollar limit for the sole source awards to a Service-disabled Veteran-owned small business be raised to \$3.5 million from the prescribed \$3 million to be consistent with the dollar limits for non-manufacturing 8(a) awards.

*Response:* Threshold changes are based on statute. Federal Acquisition Circular 2005-013, FAR Case 2004-033, published in the **Federal Register** at 71 FR 57363 on September 28, 2006, was based on a statutory requirement, raising thresholds in the FAR due to inflation. The escalation calculation for the inflationary threshold for sole source awards to Service-disabled Veteran-owned small businesses was not eligible for an inflationary increase (see <http://acquisition.gov/far/facsframe.html>). However, FAR Case 2008-024 is the case handling the next round of inflationary increases, and when that case is published as a final rule, the threshold may be raised; the Councils note that the inflation calculation is different for SDVOSB than for 8(a) and HUBZone because these statutes were enacted at different times.

This rule 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 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 this rule clarifies the intent of the existing language and is not a change in policy. The Councils did not receive any comments on the Regulatory Flexibility Act or a perceived burden 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. chapter 35, *et seq.*

### List of Subjects in 48 CFR Part 19

Government procurement.

Dated: June 25, 2010.

**Edward Loeb,**

*Director, Acquisition Policy Division.*

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

### PART 19—SMALL BUSINESS PROGRAMS

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

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

■ 2. Amend section 19.1306 by revising the introductory text of paragraph (a), paragraph (a)(1), the introductory text of paragraph (a)(2), and paragraph (a)(3) to read as follows:

#### 19.1306 HUBZone sole source awards.

(a) A contracting officer may award contracts to HUBZone small business concerns on a sole source basis (see 19.501(c) and 6.302-5(b)(5)) before considering small business set-asides (see subpart 19.5), provided—

(1) The contracting officer does not have a reasonable expectation that offers would be received from two or more HUBZone small business concerns;

(2) The anticipated price of the contract, including options, will not exceed—

\* \* \* \* \*

(3) The requirement is not currently being performed by an 8(a) participant under the provisions of subpart 19.8 or has been accepted as a requirement by SBA under subpart 19.8.

\* \* \* \* \*

■ 3. Amend section 19.1406 by revising the introductory text of paragraph (a), paragraph (a)(1), and the introductory text of paragraph (a)(2); redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(4) and (a)(5), respectively, and adding a new paragraph (a)(3) to read as follows:

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

(a) A contracting officer may award contracts to service-disabled veteran-owned small business concerns on a sole source basis (see 19.501(d) and

6.302–5(b)(6)), before considering small business set-asides (see subpart 19.5) provided none of the exclusions of 19.1404 apply and—

(1) The contracting officer does not have a reasonable expectation that offers would be received from two or more service-disabled veteran-owned small business concerns;

(2) The anticipated award price of the contract, including options, will not exceed—

\* \* \* \* \*

(3) The requirement is not currently being performed by an 8(a) participant under the provisions of subpart 19.8 or has been accepted as a requirement by SBA under subpart 19.8;

\* \* \* \* \*

[FR Doc. 2010–15902 Filed 7–1–10; 8:45 am]

BILLING CODE 6820–EP–P

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 22, 25, and 52**

[FAC 2005–43; FAR Case 2009–040; Item V; Docket 2010–0092, Sequence 1]

RIN 9000–AL57

**Federal Acquisition Regulation; FAR Case 2009–040, Trade Agreements Thresholds**

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 (the Councils) are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to incorporate increased thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements, as determined by the United States Trade Representative.

**DATES:** *Effective Date:* July 2, 2010.

*Comment Date:* Interested parties should submit written comments to the Regulatory Secretariat on or before August 31, 2010 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAC 2005–43, FAR Case 2009–040, by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by inputting “FAR Case 2009–040” under the heading “Enter Keyword or ID” and selecting “Search”. Select the link “Submit a Comment” that corresponds with “FAR Case 2009–040”. Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “FAR Case 2009–040” on your attached document.

- *Fax:* 202–501–4067.

- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

*Instructions:* Please submit comments only and cite FAC 2005–43, FAR case 2009–040, 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:** For clarification of content, contact Ms. Cecelia L. Davis, Procurement Analyst, at (202) 219–0202. Please cite FAC 2005–43, FAR Case 2009–040. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Every two years, the trade agreements thresholds are adjusted according to a pre-determined formula under the agreements. On December 29, 2009 (74 FR 68907), the United States Trade Representative established new procurement thresholds. These thresholds became effective on January 1, 2010. The United States Trade Representative has specified the following new thresholds:

Trade agreement	Supply contract (equal to or exceeding)	Service contract (equal to or exceeding)	Construction contract (equal to or exceeding)
WTO GPA .....	\$203,000	\$203,000	\$7,804,000
FTAs:			
Australia FTA .....	70,079	70,079	7,804,000
Bahrain FTA .....	203,000	203,000	9,110,318
CAFTA–DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua) .....	70,079	70,079	7,804,000
Chile FTA .....	70,079	70,079	7,804,000
Morocco FTA .....	203,000	203,000	7,804,000
NAFTA:			
—Canada .....	25,000	70,079	9,110,318
—Mexico .....	70,079	70,079	9,110,318
Oman FTA .....	203,000	203,000	9,110,318
Peru FTA .....	203,000	203,000	7,804,000
Singapore FTA .....	70,079	70,079	7,804,000
Israeli Trade Act .....	50,000	.....	.....

**B. Executive Order 12866**

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.

**C. Regulatory Flexibility Act**

The Councils do not expect this interim rule 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 dollar threshold changes are designed to keep pace with inflation and thus maintain the status quo. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

The Councils will also consider comments from small entities concerning the existing regulations in parts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005-43, FAR Case 2009-040) in all correspondence.

**D. 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 9000-0130 (FAR 52.225-4), 9000-0025 (FAR 52.225-6) and 9000-0141 (FAR 52.225-9, 52.225-11, 52.225-21, and 52.225-23). The interim rule affects the prescriptions for use of the certifications. However, there is no impact on the estimated burden hours, because the threshold changes are in

line with inflation and maintain the status quo.

**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 interim rule incorporates increased dollar thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements, as determined by the United States Trade Representative. This action is necessary because the new thresholds became effective on January 1, 2010. However, pursuant to 41 U.S.C. 418b and FAR 1.501-3(b), the Councils will consider public comments received in response to this interim rule in the formation of the final rule. Absent this regulatory change, this requirement would not be incorporated into the FAR and implemented by the acquisition community.

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

Government procurement.

Dated: June 25, 2010.

**Edward Loeb,**

*Director, Acquisition 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 by removing from paragraph (b)(3) “\$67,826” and adding “\$70,079” in its place; and removing from paragraph (b)(4) “\$194,000” and adding “\$203,000” in its place.

**PART 25—FOREIGN ACQUISITION**

**25.202 [Amended]**

■ 3. Amend section 25.202 by removing from paragraph (c) “\$7,443,000” and adding “\$7,804,000” in its place.

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

**25.402 General.**

\* \* \* \* \*  
(b) \* \* \*

Trade agreement	Supply contract (equal to or exceeding)	Service contract (equal to or exceeding)	Construction contract (equal to or exceeding)
WTO GPA .....	\$203,000	\$203,000	\$7,804,000
FTAs:			
Australia FTA .....	70,079	70,079	7,804,000
Bahrain FTA .....	203,000	203,000	9,110,318
CAFTA-DR (Costa Rica, El Salvador, Dominican Republic, Guatemala, Honduras, and Nicaragua) .....	70,079	70,079	7,804,000
Chile FTA .....	70,079	70,079	7,804,000
Morocco FTA .....	203,000	203,000	7,804,000
NAFTA:			
—Canada .....	25,000	70,079	9,110,318
—Mexico .....	70,079	70,079	9,110,318
Oman FTA .....	203,000	203,000	9,110,318
Peru FTA .....	203,000	203,000	7,804,000
Singapore FTA .....	70,079	70,079	7,804,000
Israeli Trade Act .....	50,000	.....	.....

■ 4. Amend section 25.504-2 by revising Example 1. to read as follows:

**25.504-2 WTO GPA/Caribbean Basin Trade Initiative/FTAs.**

*Example 1.*

Offer A .....	304,000	U.S.-made end product (not domestic).
Offer B .....	303,000	U.S.-made end product (domestic), small business.
Offer C .....	300,000	Eligible product.
Offer D .....	295,000	Noneligible product (not U.S.-made).

\* \* \* \* \*

**25.603 [Amended]**

■ 5. Amend section 25.603 in paragraph (c) by removing “\$7,443,000” and adding “\$7,804,000” in its place.

**25.1101 [Amended]**

■ 6. Amend section 25.1101 by—  
 ■ a. Removing from paragraph (b)(1)(i)(A) “\$194,000” and adding “\$203,000” in its place;  
 ■ b. Removing from paragraphs (b)(1)(iii) and (b)(2)(iii) “\$67,826”, and adding “\$70,079” in its place;  
 ■ c. Removing from paragraphs (c)(1) and (d) “\$194,000”, and adding “\$203,000” in its place.  
 ■ 7. Amend section 25.1102 by removing from paragraphs (a) introductory text and (c) introductory text “\$7,443,000” and adding “\$7,804,000” in its place; revising the first sentence in paragraph (c)(3); and revising paragraph (d)(3) to read as follows:

**25.1102 Acquisition of construction.**

\* \* \* \* \*  
 (c) \* \* \*  
 (3) For acquisitions valued at \$7,804,000 or more, but less than \$9,110,318, use the clause with its Alternate I. \* \* \*  
 (d) \* \* \*  
 (3) For acquisitions valued at \$7,804,000 or more, but less than \$9,110,318, use the clause with its Alternate II.  
 \* \* \* \* \*

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 8. Amend section 52.212–5 by revising the date of the clause and paragraph (b)(20) 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 (JUL 2010)**

(b) \* \* \*  
 (20) 52.222–19, Child Labor—Cooperation with Authorities and Remedies (Jul 2010) (E.O. 13126).  
 \* \* \* \* \*

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

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

\* \* \* \* \*

**TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL ITEMS) (JUL 2010)**

(b) \* \* \*  
 (1) \* \* \*  
 (i) 52.222–19, Child Labor—Cooperation with Authorities and Remedies (Jul 2010) (E.O. 13126). \* \* \*  
 \* \* \* \* \*  
 ■ 10. Amend section 52.222–19 by revising the date of the clause; removing from paragraph (a)(3) “\$67,826” and adding “\$70,079” in its place; and removing from paragraph (a)(4) “\$194,000” and adding “\$203,000” in its place.

The revised text reads as follows:

52.222–19 Child Labor—Cooperation with Authorities and Remedies.  
 \* \* \* \* \*

**CHILD LABOR—COOPERATION WITH AUTHORITIES AND REMEDIES (JUL 2010)**

\* \* \* \* \*  
 [FR Doc. 2010–15901 Filed 7–1–10; 8:45 am]

**BILLING CODE 6820–EP–P**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

[Docket FAR 2010–0077, Sequence 5]

**Federal Acquisition Regulation; Federal Acquisition Circular 2005–43; 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) 2005–43 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 2005–31, which precedes this document. These documents are also available via the Internet at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** The analyst whose name appears in the table below. Please cite FAC 2005–43 and the specific FAR case number. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

**LIST OF RULES IN FAC 2005–43**

Item	Subject	FAR Case	Analyst
I .....	Government Property .....	2008–011	Parnell
II .....	Registry of Disaster Response Contractors .....	2008–035	Gary
III .....	Recovery Act Subcontract Reporting Procedures (Interim) * .....	2010–008	Morgan
IV .....	Clarification of Criteria for Sole Source Awards to Service-disabled Veteran-owned Small Business Concerns.	2008–023	Cundiff
V .....	Trade Agreements Thresholds (Interim) .....	2009–040	Davis

**SUPPLEMENTARY INFORMATION:** Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item number and

subject set forth in the documents following these item summaries.  
*FAC 2005–43 amends the FAR as specified below:*

**Item I—Government Property (FAR Case 2008–011)**  
 This final rule amends the FAR to revise FAR part 45 and its associated clauses. Changes are being made to FAR

parts 2, 4, 15, 32, 42, 45, and 52. These changes are to clarify and correct the previous FAR rule for part 45, Government Property, published under Federal Acquisition Circular 2005-17, FAR case 2004-025, May 15, 2007, (72 FR 27364). Minor changes are made to the proposed rule published August 6, 2009 (74 FR 39262).

The rule specifically impacts contracting officers, property administrators, and contractors responsible for the management of Government property. The rule does not have a significant economic impact on small entities because the rule does not impose any additional requirements on small businesses. The rule does not affect the method of managing Government property. The rule merely clarifies and corrects the previous FAR rule.

**Item II—Registry of Disaster Response Contractors (FAR Case 2008-035)**

This final rule adopts, without change, the interim rule implementing Public Law 109-295, the Department of Homeland Security Appropriations Act, 2007, section 697, which requires the establishment and maintenance of a registry of disaster response contractors. The Disaster Response Registry is located at <http://www.ccr.gov>. The Federal Emergency Management Agency (within the Department of Homeland Security) has a link to the registry for vendors on its Web site at <http://www.fema.gov/business/contractor.shtml>. The Registry covers

domestic disaster and emergency relief activities.

**Item III—Recovery Act Subcontract Reporting Procedures (FAR Case 2010-008) (Interim) \***

This interim rule amends the FAR to revise the clause at FAR 52.204-11, American Recovery and Reinvestment Act—Reporting Requirements. The revised clause will require first-tier subcontractors with Recovery Act funded awards of \$25,000 or more, to report jobs information to the prime contractor for reporting into *FederalReporting.gov*. It also will require the prime contractor to submit its first report on or before the 10th day after the end of the calendar quarter in which the prime contractor received the award, and quarterly thereafter.

The revised clause will be used for all new solicitations and awards issued on or after the effective date of this interim rule. This clause is not required for any existing contracts, or task and delivery orders issued under a contract, that contain the original clause FAR 52.204-11 (March 2009). Therefore, this interim rule does not require renegotiation of existing Recovery Act contracts that include the clause dated March 2009.

**Item IV—Clarification of Criteria for Sole Source Awards to Service-Disabled Veteran-Owned Small Business Concerns (FAR Case 2008-023)**

This final rule amends FAR 19.1406(a) to clarify the criteria that

need to be met in order to conduct a sole source service-disabled veteran-owned small business (SDVOSB) concern acquisition. The FAR language is amended to be consistent with the Veterans Benefit Act of 2003 (15 U.S.C. 657f) and the Small Business Administration's regulation (13 CFR 125.20) that implements the Act. This final rule also amends FAR 19.1306(a) to clarify the criteria that need to be met in order to conduct a sole source for Historically Underutilized Business Zone (HUBZone) small business concern acquisitions. These amendments to the FAR alleviate confusion for contracting officers on the appropriate use of the criteria needed to conduct sole source HUBZONE small business and SDVOSB concern acquisitions.

**Item V—Trade Agreements Thresholds (FAR Case 2009-040) (Interim)**

This interim rule adjusts the thresholds for application of the World Trade Organization Government Procurement Agreement and the other Free Trade Agreements as determined by the United States Trade Representative, according to a pre-determined formula under the agreements.

Dated: June 25, 2010.

**Edward Loeb,**

*Director, Acquisition Policy Division.*

[FR Doc. 2010-15906 Filed 7-1-10; 8:45 am]

**BILLING CODE 6820-EP-P**