



# FEDERAL REGISTER

---

Vol. 76

Tuesday,

No. 128

July 5, 2011

---

Part V

Department of Defense

General Services Administration

National Aeronautics and Space Administration

---

48 CFR Chapter 1

Federal Acquisition Regulation; Final Rules

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES  
ADMINISTRATION**

**NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

**48 CFR Chapter 1**

[Docket FAR 2011–0076, Sequence 5]

**Federal Acquisition Regulation;  
Federal Acquisition Circular 2005–53;  
Introduction**

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

and National Aeronautics and Space  
Administration (NASA).

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

**SUMMARY:** This document summarizes  
the Federal Acquisition Regulation  
(FAR) rules agreed to by DoD, GSA, and  
NASA in this Federal Acquisition  
Circular (FAC) 2005–53. 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 2005–53 and the  
specific FAR case numbers. For  
information pertaining to status or  
publication schedules, contact the  
Regulatory Secretariat at (202) 501–  
4755.

**SUPPLEMENTARY INFORMATION:**

LIST OF RULES IN FAC 2005–53

| Item      | Subject   | FAR case | Analyst   |
|-----------|---|----------|-----------|
| I .....   | Equal Opportunity for Veterans .....  | 2009–007 | McFadden. |
| II .....  | Unique Procurement Instrument Identifier .....                                    | 2009–023 | Morgan.   |
| III ..... | Uniform Suspension and Debarment Requirement .....                                | 2009–036 | Jackson.  |
| IV .....  | Extension of Sunset Date for Protests of Task and Delivery Orders (Interim) ..... | 2011–015 | Lague.    |
| V .....   | Encouraging Contractor Policies to Ban Text Messaging While Driving .....         | 2009–028 | Clark.    |
| VI .....  | TINA Interest Calculations .....  | 2009–034 | Chambers. |

Summaries for each FAR rule follow.  
For the actual revisions and/or  
amendments made by these FAR cases,  
refer to the specific item numbers and  
subject set forth in the documents  
following these item summaries. FAC  
2005–53 amends the FAR as specified  
below:

**Item I—Equal Opportunity for Veterans  
(FAR Case 2009–007)**

The interim rule, published  
September 29, 2010, is adopted as final  
with minor changes. A definition from  
the clause at FAR 52.222–35 for  
“executive and senior management” is  
added to FAR subpart 22.13. The  
interim rule implemented Department  
of Labor regulations on equal  
opportunity provisions for various  
categories of military veterans.

**Item II—Unique Procurement  
Instrument Identifier (FAR Case 2009–  
023)**

This final rule amends the FAR to  
define the requirement for an agency  
unique procurement instrument  
identifier (PIID) and, to extend the  
requirement for using PIIDs to  
solicitations, contracts, and related  
procurement instruments.

This final rule adds two new  
definitions at 4.001, revises 4.605(a),  
and adds a new FAR subpart 4.16—  
Unique Procurement Instrument  
Identifiers, to prescribe policies and  
procedures for assigning PIIDs. The  
Government expects that these changes

will reduce data errors and  
interoperability problems across the  
Federal Government’s business  
processes which were created by  
inconsistent and non-unique PIID  
assignment and use. These changes will  
not impose new requirements on small  
businesses, as the rule only addresses  
internal Government policy and  
procedures.

**Item III—Uniform Suspension and  
Debarment Requirement (FAR Case  
2009–036)**

This rule adopts as final, with minor  
changes, an interim rule which  
implemented section 815 of the  
National Defense Authorization Act for  
Fiscal Year 2010, Public Law 111–84.  
The law requires that suspension and  
debarment requirements flow down to  
all subcontracts except contracts for  
commercially available off-the-shelf  
items, and in the case of commercial  
items, first-tier subcontracts only.

This requirement protects the  
Government against contracting with  
entities at any tier who are debarred,  
suspended, or proposed for debarment.  
This rule does not have a significant  
impact on the Government, contractors,  
or any automated systems.

**Item IV—Extension of Sunset Date for  
Protests of Task and Delivery Orders  
(FAR Case 2011–015) (Interim)**

This interim rule amends the FAR to  
implement section 825 of the Ike  
Skelton National Defense Authorization

Act for Fiscal Year 2011 (Pub. L. 111–  
383). Section 825 extends the sunset  
date for protests against awards of task  
or delivery orders by DoD, NASA, and  
the Coast Guard from May 27, 2011 to  
September 30, 2016. The sunset date for  
protests against the award of task or  
delivery orders by other Federal  
agencies remains May 27, 2011. With  
this change, contractors will no longer  
be able to protest task or delivery orders  
awarded by agencies other than DoD,  
NASA, and the Coast Guard. There is no  
effect on Government automated  
systems.

**Item V—Encouraging Contractor  
Policies To Ban Text Messaging While  
Driving (FAR Case 2009–028)**

This final rule adopts, with changes,  
the interim rule published in the  
**Federal Register** at 75 FR 60264 on  
September 29, 2010, to implement  
Executive Order 13513 (October 1,  
2009), published in the **Federal Register**  
at 74 FR 51225 on October 6, 2009,  
entitled “Federal Leadership on  
Reducing Text Messaging while  
Driving.” This final rule revises FAR  
clause 52.223–18 to encourage the  
adoption and enforcement of policies  
that ban text messaging while driving  
company-owned or -rented vehicles or  
Government-owned vehicles; or  
privately-owned vehicles when on  
official Government business or when  
performing any work for or on behalf of  
the Government. The final rule also  
revises the language in the clause to

encourage contractors to conduct initiatives such as: (1) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving, and (2) education, awareness, and other outreach programs to inform employees about the safety risks associated with texting while driving. This requirement applies to all solicitations and contracts.

#### Item VI—TINA Interest Calculations (FAR Case 2009–034)

DoD, GSA, and NASA are publishing a final rule amending the FAR to revise the clauses at FAR 52.214–27, FAR 52.215–10, and FAR 52.215–11 to require compound interest calculations be applied to Government overpayments as a result of defective cost or pricing data.

Dated: June 28, 2011.

Laura Auletta,

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

Federal Acquisition Circular (FAC) 2005–53 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 2005–53 is effective July 5, 2011, except for Items I, II, III, V and VI which are effective August 4, 2011.

Dated: June 27, 2011.

**Richard Ginman,**

*Director, Defense Procurement and Acquisition Policy.*

Dated: June 28, 2011.

**Joseph A. Neurauter,**

*Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.*

Dated: June 22, 2011.

**William P. McNally,**

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

[FR Doc. 2011–16671 Filed 7–1–11; 8:45 am]

**BILLING CODE 6820–EP–P**

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

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

[FAC 2005–53; FAR Case 2009–007; Item I; Docket 2010–0101, Sequence 1]

RIN 9000–AL67

#### Federal Acquisition Regulation; Equal Opportunity for Veterans

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

**ACTION:** Final rule.

**SUMMARY:** DoD, GSA, and NASA have adopted as final, with changes, an interim rule amending the Federal Acquisition Regulation (FAR) to implement Department of Labor (DOL) regulations on equal opportunity provisions for various categories of military veterans. The interim rule revised coverage and definitions of veterans covered under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 and included new reporting requirements established under that Act and the Jobs for Veterans Act.

**DATES:** *Effective Date:* August 4, 2011.

**FOR FURTHER INFORMATION CONTACT:** Ms. Clare McFadden, Procurement Analyst, at (202) 501–0044, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–53, FAR Case 2009–007.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 75 FR 60249 on September 29, 2010, to implement DOL regulations on equal opportunity provisions for various categories of military veterans. The interim rule revised coverage and definitions of veterans covered under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 and included new reporting requirements established under that Act and the Jobs for Veterans Act. The comment period closed November 29, 2010. One respondent submitted comments in response to the interim rule.

##### II. Discussion and Analysis of Public Comments

The Civilian Agency Acquisition Council and the Defense Acquisition

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

##### A. Definitions

*Comment:* The respondent recommended inclusion of the definition of “Executive and Senior Management,” as defined in the FAR clause 52.222–35, Equal Opportunity for Veterans, in the definitions section of FAR subpart 22.13.

*Response:* The Councils have added the definition to FAR 22.1301.

*Comment:* The respondent recommended a change to the definition of the term “other protected veteran.”

*Response:* The FAR rule is implementing the DOL rule and does not have the latitude to expand the meaning of the DOL definition. (See the August 8, 2007, final rule of the Office of Federal Contract Compliance Programs, Department of Labor, 60–300.2 (p), 72 FR 44393.)

##### B. Delete References to the VETS–100 Form

*Comment:* The respondent recommends deleting all references to the VETS–100 Form and the date of December 1, 2003, to allow contractors to submit all reports on the VETS–100A Form.

*Response:* While understanding the rationale for the recommendation, the Councils are again bound by the DOL rule.

##### C. Date of FAR Clause 52.244–6

*Comment:* The respondent recommended that the FAR clause 52.244–6 date should be updated to reflect the OCT 2010 change made to the clause subsequent to the interim rule.

*Response:* When an interim rule is finalized, the final rule automatically retains any intervening changes to the FAR baseline, such as clause dates. No further change is required.

### III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant

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

IV. Regulatory Flexibility Act

The Department of Defense, 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 contractors are already required to annually track and report their veteran workforces on the VETS-100 Form in accordance with the Vietnam Era Veterans' Readjustment Assistance Act of 1972, as amended by the Jobs for Veterans Act. This rule implemented a new form, VETS-100A that simply includes the revised categories of veterans for reporting purposes.

V. Paperwork Reduction Act

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

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

Government procurement.

Dated: June 28, 2011.

Laura Auletta,

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

Accordingly, the interim rule amending 48 CFR parts 1, 22, and 52, which was published in the Federal Register at 75 FR 60249, September 29, 2010, is adopted as final with the following changes:

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 1. The authority citation for 48 CFR part 22 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 22.1301 by adding, in alphabetical order, the definition "Executive and senior management" to read as follows:

22.1301 Definitions.

\* \* \* \* \*

Executive and senior management means—

- (1) Any employee—
  - (i) Compensated on a salary basis at a rate of not less than \$455 per week (or \$380 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging, or other facilities;
  - (ii) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;
  - (iii) Who customarily and regularly directs the work of two or more other employees; and
  - (iv) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; or
- (2) Any employee who owns at least a bona fide 20-percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management.

\* \* \* \* \*  
[FR Doc. 2011-16672 Filed 7-1-11; 8:45 am]  
BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 4

[FAC 2005-53; FAR Case 2009-023; Item II; Docket 2010-0094, Sequence 1]

RIN 9000-AL70

Federal Acquisition Regulation; Unique Procurement Instrument Identifier

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

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to standardize use of unique Procurement Instrument Identifiers (PIID) throughout the Government. The lack of consistent agency policies and procedures for PIIDs subjected users of contract data, including the Federal Government, contractors, and the public, to potential

duplicate, overlapping, or conflicting information from the different Federal agencies.

DATES: Effective Date: August 4, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Karlos Morgan, Procurement Analyst, at (202) 501-2364 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-53, FAR Case 2009-023.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the Federal Register at 75 FR 50731 on August 17, 2010, to standardize the use of unique PIIDs throughout the Government. Four respondents submitted comments on the proposed rule.

II. Discussion and Analysis of the Public Comments

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

A. Agency and Office Identifier

Comment: A respondent provided a suggestion that the prescribed identifiers include not only an agency identifier, but an office identifier as well.

Response: At this time, not all agencies have an office-unique identifier. However, as data standardization efforts progress, this may be a future area of consideration.

B. Amendments

Comment: A respondent suggested that the term "amendments" be removed from the proposed FAR 4.605, as "amendments" are not reported to the Federal Procurement Data System (FPDS).

Response: "Amendments" will be removed from the identified part, and replaced with "solicitations", because solicitation numbers are included in FPDS contract action reports.

C. Consistent Government Format

Comment: Two respondents requested a consistent format for the PIIDs across the Government.

Response: At this time it is not cost effective to transition all Federal agencies to a single PIID format across the Government.

#### D. Linkage of Old and New PIIIDs

*Comment:* A respondent suggested adding language to proposed FAR 4.1601(f) to require linking any new PIIID assigned to an award to the old originating PIIID.

*Response:* Language was added to FAR 4.1601(f) as suggested.

#### E. New Contractor Identification

*Comment:* Two respondents suggested the creation of a new contractor identification system within the public domain.

*Response:* This request is out of scope for this case.

### III. Executive Orders 12866 and 13563

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

### IV. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it will not impose new requirements on industry. It only provides internal Government policies and procedures.

### V. Paperwork Reduction Act

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

#### List of Subjects in 48 CFR Part 4

Government procurement.

Dated: June 28, 2011.

**Laura Auletta,**

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

Therefore, DoD, GSA, and NASA amend 48 CFR part 4 as follows:

### PART 4—ADMINISTRATIVE MATTERS

■ 1. The authority citation for 48 CFR part 4 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. Add section 4.001 to read as follows:

#### 4.001 Definitions.

As used in this part—  
*Procurement Instrument Identifier (PIID)* means the Government-unique identifier for each solicitation, contract, agreement, or order. For example, an agency may use as its PIIID for procurement actions, such as delivery and task orders or basic ordering agreements, the order or agreement number in conjunction with the contract number (see 4.1602).

*Supplementary procurement instrument identifier* means the non-unique identifier for a procurement action that is used in conjunction with the Government-unique identifier. For example, an agency may use as its PIIID for an amended solicitation, the Government-unique identifier for a solicitation number (*e.g.*, N0002309R0009) in conjunction with a non-unique amendment number (*e.g.*, 0001). The non-unique amendment number represents the supplementary PIIID.

■ 3. Amend section 4.605 by revising paragraph (a) to read as follows:

#### 4.605 Procedures.

(a) *Procurement Instrument Identifier (PIID)*. Agencies shall have in place a process that ensures that each PIIID reported to FPDS is unique Governmentwide, for all solicitations, contracts, blanket purchase agreements, basic agreements, basic ordering agreements, or orders in accordance with 4.1601, and will remain so for at least 20 years from the date of contract award. Other pertinent PIIID instructions for FPDS reporting can be found at <https://www.fpds.gov>.

■ 4. Add subpart 4.16 to read as follows:

### Subpart 4.16—Unique Procurement Instrument Identifiers

Sec.

4.1600 Scope of subpart.

4.1601 Policy.

4.1602 Identifying the PIIID and supplementary PIIID.

### Subpart 4.16—Unique Procurement Instrument Identifiers

#### 4.1600 Scope of subpart.

This subpart prescribes policies and procedures for assigning unique Procurement Instrument Identifiers (PIID) for each solicitation, contract, agreement, or order and related procurement instrument.

#### 4.1601 Policy.

(a) *Procurement Instrument Identifier (PIID)*. Agencies shall have in place a process that ensures that each PIIID used to identify a solicitation or contract action is unique Governmentwide, and will remain so for at least 20 years from the date of contract award.

(b) Agencies must submit their proposed identifier format to the General Services Administration's Integrated Acquisition Environment Program Office, which maintains a registry of the agency-unique identifier schemes.

(c) The PIIID shall consist of alpha characters in the first positions to indicate the agency, followed by alpha-numeric characters according to agency procedures.

(d) The PIIID shall be used to identify all solicitation and contract actions. The PIIID shall also be used to identify solicitation and contract actions in designated support and reporting systems (*e.g.*, Federal Procurement Data System, Past Performance Information Retrieval System), in accordance with regulations, applicable authorities, and agency policies and procedures.

(e) Agencies shall not change the PIIID, unless the conditions in paragraph (f) of this section exist.

(f) If continued use of a PIIID is not possible or is not in the Government's best interest solely for administrative reasons (*e.g.*, for implementations of new agency contracting systems), the contracting officer may assign a new PIIID by issuing a modification. The modification shall clearly identify both the original and the newly assigned PIIID.

#### 4.1602 Identifying the PIIID and supplementary PIIID.

(a) *Identifying the PIIID in solicitation and contract award documentation (including forms and electronic generated formats)*. Agencies shall include all PIIIDs for all related procurement actions as identified in paragraphs (a)(1) through (5) of this section.

(1) *Solicitation*. Identify the PIIID for all solicitations. For amendments to

solicitations, identify a supplementary PIID, in conjunction with the PIID for the solicitation.

(2) *Contracts and purchase orders.* Identify the PIID for contracts and purchase orders.

(3) *Delivery and task orders.* For delivery and task orders placed by an agency under a contract (e.g., indefinite delivery indefinite quantity (IDIQ) contracts, multi-agency contracts (MAC), Governmentwide acquisition contracts (GWACs), or Multiple Award Schedule (MAS) contracts), identify the PIID for the delivery and task order and the PIID for the contract.

(4) *Blanket purchase agreements and basic ordering agreements.* Identify the PIID for blanket purchase agreements issued in accordance with 13.303, and for basic agreements and basic ordering agreements issued in accordance with subpart 16.7. For blanket purchase agreements issued in accordance with subpart 8.4 under a MAS contract, identify the PIID for the blanket purchase agreement and the PIID for the MAS contract.

(i) *Orders.* For orders against basic ordering agreements or blanket purchase agreements issued in accordance with 13.303, identify the PIID for the order and the PIID for the blanket purchase agreement or basic ordering agreement.

(ii) *Orders under subpart 8.4.* For orders against a blanket purchase agreement established under a MAS contract, identify the PIID for the order, the PIID for the blanket purchase agreement, and the PIID for the MAS contract.

(5) *Modifications.* For modifications to actions described in paragraphs (a)(2) through (4) of this section, and in accordance with agency procedures, identify a supplementary PIID for the modification in conjunction with the PIID for the contract, order, or agreement being modified.

(b) *Placement of the PIID on forms.* When the form (including electronic generated format) does not provide spaces or fields for the PIID or supplementary PIID required in paragraph (a) of this section, identify the PIID in accordance with agency procedures.

(c) *Additional agency specific identification information.* If agency procedures require additional identification information in solicitations, contracts, or other related procurement instruments for administrative purposes, identify it in such a manner so as to separate it clearly from the PIID.

[FR Doc. 2011-16673 Filed 7-1-11; 8:45 am]

BILLING CODE 6820-EP-P

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 9 and 52

[FAC 2005-53; FAR Case 2009-036; Item III; Docket 2010-0109, Sequence 1]

RIN 9000-AL75

#### Federal Acquisition Regulation; Uniform Suspension and Debarment Requirement

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

**ACTION:** Final rule.

**SUMMARY:** DoD, GSA, and NASA have adopted as final, with changes, the interim rule amending the Federal Acquisition Regulation (FAR) to implement section 815 of the National Defense Authorization Act for Fiscal Year 2010. Section 815 extends the flow down of limitations on subcontracting with entities that have been debarred, suspended, or proposed for debarment.

**DATES:** *Effective Date:* August 4, 2011.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael O. Jackson, Procurement Analyst, at (202) 208-4949 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-53, FAR Case 2009-036.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 75 FR 77739 on December 13, 2010, to implement section 815 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111-84). Section 815 amends section 2455(c)(1) of the Federal Acquisition Streamlining Act of 1994 (FASA) (31 U.S.C. 6101 note) by amending the definition of “procurement activities” to include subcontracts at any tier, except—

- It does not include subcontracts for commercially available off-the-shelf items (COTS); and
- In the case of commercial items, such term includes only the first-tier subcontracts.

This has the effect, except for commercial items and COTS items, of expanding the requirement of section 2455(a), which states that “No agency shall allow a party to participate in any

procurement \* \* \* activity if any agency has debarred, suspended, or otherwise excluded \* \* \* that party from participation in a procurement \* \* \* activity.”

Therefore, the interim rule amended the FAR clause at 52.209-6, Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, by flowing down the requirements for the contractor or higher-tier subcontractor to check whether a subcontractor beyond the first tier is debarred, suspended, or proposed for debarment, with the stated dollar threshold and exceptions for commercial items and COTS items. As in the current clause, the contractor and higher-tier subcontractors must also notify the contracting officer in writing before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment, providing the contractor’s knowledge of the reasons for the subcontractor being on the Excluded Parties Systems List, and the compelling reasons for doing business with the subcontractor, as well as the systems and procedures the contractor has established to ensure that it is fully protecting the Government’s interests. The contracting officer will now have more visibility into whether lower-tier subcontractors have been debarred, suspended, or proposed for debarment. Because commercial contracts must now flow the requirement down to the first tier, the clause was added to FAR 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

The comment period closed on February 11, 2011. Three respondents submitted comments on the interim rule.

##### II. Discussion/Analysis of the Public Comments

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

###### A. Dollar Threshold in FAR 9.405-2

*Comment:* One respondent recommended a rewrite of FAR 9.405-2 to clarify that the notification requirement does not apply to subcontracts under \$30,000.

*Response:* The Councils agree and have incorporated the requested change.

### B. Definition of COTS Item

*Comment:* One respondent recommended deletion of the definition of COTS item from paragraph (a) of the FAR clause 52.209–6. The rationale is that the term is defined in FAR 2.101 and is therefore unnecessary in the clause.

*Response:* The Councils have retained the definition of COTS item in the clause. Although the clause at FAR 52.202–1, Definitions, provides for the applicability of definitions in FAR 2.101 to words or terms used in a solicitation provision or contract clause, unless the solicitation provides a different definition, or certain other exceptions apply, it is common practice to include the definition of important terms in solicitation provisions and contract clauses, for clarity and ease of use.

### C. Applicability to Commercial Items

*Comment:* Two respondents supported the interim rule but hoped that the Councils will eliminate the exceptions for commercial item and COTS item acquisition contracts.

*Response:* The statute specifically stated that contracts for COTS items are exempt and that for contracts for commercial items, the requirements only flow to the first-tier subcontracts. The rule implements the statutory requirements.

*Comment:* One respondent suggested that the following rewording of the clause flowdown in FAR 52.209–6(e) to “make the exceptions clearer”:

- “*Subcontracts.* The Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for the identification of the parties), in each subcontract that—

- Exceeds \$30,000 in value; and
- Is not a subcontract for commercially available off-the-shelf items or commercial items.”

According to the respondent, if the subcontract is for COTS or commercial items, the clause will not flow down to any subcontractor, because the prime contractor is responsible for determining the suspension and debarment status of only first-tier commercial item subcontractors and the prime contractor is not responsible for determining the suspension and debarment status for COTS subcontractors.

*Response:* According to the statute, the prohibition on subcontracting with entities that have been debarred, suspended, or proposed for debarment applies to subcontractors at any tier, other than subcontractors for COTS items, except that in the case of a

contract for commercial items, such term includes only first-tier subcontracts.

The difference between the revised language proposed by the respondent and the language that was proposed in the **Federal Register** is in the treatment of a subcontract for a commercial item. Both versions will arrive at the same result with regard to a prime contract for a commercial item and the first-tier subcontracts under that commercial contract. In such case, each first-tier subcontract (over \$30,000 and not a COTS item) will have to disclose whether at time of subcontract award it, or its principals, is debarred, suspended, or proposed for debarment.

However, with regard to subcontracts for the acquisition of a commercial item (which were not specifically addressed by the statute), the proposed rule implemented the statute to also apply to the subcontract one tier below a commercial subcontract for the acquisition of a commercial item, whereas the proposed revision does not apply the requirements of the statute to a subcontract under a commercial subcontract. The Councils consider the language of the proposed rule to be a reasonable interpretation of the statutory intent, by requiring all commercial contractors (whether a prime contractor or a higher-tier subcontractor), to get the reports of the next-tier subcontractors, but not be required to flow the requirement down to the next tier. To adopt the interpretation of the respondent would narrow the ability of agencies to determine if a subcontractor has been debarred, suspended, or proposed for debarment because agencies would have no visibility into the debarment/suspension status of any subcontract that was one level below a subcontract for the acquisition of a commercial item. This appears to be contrary to the intent of the statute.

### D. Compelling Reason

*Comment:* One respondent believes that the Councils should provide a clarification of the term “compelling reason” as it appears in FAR 9.405–2(b) and 52.209–6(b). FAR 9.405–2(b) and the clause at 52.209–6(b) state that contractors shall not enter into subcontracts in excess of \$30,000, other than a subcontract for a COTS item, with a contractor that has been debarred, suspended, or proposed for debarment, unless there is a compelling reason to do so.

*Response:* The Councils believe this request is outside the scope of this case. The term “compelling reason” was not instituted with the current FAR case,

which simply removed applicability to COTS items and extended flowdown of the requirement to lower-tier subcontracts.

### E. Applicability in FAR 52.212–5 and FAR 52.213–4

*Comment:* One respondent requested that both parentheticals indicating applicability be removed from the listing of the clause 52.209–6 in FAR 52.212–5 (commercial items) and 52.213–4 (simplified acquisition). The rationale of the respondent is that the directives are not complete and are not used in most clauses contained in these clauses. In addition, the respondent states that FAR 52.209–6 already states when the clause is applicable and applicability to subcontracts is covered in FAR 52.209–6(e).

*Response:* With regard to FAR 52.212–5, the contracting officer indicates if the clause applies to the acquisition of commercial items. The respondent is correct that no parenthetical indication of applicability is appropriate, unless the clause is applicable to the acquisition of commercial items, but is not applicable to the acquisition of COTS items (e.g., FAR 52.223–9, Estimate of Percentage of Recovered Material). However, indication of inapplicability to subcontracts for COTS items is not appropriate. That is covered in the FAR clause itself, once it is decided that the clause is applicable to the prime contract. The Councils have removed both parentheticals from the listing of FAR 52.209–6 in the FAR clause 52.212–5 in the final rule.

However, with regard to the FAR clause 52.213–4, the Councils do not agree that there should be no parenthetical indication of applicability for the listed clauses. Unless the clause is required in all contracts, each of the clauses listed in paragraph (b) of FAR 52.213–4 indicates applicability parenthetically. However, this indication of applicability should be to the prime contract, not the subcontract. Therefore, the statement of inapplicability to subcontracts for the acquisition of COTS items has been deleted from the final rule.

### III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the

importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**IV. Regulatory Flexibility Act**

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The interim rule removed requirements relating to subcontracts for COTS items. In the case of commercial items, the requirement extends only to the first-tier subcontracts. This rule will impact small entities that are awarded a lower-tier subcontract for a non-COTS item that exceeds \$30,000, in that these entities must now disclose to the higher-tier subcontractor whether they are debarred, suspended, or proposed for debarment. Although a substantial number of small entities may be impacted by this rule, the impact is not significant. It will probably take only minimal time to include the required information with an offer. For the other impact of the rule, which will require the higher-tier subcontractor to provide an explanation if desiring to subcontract with an entity that has been debarred, suspended, or proposed for debarment, DoD, GSA, and NASA have determined that this will not impact a substantial number of small entities, because it should be a rare occurrence that a subcontractor would potentially jeopardize performance or integrity by knowingly contracting with an entity that is debarred, suspended, or proposed for debarment. No public comments were received with regard to the impact of this rule on small entities.

**V. Paperwork Reduction Act**

This rule affects the certification and information collection requirements in the provisions at FAR case 2009-036 currently approved under OMB Control Number 9000-0094 in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The impact, however, is negligible because the change in burden hours is so slight.

**List of Subjects in 48 CFR Parts 9 and 52**

Government procurement.

Dated: June 28, 2011.

**Laura Auletta,**

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

Accordingly, the interim rule amending 48 CFR parts 9 and 52, which was published in the **Federal Register** at 75 FR 77739, December 13, 2010, is adopted as final with the following changes:

- 1. The authority citation for 48 CFR parts 9 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 9—CONTRACTOR QUALIFICATIONS**

**9.405-2 [Amended]**

- 2. Amend section 9.405-2 by removing from paragraph (b) introductory text, in the third sentence, “to subcontract” and adding “to enter into a subcontract in excess of \$30,000” in its place.

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

- 3. Amend section 52.212-5 by revising the date of the clause and paragraph (b)(6) to read as follows:

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

\* \* \* \* \*

**Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (AUG 2011)**

\* \* \* \* \*

(b) \* \* \*

(6) 52.209-6, Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (Dec 2010) (31 U.S.C. 6101 note).

\* \* \* \* \*

- 4. Amend section 52.213-4 by revising the date of the clause and paragraph (b)(2)(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) (AUG 2011)**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(i) 52.209-6, Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, or

Proposed for Debarment (Dec 2010) (Applies to contracts over \$30,000).

\* \* \* \* \*

[FR Doc. 2011-16674 Filed 7-1-11; 8:45 am]

**BILLING CODE 6820-EP-P**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 16**

[FAC 2005-53; FAR Case 2011-015; Item IV; Docket 2011-0015, Sequence 1]

RIN 9000-AM08

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

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

**ACTION:** Interim rule.

**SUMMARY:** DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement section 825 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011. The statute extends the sunset date for protests against the award of task or delivery orders by DoD, NASA, and the Coast Guard from May 27, 2011, to September 30, 2016.

**DATES:** *Effective Date:* July 5, 2011.

*Comment Date:* Interested parties should submit written comments to the Regulatory Secretariat on or before September 6, 2011 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAC 2005-53, FAR Case 2011-015, by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting “FAR Case 2011-015” under the heading “Enter Keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “FAR Case 2011-015.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “FAR Case 2011-015” on your attached document.

- *Fax:* (202) 501-4067.

- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), *Attn:* Hada Flowers, 1275 First

Street, NE., 7th Floor, Washington, DC 20417.

*Instructions:* Please submit comments only and cite FAC 2005–53, FAR Case 2011–015, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah Lague, Procurement Analyst, at (202) 694–8149, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2010–53, FAR Case 2011–015.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD, GSA, and NASA are publishing this interim rule amending the FAR to implement section 825 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383, enacted January 7, 2011). Section 825 amends 10 U.S.C. 2304c(e) to extend the sunset date for protests against the award of task and delivery orders from May 27, 2011, to September 30, 2016, but only for Title 10 agencies, *i.e.*, DoD, NASA, and the Coast Guard. There has been no comparable change to Title 41, so the sunset date for protests against the award of task and delivery orders by other agencies remains May 27, 2011. With this change, contractors will no longer be able to protest task or delivery orders awarded by agencies

other than DoD, NASA, and the Coast Guard. There is no effect on Government automated systems.

**II. Executive Orders 12866 and 13563**

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

**III. Regulatory Flexibility Act**

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

This rule was initiated to implement section 825 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383), enacted January 7, 2011. Section 825 amends 10 U.S.C. 2304c(e) to extend the sunset date for protests against the award of task or delivery orders by DoD,

NASA, and the Coast Guard from May 27, 2011, to September 30, 2016.

Prior to the National Defense Authorization Act for Fiscal Year 2008, there was no authority for protests against the award of task or delivery orders under indefinite-delivery contracts. That statute, however, amended Titles 10 and 41 to allow protests against the award, or proposed award, of a task or delivery order by any Federal agency if (a) the protest is on the grounds that the order increases the scope, period, or maximum value of the contract, or (b) the order is valued at over \$10 million.

This protest authority has been in effect for the past 2½ years. Section 825 extended the sunset date for Title 10 agencies (DoD, NASA, and the Coast Guard). However, there has not been a similar change to the Title 41 authority, so the sunset date remains May 27, 2011, for all other agencies.

The authority to file protests against the award of task or delivery orders is relatively new, and there is little data available, as such protests may be filed with the agency or General Accountability Office (GAO). Section 843 of Pub. L. 110–181 gave the Comptroller General of the United States the exclusive jurisdiction of a protest of an order valued in excess of \$10 million. Data on agency-level protests is not compiled outside the agency concerned, so we had to base our estimate on the total number of protests filed at the GAO in Fiscal Years 2009 and 2010. The data was extracted from GAO’s latest report to the Congress. Only Fiscal Years 2009 and 2010 protest numbers were used because the authority to protest against task or delivery orders did not exist prior to that time.

Offerors can protest to the agency or to the GAO. Assuming that one-half of all protests are filed with the GAO and the other half are filed with the agency, then the average number of protests filed per fiscal year would be 4,300 (see below):

|                                    |              |
|------------------------------------|--------------|
| Fiscal Year 2009 protests to GAO   | 2,000        |
| Fiscal Year 2010 protests to GAO   | 2,300        |
|                                    | <u>4,300</u> |
| Divided by                         |              |
| Average annual GAO protests        | 2            |
| Multiplied by                      | <u>2</u>     |
| Estimated total number of protests | 4,300        |

Protests may be filed against the award of contracts as well as certain task or delivery orders. There are few prohibitions on the grounds for protests against the award of a contract. However, protests against the award of a task or delivery order are limited to (a) a protest on the grounds that the order increases the scope, period, or maximum

value of the contract; or (b) a protest of an order valued in excess of \$10 million. Therefore, it is reasonable to assume that less than 50 percent of the total number of protests filed is against the award of a task or delivery order. A generous estimate is approximately one-fourth, or 1,075. Likewise, only a percentage of the protests against the

award of a task or delivery order are made by small businesses. Even if we assume that percentage to be one-half, then the number of protests filed by small businesses against the award of a task or delivery order is estimated to be 539.

|   |              |
|---|--------------|
| # of protests of task/delivery orders by small businesses | 539          |
| % of protests sustained                                   | <u>x .03</u> |
| # of task/delivery orders protests sustained              | 16           |

The number 16 represents the number of small business task or delivery order protests

sustained in a fiscal year. However, this number is representative of protests against

awards by all Government agencies, not just DoD, NASA, and the Coast Guard. If the

assumption is made that half of the protests sustained are on DoD, NASA, or Coast Guard task or delivery orders, then it can be estimated that extending the sunset date for protests against task or delivery order awards by Title 10 agencies will result in an additional 8 awards to small businesses per fiscal year that the protest authority remains in effect.

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

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

There are no practical alternatives that will accomplish the objectives of the interim rule, *i.e.*, implementation of a statutory mandate.

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

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in the subpart 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 2005–53, FAR Case 2011–015) in correspondence.

#### IV. Paperwork Reduction Act

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

#### V. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383) was enacted on January 7, 2011, and requires the extension of the sunset date for the affected agencies to be published in the FAR prior to the expiration of the previous sunset date, May 27, 2011. However, pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD, GSA, and NASA will consider public

comments received in response to this interim rule in the formation of the final rule.

#### List of Subjects in 48 CFR Part 16

Government procurement.

Dated: June 28, 2011.

**Laura Auletta,**

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

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

#### PART 16—TYPES OF CONTRACTS

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

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

■ 2. Amend section 16.505 by revising paragraph (a)(9)(ii) to read as follows:

##### 16.505 Ordering.

\* \* \* \* \*

(a) \* \* \*

(9) \* \* \*

(ii) The authority to protest the placement of an order under this subpart expires on September 30, 2016, for DoD, NASA and the Coast Guard (10 U.S.C. 2304a(d) and 2304c(e)), and on May 27, 2011, for other agencies (41 U.S.C. 4103(d) and 4106(f)).

\* \* \* \* \*

[FR Doc. 2011–16675 Filed 7–1–11; 8:45 am]

**BILLING CODE 6820–EP–P**

#### DEPARTMENT OF DEFENSE

##### GENERAL SERVICES ADMINISTRATION

##### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 23 and 52

[FAC 2005–53; FAR Case 2009–028; Item V; Docket 2010–0097, Sequence 1]

RIN 9000–AL64

#### Federal Acquisition Regulation; Encouraging Contractor Policies To Ban Text Messaging While Driving

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

**ACTION:** Final rule.

**SUMMARY:** DoD, GSA, and NASA have adopted as final, with changes, the interim rule amending the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.)

13513, dated October 1, 2009, entitled “Federal Leadership on Reducing Text Messaging while Driving.”

**DATES:** *Effective Date:* August 4, 2011.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Clark, Procurement Analyst, at (202) 219–1813, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–53, FAR Case 2009–028.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 75 FR 60264 on September 29, 2010, to amend the FAR to implement E.O. 13513 (October 1, 2009), published in the **Federal Register** at 74 FR 51225 on October 6, 2009, entitled “Federal Leadership on Reducing Text Messaging while Driving.” The rule requires Government agencies to encourage Federal contractors and subcontractors to adopt and enforce policies that ban text messaging while driving. This requirement applies to all solicitations and contracts entered into on or after September 29, 2010. The interim rule encouraged contracting officers to modify existing contracts to include the FAR clause 52.223–18, Contractor Policy to Ban Text Messaging While Driving. The clause in the interim rule indicated that Federal contractors should adopt and enforce policies banning text messaging while driving company-owned or -rented vehicles or Government-owned vehicles; or privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government. The interim rule clause also indicated that Federal contractors should conduct initiatives such as—

(1) Establishing new rules and programs or re-evaluating existing programs to prohibit text messaging while driving; and

(2) Education, awareness, and other outreach programs to inform employees about the safety risks associated with texting while driving.

As a result of public comments, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) changed “should” to “encouraged to” in this final rule clause. The revised language better aligns with the intent of the Executive Order. A corresponding change has been made to the clause title. Five respondents submitted comments on the interim rule.

## II. Discussion and Analysis of the Public Comments

The Councils reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

*Comments:* A respondent recommended that the clause should not be adopted and incorporated into the FAR because it does not mandate that contractors perform any action and does not include any enforcement language. Another respondent commented that it would be a much stronger stance to make it mandatory that all Federal contractors and subcontractors “enforce” these policies in states with text-messaging bans.

*Response:* The purpose of this rule is to implement E.O. 13513, which requires each Federal agency only to encourage contractors and subcontractors to adopt and enforce policies that ban texting while driving. The Executive Order does not include enforcement provisions.

*Comment:* A respondent recommended that the final rule be modified to include the Federal Motor Carrier Safety Administration (FMCSA) definitions of electronic device, texting, and driving at 49 CFR 390.5 and 49 CFR 392.80.

*Response:* The FMCSA regulations are more restrictive than FAR 52.223–18, which only encourages the adoption of policies to ban text messaging while driving. The FAR rule does not include enforcement methods or consequences for not adopting policies, unlike the FMCSA regulations. The Department of Transportation (DOT) was consulted regarding this comment, and DOT agreed that no changes to the definitions are required.

*Comment:* A respondent stated that the provisions at 41 U.S.C. 430 and 431 are intended to limit the clauses that are to be applied to contractors that sell commercial items to the Government so that commercial item contracts reflect customary commercial terms and conditions to the extent practicable. The respondent recommended that the final rule exempt commercial and commercially available off-the-shelf contracts and limit application of the rule to subcontracts over \$25,000.

*Response:* This rule requires each Federal agency only to encourage adoption and enforcement policies that ban texting while driving. Implementing such policies in any contract or subcontract is not mandatory. In addition, 41 U.S.C. 430 (renumbered as 41 U.S.C. 1906) and 41 U.S.C. 431

(renumbered as 41 U.S.C. 1907) do not address waiver of Executive orders.

*Comment:* A respondent noted that this rule will improve the safety of our roads and provides Government contractors with a better understanding of the risks associated with texting while driving.

*Response:* Noted.

*Comment:* One respondent suggested that because the rule is not mandatory, the title of FAR clause 52.223–18 should begin with “Encouragement of,” and the introductory paragraph at FAR 52.223–18(c) should begin with “The Contractor is encouraged to” instead of “The Contractor should.”

*Response:* The Councils agree that the recommended changes better represent the purpose of the rule. The final rule reflects the recommended changes.

## III. Executive Orders 12866 and 13563

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

## IV. Regulatory Flexibility Act

The Department of Defense, 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 only encourages contractors to adopt policies that ban texting while driving. The adoption of such policies is not mandatory for contractors, including small businesses.

## V. Paperwork Reduction Act

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

## List of Subjects in 48 CFR Parts 23 and 52

Government procurement.

Dated: June 28, 2011.

**Laura Auletta,**

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

## Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR parts 23 and 52, which was published in the **Federal Register** at 75 FR 60264 on September 29, 2010, is adopted as final with the following changes:

■ 1. The authority citation for 48 CFR parts 23 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 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

■ 2. Revise section 23.1105 to read as follows:

#### 23.1105 Contract clause.

The contracting officer shall insert the clause at 52.223–18, Encouraging Contractor Policies to Ban Text Messaging While Driving, in all solicitations and contracts.

### PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.212–5 by revising the date of the clause and paragraph (b)(36) to read as follows:

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

\* \* \* \* \*

#### Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (AUG 2011)

\* \* \* \* \*

(b) \* \* \*

\_\_\_\_ (36) 52.223–18, Encouraging Contractor Policies to Ban Text Messaging While Driving (AUG 2011)

\* \* \* \* \*

■ 4. Amend section 52.223–18 by revising the section heading, the heading and date of the clause, and the paragraph (c) introductory text to read as follows:

52.223-18 Encouraging Contractor Policies To Ban Text Messaging While Driving.

\* \* \* \* \*

Encouraging Contractor Policies To Ban Text Messaging While Driving (AUG 2011)

\* \* \* \* \*

(c) The Contractor is encouraged to—

\* \* \* \* \*

[FR Doc. 2011-16676 Filed 7-1-11; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 2005-53; FAR Case 2009-034; Item VI; Docket 2010-0098, Sequence 1]

RIN 9000-AL73

Federal Acquisition Regulation; TINA Interest Calculations

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

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to revise the FAR clauses on price reduction for defective pricing to require compound interest calculations be applied to Government overpayments as a result of defective cost or pricing data.

DATES: Effective Date: August 4, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Edward N. Chambers, Procurement Analyst, at (202) 501-3221 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-53, FAR Case 2009-034.

SUPPLEMENTARY INFORMATION:

I. Background

On September 14, 2009, the U.S. Court of Appeals for the Federal Circuit (CAFC) issued a decision regarding the method of interest calculation on Cost Accounting Standards (CAS) cost impacts (see GATES v. Raytheon Co., 584 F.3d 1062 (Fed. Cir. 2009)). The interest on CAS cost impacts is set by reference in the enabling statute to 26 U.S.C. 6621. The CAFC ruled that the

citation led to calculation of the interest using daily compounding. The Truth in Negotiation Act (TINA) also references 26 U.S.C. 6621 for interest calculation. (See 41 U.S.C. 3507 and 10 U.S.C. 2306a).

A proposed rule was published on September 22, 2010, (75 FR 57719) with regard to the application of compound interest calculations to Government overpayments as a result of defective cost or pricing data. This rule replaces the term "simple interest" as the requirement for calculating interest for Truth in Negotiations Act cost impacts with the phrase "Interest compounded daily as required by 26 U.S.C. 6622." Thus, compound interest calculations will be applied to Government overpayments as a result of defective cost or pricing data. DoD, GSA, and NASA received no comments on the proposed rule.

II. Executive Orders 12866 and 13563

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

III. 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 merely clarifies the statutory method for calculating interest in the rare instances when a contractor is found to be in violation of TINA. Since TINA requirements generally do not apply to contracts with small entities, and since the numbers of contractors found to have submitted defective cost or pricing data are a minute subset of contractors to whom TINA applies, the rule is not expected to apply to a substantial number of small entities. Furthermore, the differential in interest

computing methods is not expected to amount to a significant economic impact.

IV. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: June 28, 2011.

Laura Auletta,

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

Therefore, DoD, GSA, and NASA amend 48 CFR part 52 as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 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).

2. Amend section 52.214-27 by revising the date of the clause and paragraph (e)(1) to read as follows:

52.214-27 Price Reduction for Defective Certified Cost or Pricing Data—Modifications—Sealed Bidding.

\* \* \* \* \*

Price Reduction for Defective Certified Cost or Pricing Data—Modifications—Sealed Bidding (AUG 2011)

\* \* \* \* \*

(e) \* \* \*

(1) Interest compounded daily, as required by 26 U.S.C. 6622, on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

\* \* \* \* \*

3. Amend section 52.215-10 by revising the date of the clause and paragraph (d)(1) to read as follows:

52.215-10 Price Reduction for Defective Certified Cost or Pricing Data.

\* \* \* \* \*

Price Reduction for Defective Certified Cost or Pricing Data (AUG 2011)

\* \* \* \* \*

(d) \* \* \*

(1) Interest compounded daily, as required by 26 U.S.C. 6622, on the amount of such overpayment to be computed from the date(s)

of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

\* \* \* \* \*

■ 4. Amend section 52.215–11 by revising the date of the clause and paragraph (e)(1) to read as follows:

**52.215–11 Price Reduction for Defective Certified Cost or Pricing Data—Modifications.**

\* \* \* \* \*

**Price Reduction for Defective Certified Cost or Pricing Data—Modifications (AUG 2011)**

\* \* \* \* \*

(e) \* \* \*

(1) Interest compounded daily, as required by 26 U.S.C. 6622, on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary

of the Treasury under 26 U.S.C. 6621(a)(2); and

\* \* \* \* \*

[FR Doc. 2011–16677 Filed 7–1–11; 8:45 am]

BILLING CODE 6820–EP–P

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

[Docket FAR 2011–0077, Sequence 5]

**Federal Acquisition Regulation; Federal Acquisition Circular 2005–53; Small Entity Compliance Guide**

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

**ACTION:** Small Entity Compliance Guide.

**SUMMARY:** This document is issued under the joint authority of DOD, GSA,

and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2005–53, which amend the Federal Acquisition Regulation (FAR). An asterisk (\*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2005–53, which precedes this document. These documents are also available via the Internet at <http://www.regulations.gov>.

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

**FOR FURTHER INFORMATION CONTACT:** The analyst whose name appears in the table below. Please cite FAC 2005–53 and the specific FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755.

**SUPPLEMENTARY INFORMATION:**

**LIST OF RULES IN FAC 2005–53**

| Item      | Subject   | FAR case | Analyst   |
|-----------|---|----------|-----------|
| I .....   | Equal Opportunity for Veterans .....  | 2009–007 | McFadden. |
| II .....  | Unique Procurement Instrument Identifier .....                                    | 2009–023 | Morgan.   |
| III ..... | Uniform Suspension and Debarment Requirement .....                                | 2009–036 | Jackson.  |
| IV * ..   | Extension of Sunset Date for Protests of Task and Delivery Orders (Interim) ..... | 2011–015 | Lague.    |
| V .....   | Encouraging Contractor Policies To Ban Text Messaging While Driving .....         | 2009–028 | Clark.    |
| VI ...    | TINA Interest Calculations .....  | 2009–034 | Chambers. |

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item numbers and subject set forth in the documents following these item summaries. FAC 2005–53 amends the FAR as specified below:

**Item I—Equal Opportunity for Veterans (FAR Case 2009–007)**

The interim rule, published September 29, 2010, is adopted as final with minor changes. A definition from the clause at FAR 52.222–35 for “executive and senior management” is added to FAR subpart 22.13. The interim rule implemented Department of Labor regulations on equal opportunity provisions for various categories of military veterans.

**Item II—Unique Procurement Instrument Identifier (FAR Case 2009–023)**

This final rule amends the FAR to define the requirement for an agency

unique procurement instrument identifier (PIID) and, to extend the requirement for using PIIDs to solicitations, contracts, and related procurement instruments.

This final rule adds two new definitions at 4.001, revises 4.605(a), and adds a new FAR subpart 4.16—Unique Procurement Instrument Identifiers, to prescribe policies and procedures for assigning PIIDs. The Government expects that these changes will reduce data errors and interoperability problems across the Federal Government’s business processes which were created by inconsistent and non-unique PIID assignment and use. These changes will not impose new requirements on small businesses, as the rule only addresses internal Government policy and procedures.

**Item III—Uniform Suspension and Debarment Requirement (FAR Case 2009–036)**

This rule adopts as final, with minor changes, an interim rule which implemented section 815 of the National Defense Authorization Act for Fiscal Year 2010, Public Law 111–84. The law requires that suspension and debarment requirements flow down to all subcontracts except contracts for commercially available off-the-shelf items, and in the case of commercial items, first-tier subcontracts only.

This requirement protects the Government against contracting with entities at any tier who are debarred, suspended, or proposed for debarment. This rule does not have a significant impact on the Government, contractors, or any automated systems.

**Item IV—Extension of Sunset Date for Protests of Task and Delivery Orders (FAR Case 2011–015) (Interim)**

This interim rule amends the FAR to implement section 825 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383). Section 825 extends the sunset date for protests against awards of task or delivery orders by DoD, NASA, and the Coast Guard from May 27, 2011 to September 30, 2016. The sunset date for protests against the award of task or delivery orders by other Federal agencies remains May 27, 2011. With this change, contractors will no longer be able to protest task or delivery orders awarded by agencies other than DoD, NASA, and the Coast Guard. There is no effect on Government automated systems.

**Item V—Encouraging Contractor Policies To Ban Text Messaging While Driving (FAR Case 2009–028)**

This final rule adopts, with changes, the interim rule published in the **Federal Register** at 75 FR 60264 on September 29, 2010, to implement Executive Order 13513 (October 1, 2009), published in the **Federal Register** at 74 FR 51225 on October 6, 2009, entitled “Federal Leadership on Reducing Text Messaging while Driving.” This final rule revises FAR clause 52.223–18 to encourage the adoption and enforcement of policies that ban text messaging while driving company-owned or -rented vehicles or Government-owned vehicles; or privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government. The final rule also revises the language in the clause to encourage contractors to conduct initiatives such as: (1) Establishment of new rules and programs or re-evaluation

of existing programs to prohibit text messaging while driving, and (2) education, awareness, and other outreach programs to inform employees about the safety risks associated with texting while driving. This requirement applies to all solicitations and contracts.

**Item VI—TINA Interest Calculations (FAR Case 2009–034)**

DoD, GSA, and NASA are publishing a final rule amending the FAR to revise the clauses at FAR 52.214–27, FAR 52.215–10, and FAR 52.215–11 to require compound interest calculations be applied to Government overpayments as a result of defective cost or pricing data.

Dated: June 28, 2011.

**Laura Auletta,**

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

[FR Doc. 2011–16678 Filed 7–1–11; 8:45 am]

**BILLING CODE 6820–EP–P**