

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2009-0001, Sequence 7]

Federal Acquisition Regulation; Federal Acquisition Circular 2005-36; Introduction

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

and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2005-36. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at <http://www.regulations.gov>.

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

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to each FAR case. Please cite FAC 2005-36 and the specific FAR case numbers. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755.

LIST OF RULES IN FAC 2005-36

Item	Subject	FAR case	Analyst
I	Federal Technical Data Solution (FedTeDS)	2008-038	Loeb.
II	Fair Labor Standards Act and Service Contract Act Price Adjustment Clauses	2007-021	Murphy.
III	New Designated Country—Taiwan	2009-014	Murphy.
IV	Prohibition on Restricted Business Operations in Sudan and Imports from Burma	2008-004	Murphy.
V	List of Approved Attorneys, Abstractors, and Title Companies	2006-013	Chambers.
VI	Cost Accounting Standards (CAS) Administration and Associated Federal Acquisition Regulation Clauses.	2007-002	Chambers.
VII	Technical Amendments		

SUPPLEMENTARY INFORMATION:

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

FAC 2005-36 amends the FAR as specified below:

Item I—Federal Technical Data Solution (FedTeDS) (FAR Case 2008-038)

This final rule amends the Federal Acquisition Regulation (FAR) subparts 5.1, 5.2, and 7.1 to remove all references to the Federal Technical Data Solution (FedTeDS) System, and refer to the enhanced capabilities of the Governmentwide Point of Entry (GPE) system. The FedTeDS system was used to post on-line technical data packages and other items associated with solicitations that required some level of access control. It was interfaced directly with the GPE system. In April 2008, the newest version of the GPE was launched. This version incorporated the capabilities of FedTeDS, allowing the FedTeDS system to be retired. This rule will only have a slight impact on Government. It will inform and direct both internal and external users to the new system and website. This rule does not have a significant impact on any automated systems.

Item II—Fair Labor Standards Act and Service Contract Act Price Adjustment Clauses (FAR Case 2007-021)

This final rule amends the Federal Acquisition Regulation (FAR) to specifically require the incorporation of FAR clauses 52.222-43, Fair Labor Standards Act and Service Contract Act-Price Adjustment (Multiple Year and Option Contracts) and 52.222-44, Fair Labor Standards Act and Service Contract Act—Price Adjustment, in time-and-materials and labor-hour service contracts that are subject to the Service Contract Act.

Item III—New Designated Country—Taiwan (FAR Case 2009-014) (Interim)

This interim rule implements in FAR Parts 22, 25, and 52, as appropriate, the designation of Taiwan under the World Trade Organization Agreement on Government Procurement, which took effect on July 15, 2009. This FAR change allows contracting officers to purchase goods and services made in Taiwan without application of the Buy American Act if the acquisition is covered by the World Trade Organization Agreement on Government Procurement.

Item IV—Prohibition on Restricted Business Operations in Sudan and Imports from Burma (FAR Case 2008-004)

This final rule converts the interim rule published in the **Federal Register** at 73 FR 33636 on June 12, 2008, to a final rule with changes. This final rule implements Section 6 of the Sudan Accountability and Divestment Act of 2007, which requires certification in each contract entered into by an executive agency that the contractor does not conduct certain business operations in Sudan. In addition, in accordance with Executive Orders 13310 and 13448, the Councils added Burma to the list of countries from which most imports are prohibited.

Item V—List of Approved Attorneys, Abstractors, and Title Companies (FAR Case 2006-013)

This final rule amends Federal Acquisition Regulation (FAR) 28.203-3 and 52.228-11 to update the procedures for the acceptance of a bond with a security interest in real property. The FAR has relied on the Department of Justice (DOJ) to provide a “List of Approved Attorneys, Abstractors, and Title Companies”. However, DOJ has discontinued maintenance of the List. Replacing the List, DOJ published “Title Standards 2001”, establishing the evidence requirements for acceptance of

title to real property for individual sureties.

The rule also provides that in lieu of evidence of title that is consistent with DOJ standards, that sureties may provide a mortgagee title insurance policy in an insurance amount equal to the amount of the lien.

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

This final rule converts, without change, the interim rule published in the **Federal Register** at 73 FR 54011 September 17, 2008. No comments were received in response to the interim rule. The interim rule amended the Federal Acquisition Regulation (FAR) to revise FAR 30.201–4(b)(1) and FAR 52.230–1 through 52.230–5 to maintain consistency between the Federal Acquisition Regulation (FAR) and Cost Accounting Standards (CAS) regarding the administration of the CAS Board's rules, regulations and standards.

Effective June 14, 2007, the CAS Board amended the contract clauses contained in its rules and regulations at 48 CFR 9903.201–4, pertaining to the administration of CAS, to adjust the CAS applicability threshold in accordance with section 822 of the 2006 National Defense Authorization Act (Pub. L. 109–163). That section amended 41 U.S.C. 422(f)(2)(A) to require that the threshold for CAS applicability be the same as the threshold for compliance with the Truth in Negotiations Act (TINA).

Item VII—Technical Amendments

Editorial changes are made at FAR 32.503–9, 52.213–4, and 52.244–6.

Dated: August 4, 2009.

Al Matera,

Director, Office of Acquisition Policy.

Federal Acquisition Circular (FAC) 2005-36 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 2005-36 is effective August 11, 2009, except for Items I, II, and V, which are effective September 10, 2009.

Dated: August 3, 2009.

Shay D. Assad,

Director, Defense Procurement and Acquisition Policy.

Dated: August 3, 2009.

Rodney P. Lantier,

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

Dated: August 3, 2009.

William P. McNally,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. E9–19161 Filed 8–10–09; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5 and 7

[FAC 2005–36; FAR Case 2008–038; Item I; Docket 2009–0028, Sequence 1]

RIN 9000–AL32

Federal Acquisition Regulation; FAR Case 2008–038, Federal Technical Data Solution (FedTeDS)

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 reflect that FedTeDS capabilities have been incorporated into the Governmentwide Point of Entry (GPE). References to FedTeDS are amended to reflect the GPE i.e., FedBizOpps system.

DATES: *Effective Date:* September 10, 2009.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Ed Loeb, Director, Contract Policy Division at (202) 501–0650. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–36, FAR case 2008–038.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Technical Data Solution (FedTeDS) is the system that was used

for the past several years to post on-line technical data packages and other items associated with solicitations that required some level of access control. It was interfaced directly with the Governmentwide Point of Entry (GPE) i.e., FedBizOpps system. In April 2008, a new version of the GPE was launched. This version incorporated the capabilities of FedTeDS, thereby allowing FedTeDS to be retired. FAR Sections 5.102, 5.207 and 7.105 will be amended to (1) remove all references to FedTeDS and refer to the enhanced controls of the GPE, (2) address technical data availability via GPE in lieu of FedTeDS, and (3) substitute GPE in lieu of FedTeDS in references to acquisition plans.

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

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Parts 5 and 7 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2005–36, FAR case 2008–038), in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 5 and 7

Government procurement.

Dated: August 4, 2009.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 5 and 7 as set forth below:

■ 1. The authority citation for 48 CFR parts 5 and 7 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 5—PUBLICIZING CONTRACT ACTIONS

- 2. Amend section 5.102 by—
 - a. Revising paragraph (a)(4) and the introductory text of paragraph (a)(5);
 - b. Removing paragraph (a)(5)(iii); and
 - c. Redesignating paragraph (a)(5)(iv) as (a)(5)(iii).
- The revised text reads as follows:

5.102 Availability of solicitations.

(a) * * *

(4) When an agency determines that a solicitation contains information that requires additional controls to monitor access and distribution (e.g., technical data, specifications, maps, building designs, schedules, etc.), the information shall be made available through the enhanced controls of the GPE, unless an exception in paragraph (a)(5) of this section applies. The GPE meets the synopsis and advertising requirements of this part.

(5) The contracting officer need not make a solicitation available through the GPE as required in paragraph (a)(4) of this section, when—

* * * * *

5.207 [Amended]

- 3. Amend section 5.207 by removing from paragraph (c)(18) “FedTeDS (<https://www.fedteds.gov>)” and adding “<http://www.fedbizopps.gov>” in its place.

PART 7—ACQUISITION PLANNING

7.105 [Amended]

- 4. Amend section 7.105 by removing from paragraph (b)(15) “Federal Technical Data Solution (FedTeDS)” and adding “enhanced controls of the GPE at <http://www.fedbizopps.gov>” in its place.

[FR Doc. E9–19162 Filed 8–10–09; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22 and 52

[FAC 2005–36; FAR Case 2007–021; Item II; Docket 2009–0004; Sequence 2]

RIN 9000–AL14

Federal Acquisition Regulation; FAR Case 2007–021, Fair Labor Standards Act and Service Contract Act Price Adjustment Clauses

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 specifically require the incorporation of FAR clauses 52.222–43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) and 52.222–44, Fair Labor Standards Act and Service Contract Act—Price Adjustment, in time-and-materials and labor-hour service contracts that are subject to the Service Contract Act. No comments were received in response to the proposed rule.

DATES: *Effective Date:* September 10, 2009.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Meredith Murphy, Procurement Analyst, at (202) 208–6925. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–36, FAR case 2007–021.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the FAR to revise the clause prescriptions at FAR 22.1006(c)(1) and (2) to specifically require that time-and-materials and labor-hour service contracts subject to the Service Contract Act contain the appropriate price adjustment clauses set forth at FAR 52.222–43 and 52.222–44.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 74 FR 872 on January 9, 2009.

Despite the fact that the previous prescriptions did not require use of the clauses in time-and-materials or labor-hour contracts, there was actually broad usage of the clause(s) in such contracts. This change will achieve consistency throughout the Government acquisition community and resolve potential inequities where the clauses have not been applied. It will achieve an equitable result for contractors and will also allow the Government to avoid use of other means of adjusting contract unit price labor rates which may be more costly to the Government. Other means of adjusting contract labor rates, such as allowing for wage/benefit escalation, equitable adjustment or economic price adjustment, would likely include profit, overhead, and general and administrative expenses. The FAR clauses at 52.222–43 and 52.222–44 explicitly exclude these additional costs.

The clause prescriptions at FAR 22.1006(c)(1) and (c)(2) currently require that Service Contract Act wage determination updates be applied to contracts subject to the FAR clause at 52.222–41, Service Contract Act of 1965 but, as required by FAR clause 52.222–41, minimum monetary wages and fringe benefits to be paid to service employees under the contract may be subject to adjustment, under wage determinations issued by the Department of Labor. While there may be other means permitted to adjust fixed labor rates on time-and-materials or labor-hour contracts, those other means do not achieve the consistent results that use of the Service Contract Act price adjustment clause(s) will achieve.

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 it merely clarifies the existing prescriptions relating to service contracts. FAR clause 52.222–41 requires contractors to comply with wage determinations of the Department of Labor and may require adjustment to wage rates during the term of the contract. Most contracts that include

this clause therefore provide some mechanism for dealing with the potential required price adjustment. The Councils have been advised that use of these clauses for time-and-materials and labor-hour service contracts is already widespread. Uniform use of the appropriate clause will ensure consistency in the adjustment method for any required increase in wage rate, but should not have a significant cost impact.

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 22 and 52

Government procurement.

Dated: August 4, 2009.

Al Matera,

Director, Office of Acquisition Policy.

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

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

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

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1006 [Amended]

■ 2. Amend section 22.1006 by removing from paragraphs (c)(1) and (c)(2) “fixed-price” and adding “fixed-price, time-and-materials, or labor-hour” in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.212-5 [Amended]

■ 3. Amend section 52.212-5 by removing from the date of the clause “(June 2009)” and adding “(Sep 2009)” in its place; by removing from paragraph (c)(3) “(Nov 2006)” and adding “(Sep 2009)” in its place; and by removing from paragraph (c)(4) “(Feb 2002)” and adding “(Sep 2009)” in its place.

■ 4. Amend section 52.222-43 by revising the date of the clause, introductory text in paragraph (d), and the third and fourth sentences of paragraph (f) to read as follows:

52.222-43 Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts).

* * * * *

FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT—PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS) (Sep 2009)

* * * * *

(d) The contract price, contract unit price labor rates, or fixed hourly labor rates will be adjusted to reflect the Contractor’s actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with or the decrease is voluntarily made by the Contractor as a result of:

* * * * *

(f) * * * The notice shall contain a statement of the amount claimed and the change in fixed hourly rates (if this is a time-and-materials or labor-hour contract), and any relevant supporting data, including payroll records, that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price, contract unit price labor rates, or fixed hourly rates shall be modified in writing. * * *

* * * * *

■ 5. Amend section 52.222-44 by revising the date of the clause, introductory text of paragraph (c), and the third and fourth sentences of paragraph (e) to read as follows:

52.222-44 Fair Labor Standards Act and Service Contract Act—Price Adjustment.

* * * * *

FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT—PRICE ADJUSTMENT (Sep 2009)

* * * * *

(c) The contract price, contract unit price labor rates, or fixed hourly labor rates will be adjusted to reflect increases or decreases by the Contractor in wages and fringe benefits to the extent that these increases or decreases are made to comply with—

* * * * *

(e) * * * The notice shall contain a statement of the amount and the change in fixed hourly rates (if this is a time-and-materials or labor-hour contract) claimed and any relevant supporting data that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price, contract unit price labor rates, or fixed hourly rates shall be modified in writing. * * *

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[FR Doc. E9-19163 Filed 8-10-09; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22, 25, and 52

[FAC 2005-36; FAR Case 2009-014; Item III; Docket 2009-0027, Sequence 1]

RIN 9000-AL34

Federal Acquisition Regulation; FAR Case 2009-014, New Designated Country—Taiwan

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 add Taiwan (known in the World Trade Organization as “the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei)”) as a designated country, due to the accession of Taiwan to membership in the World Trade Organization Agreement on Government Procurement.

DATES: *Effective Date:* August 11, 2009.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before October 13, 2009 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005-36, FAR case 2009-014, by any of the following methods:

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

Submit comments via the Federal eRulemaking portal by inputting “FAR Case 2009-014” under the heading “Comment or Submission”. Select the link “Send a Comment or Submission” that corresponds with FAR Case 2009-014. Follow the instructions provided to complete the “Public Comment and Submission Form”. Please include your name, company name (if any), and “FAR Case 2009-014” on your attached document.

• Fax: 202-501-4067.

• Mail: General Services

Administration, Regulatory Secretariat (VPR), 1800 F Street, NW, Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005-36, FAR case 2009-014, 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. Meredith Murphy, Procurement Analyst, at (202) 208-6925. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755. Please cite FAR Case 2009-014.

SUPPLEMENTARY INFORMATION:

A. Background

On July 15, 2009, Taiwan became a designated country based on its accession to the World Trade Organization Agreement on Government Procurement. This interim rule adds Taiwan to the list of World Trade Organization Government Procurement Agreement countries in FAR 22.1503, 25.003, 52.222-19, 52.225-5, 52.225-11, and 52.225-23.

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 interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. Although the rule opens up Government procurement to the goods and services of Taiwan, the Councils do not anticipate any significant economic impact on U.S. small businesses. The Department of Defense only applies the trade agreements to the non-defense items listed at Defense Federal Acquisition Regulation Supplement (DFARS) 225.401-70, and acquisitions that are set aside for small businesses are exempt. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 22, 25, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, et seq. (FAC 2005-36, FAR case 2009-014), in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to

the paperwork burden previously approved under OMB Control Number 9000-0141, Buy American Act—Construction. The interim rule affects the certification and information collection requirement in the clause at FAR 52.225-11. The impact, however, is negligible.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because this interim rule implements the designation of Taiwan under the World Trade Organization Agreement on Government Procurement, which took effect on July 15, 2009. However, pursuant to Pub. L. 98-577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

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

Government procurement.

Dated: August 4, 2009.

Al Matera,

Director, Office of Acquisition Policy.

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

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

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

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1503 [Amended]

2. Amend section 22.1503 in paragraph (b)(4) by removing "Switzerland," and adding "Switzerland, Taiwan," in its place.

PART 25—FOREIGN ACQUISITIONS

3. Amend section 25.003 by—
a. Revising paragraph (1) in the definition "Designated country"; and
b. Removing from the definition "World Trade Organization Government Procurement Agreement (WTO GPA) country" the words "Switzerland," and adding "Switzerland, Taiwan," in its place.
The revised text reads as follows:

25.003 Definitions.

* * * * *

Designated country * * *

(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as "the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu" (Chinese Taipei)) or United Kingdom);

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Amend section 52.212-5 by revising the date of the clause, and paragraphs (b)(20) and (b)(33) 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 09)

* * * * *

(b) * * *

(20) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (Aug 09) (E.O. 13126).

* * * * *

(33) 52.225-5, Trade Agreements (Aug 09) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).

* * * * *

5. Amend section 52.213-4 by revising the date of the clause, and 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)(Aug 09)

* * * * *

(b) * * *

(1) * * *

(i) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (Aug 09) (E.O. 13126). (Applies to contracts for supplies exceeding the micro-purchase threshold.)

* * * * *

52.222–19 [Amended]

■ 6. Amend section 52.222–19 by removing from the clause heading “(Feb 2008)” and adding “(Aug 09)” in its place; and removing from paragraph (a)(4) “Switzerland,” and adding “Switzerland, Taiwan,” in its place.

■ 7. Amend section 52.225–5 by revising the date of the clause; and in paragraph (a), in the definition “Designated Country”, revising paragraph (1) to read as follows:

52.225–5 Trade Agreements.

* * * * *
TRADE AGREEMENTS (Aug 09)

(a) *Definitions.* * * *

Designated country * * *

(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as “the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei)”), or United Kingdom);

* * * * *

52.225–11 [Amended]

■ 8. Amend section 52.225–11 by removing from the clause heading “(June 2009)” and adding “(Aug 09)” in its place; and in paragraph (a), in the definition “Designated country”, removing from paragraph (1) “Switzerland,” and adding “Switzerland, Taiwan,” in its place.

52.225–23 [Amended]

■ 9. Amend section 52.225–23 by removing from the clause heading “(Mar 2009)” and adding “(Aug 09)” in its place; and in paragraph (a), in the definition “Recovery Act designated country”, removing from paragraph (1) “Switzerland,” and adding “Switzerland, Taiwan,” in its place. [FR Doc. E9–19164 Filed 8–10–09; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 4, 15, 25, and 52**

[FAC 2005–36; FAR Case 2008–004; Item IV; Docket 2008–0001; Sequence 21]

RIN 9000–AL01

**Federal Acquisition Regulation; FAR
Case 2008–004, Prohibition on
Restricted Business Operations in
Sudan and Imports from Burma**

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Section 6 of the Sudan Accountability and Divestment Act of 2007. Section 6 requires certification in each contract entered into by an Executive Agency that the contractor does not conduct certain business operations in Sudan. In addition, the Councils added Burma to the list of countries from which most imports are prohibited. This action was taken in accordance with Executive Order (E.O.) 13310, Blocking Property of the Government of Burma and Prohibiting Certain Transactions, and E.O. 13448, Blocking the Property and Prohibiting Certain Transactions Related to Burma.

DATES: *Effective Date:* August 11, 2009.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Meredith Murphy, Procurement Analyst, at (202) 208–6925. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–36, FAR case 2008–004.

SUPPLEMENTARY INFORMATION:**A. Background**

This final rule amends the Federal Acquisition Regulation (FAR) to implement Section 6 of the Sudan Accountability and Divestment Act of 2007, which was signed on December 31, 2007.

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 73 FR 33636 on June 12, 2008. The

public comment period ended August 11, 2008.

This rule amends the FAR to implement Section 6 of the Sudan Accountability and Divestment Act of 2007 (the Act), which requires certification in each contract entered into by an executive agency that the contractor does not conduct certain business operations in Sudan. In addition, the Councils added Burma to the list of countries from which most imports are prohibited.

B. Discussion and Analysis.

The FAR Secretariat received five (5) responses to the interim rule. These responses included a total of 16 comments on 11 issues. A sixth response was simply a copy of the statute and was not counted as a comment. All of the responses concerned the implementation of the Act; there were no comments on the addition of Burma to the list of prohibited countries. Each issue is discussed in the following sections.

No public comments were received regarding the portion of the interim rule addressing Burma. Therefore, that part of the interim rule is unchanged (see the **Federal Register** at 73 FR 33636 dated June 12, 2008).

**1. Delete the definition of “person”
and other issues with definitions.**

Comment: a. Two respondents recommended that the final rule delete the definition of “person.” The respondents point out that Section 2 of the Act, which defines the key terms in the Act, does not define “contractor” but does define “person.” The term person, however, is used frequently in Section 3 of the Act, which addresses divestiture by State and local governments (not a subject of the FAR coverage), but it is not used at all in Section 6 of the Act, which the FAR is implementing. The respondents point out that, had the Congress intended “person” and “contractor” to be synonymous, it should have defined them so, and one respondent points out portions of the legislative history that reinforce its conclusion that the congressional intent was to have a different meaning for each term.

b. In addition, one respondent requested that the definition of “restricted business operations” at FAR sections 25.702–1 and 52.225–20 either delete the phrase “as those terms are defined in the Sudan Accountability and Divestment Act of 2007 (Pub. L. 110–174)” or replace “defined in” with the phrase “described in Section 3(d) of”.

c. Last, a respondent reminded the Councils that in the “definition of the

term 'business operations' in Section 3(d) of the Act, the term means 'engaging in commerce in any form in Sudan' (emphasis added)."

Response: a. The Councils have deleted the definition of "person". The definition of "person" was included at FAR 25.702-1, Definitions, and the clause at 52.225-20, as well, because Section 6 of the Act requires contractors to certify that they do not conduct business operations as described in Section 3(d) of the Act. This description of business operations that are restricted uses the term "person", which is therefore used in the rule within the definition of "restricted business operations". A cross reference to the definition of "person" in the Act is included within the definition of "restricted business operations," rather than including a separate definition of "person" in the rule. The rule does not use the term "person" as synonymous with "contractor" or "offeror".

b. The Councils note that, although the statute describes the business operations that are restricted and does not define the term "restricted business operations," the terms that are used within that definition of "restricted business operations" in the rule ("power production activities," "oil-related activities," and "military equipment") are all defined in section 2 of the Act, which is entitled "DEFINITIONS".

c. The Councils have not added "in Sudan" in the definition of "business operations". The Councils defined the term "restricted business operations" to include any business operations in Sudan, which the Councils believe fully implements the intent of the statute. In addition, the other specific conditions regarding what types of business operations are restricted are addressed at FAR sections 25.702-1, 52.212-3(a), and 52.225-20(a).

2. Apply the certification requirement only to offerors that would be in privity of contract with the U.S. Government.

Comment: a. Effectively, this recommendation is a logical outcome of the comment immediately above. Two respondents believed that, given the words the Congress chose, the way in which the law is structured, and the legislative history of the statute, it is clear that Congress intended the certification requirement to apply to the business operations of contractors themselves and not the business operations of other entities in their corporate families. One respondent quoted the report of the Senate Banking, Housing, and Urban Affairs Committee, in the section discussing divestment,

not in the discussion of Section 6, says that "(i)mplicit in this definition (of "person") is the requirement that parent companies to subsidiaries, or subsidiaries that share the same parent company, may be targeted for divestment as long as there is credible evidence linking their affiliates to business operations in key sectors of Sudan" (emphasis added). In addition, the corporate entity that is submitting the proposal may not have any control over, or insight into, an affiliate or subsidiary of a shared corporate parent. In support of this position, another respondent states that "(c)learly, only the offeror making the certification required under the interim regulation is the party that will be in privity of contract."

b. In addition, a respondent claimed that, because the statute used the term "contractor" rather than "offeror," the certification should be restructured so that not every offeror has to certify and the certification will be required only of the successful offeror. This change, according to the respondent, will substantially reduce the scope of the certification in terms of the number of companies it impacts.

Response: a. The Councils note that the plain words of the Act, Section 6, require each "contractor," not each "person," to certify, and only the definition of "person" includes the highly inclusive elements of affiliates, subsidiaries, and so forth. The interim rule has plainly implemented this, except that the term "contractor" has been changed to "offeror" due to the timing of the certification. The certification requires the offeror to certify that "it" does not conduct any restricted business operations in Sudan. This has been made even clearer by substituting "the offeror" for "it".

b. With regard to the timing of the certification requirement, however, the Councils do not agree that it should be delayed from proposal submission to a time immediately prior to award (when the Government knows which is the presumptive successful offeror) or should be limited solely to the successful offeror. The Government's solicitation and contract award process does not contemplate a second certification round wherein only the successful offeror is required to complete a certification(s). A failure to certify that it does not conduct restricted business operations in Sudan should remove an offeror from consideration for award. If an offeror is unable to certify, then it will not qualify for award, and the Government should not be expending time and money evaluating that offeror's proposal.

3. Apply the certification requirement to affiliated companies.

Comment: Two respondents were concerned that the interim rule does not explicitly extend to affiliated companies. One of these respondents notes that the report accompanying the Act specifically "defines 'persons' to include 'parent companies to subsidiaries, or subsidiaries that share the same parent company' in addition to 'successors, subunits, or subsidiaries'", and the respondent encourages the Councils to interpret the legislation to include affiliated companies in the contract certification requirement. Another respondent quotes the same language from the report in requesting that affiliates be included.

Response: In response to the first comment above, the Councils attempted, in the interim rule, to stay as close as possible to the literal requirements in terms of the statute. Given that the statute does not use the term "person," with its expansive definition, in Section 6 of the Act, the Councils do not agree that the certification requirement should be expanded to include affiliates. Please see also the response at Section 2 above.

4. Don't apply the certification requirement to affiliated companies.

Comment: A respondent stated that requiring companies to certify more broadly about the activities of their affiliates would require them to attest to factual matters typically beyond their reach. As a practical and legal matter, according to the respondent, offerors often do not have the right to access information about the activities of their affiliates, particularly of their parent or subsidiaries of that parent.

Response: The Councils agree that it is unlikely that most prospective Government contractors would be able to access the information needed to certify to the activities of their affiliates, parents, or parent-company subsidiaries. Please see responses to Comments 2 and 3 above.

5. Apply the requirement to all subcontractors.

Comment: A respondent believed that the rule could be improved by extending the contract prohibition to all subcontractors of companies that receive Federal contracts. Another respondent, also, was concerned that the exclusion of subcontractors would result in the exclusion of a significant portion of entities seeking to carry out work for the U.S. Government.

Response: In the Preamble to the interim rule, the Councils noted that the Act does not require flow down of the certification provision to subcontractors but only addresses contracts entered

into by executive agencies, *i.e.*, prime contracts. The Councils do not think it appropriate to exceed the limits of the statute.

6. Apply the certification requirement only to future contracts.

Comment: The interim rule requested comments on whether the law should also be applied to existing contracts to ensure compliance with the overall intent of the law. Two respondents were against extending the certification requirement “retroactively,” and they noted that there is no indication in the Act’s legislative history to indicate any such intention on the part of the Congress.

Further, one respondent recommended that the certification not be required (1) under the annual Online Representations and Certifications (ORCA) update, (2) upon the exercise of an option or issuance of a task or delivery order under an existing contract, or (3) pursuant to the performance of warranty work or safety-related repair work for an otherwise completed project in Sudan.

Response: The Councils have resisted applying new requirements to existing contracts, and the Councils do not recommend doing so now. This final rule will have normal effective date (prospective) language, as set forth in FAR 1.108(d).

This rule does not require the new certification upon exercise of options or issuance of a task or delivery order.

With regard to annual update of the Online Representations and Certifications (ORCA), that has no impact on an existing contract. Annual updates to ORCA are only applicable to future contracts.

With regard to the third situation posed by the respondent above, this seems to be an extreme situation and should be treated by the contracting officer, if it occurs, under the FAR deviation process.

7. Ensure that contract extensions are covered.

Comment: A respondent was concerned that “under existing practice, Federal contracts may be extended in some cases without being formally renewed and thus would not be subject to the contract prohibition rule.” The respondent encouraged the Councils to “address this potential loophole” and ensure that contract extensions are covered by the certification requirement.

Response: The Councils are unaware of any circumstances under which the FAR sanctions the informal extension of contracts.

8. Require certification in ORCA and each individual offer.

Comment: A respondent encouraged a final rule that requires certification in both the “ORCA Application” and each individual proposal.

Response: The final rule does not change the interim rule’s requirement to include the certification in each new procurement. In addition, the certification will be part of ORCA, and it will be considered in the contractor’s annual ORCA certification. Annual updates to ORCA are only applicable to future contracts.

9. Require contractors to certify that they will not engage in targeted business operations during contract performance.

Comment: One respondent wanted the FAR to require companies that are awarded contract extensions to disclose any potential targeted business operations with Sudan and to explicitly require that companies certify they will not engage in targeted business operations for the duration of the contract.

Response: The statute does not require that the certification apply to future (targeted) business operations or include a promise not to engage in restricted business operations in Sudan for the duration of the company’s contract with the U.S. Government. Therefore, the Councils do not think that it would be appropriate to substitute their judgment for the language of the statute.

10. Make certification into a check-the-box certification.

Comment: A respondent recommended that the final rule change the certification to a check-the-box certification. The respondent said that, “(g)iven that the certification requirement may only be incorporated by reference into a solicitation, the FAR could create a substantial risk to offerors” because offerors that are unaware of the content of the certification provision may unknowingly, and falsely, certify compliance. The respondent argued, also, that an explicit, check-the-box certification requirement would eliminate a potential defense to a falsely certifying contractor that it did not realize it was certifying at all.

Response: The respondent is incorrect in claiming that the certification may only be incorporated by reference. Incorporation by reference is the case for commercial items in the clause at 52.212–5; it is not the case for 52.225–20, Prohibition on Conducting Restricted Business Operation in Sudan—Certification, or 52.212–1, Instructions to Offerors—Commercial Items. In any case, a company signs and is responsible for complying with all

requirements of the contract, whether a provision is reproduced in full or by reference.

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 will only impact an offeror that is conducting restricted business operations in Sudan and wants to do business with the U.S. Government because there are already numerous sanctions against dealing with Sudan (*e.g.*, E.O.s 13412, 13400, and 13067, and 31 CFR Part 538), the number of entities impacted will be minimal. No comments to the contrary were received from small entities in response to the interim rule.

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 25 and 52

Government procurement.

Dated: August 4, 2009.

Al Matera,

Director, Office of Acquisition Policy.

Interim Rule Adopted as Final With Changes

■ Accordingly, the interim rule amending 48 CFR parts 4, 15, 25, and 52 which was published in the **Federal Register** at 73 FR 33636 on June 12, 2008, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 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 25—FOREIGN ACQUISITION

■ 2. Amend section 25.702–1 by removing the definition “Person”; and in the definition “Restricted business

operations” revising the introductory text of paragraph (2) to read as follows:

25.702-1 Definitions.

* * * * *

Restricted business operations— * * *

(2) Does not include business operations that the person (as that term is defined in Section 2 of the Sudan Accountability and Divestment Act of 2007) conducting the business can demonstrate—

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 3. Amend section 52.212-3 by—
a. Revising the date of the provision;
b. Revising in paragraph (a), in the definition “Restricted business operations” the second sentence of the introductory text; and
c. Removing from paragraph (m) “that it” and adding “that the offeror” in its place.
The revised text reads as follows:

52.212-3 Offeror Representations and Certifications—Commercial Items.

* * * * *

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS (Aug 2009)

* * * * *

(a) Definitions. * * *

Restricted business operations * * *

Restricted business operations do not include business operations that the person (as that term is defined in Section 2 of the Sudan Accountability and Divestment Act of 2007) conducting the business can demonstrate—

* * * * *

- 4. Amend section 52.225-20 by—
a. Revising the date of the provision;
b. Removing from paragraph (a) the definition “Person”, and revising the second sentence in the introductory text of the definition “Restricted business operations”; and
c. Removing from paragraph (b) “that it” and adding “that the offeror” in its place.
The revised text reads as follows:

52.225-20 Prohibition on Conducting Restricted Business Operations in Sudan—Certification.

* * * * *

PROHIBITION ON CONDUCTING RESTRICTED BUSINESS OPERATIONS IN SUDAN—CERTIFICATION (Aug 2009)

(a) Definitions. * * *

Restricted business operations * * *

Restricted business operations do not include business operations that the person (as that term is defined in Section 2 of the Sudan Accountability

and Divestment Act of 2007) conducting the business can demonstrate—

* * * * *

[FR Doc. E9-19165 Filed 8-10-09; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 28 and 52

[FAC 2005-36; FAR Case 2006-013; Item V; Docket 2006-0033; Sequence 1]

RIN 9000-AK71

Federal Acquisition Regulation; FAR Case 2006-013, List of Approved Attorneys, Abstractors, and Title Companies

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 update the procedures for the acceptance of a bond with a security interest in real property.

DATES: Effective Date: September 10, 2009.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Edward N. Chambers, Procurement Analyst, at (202) 501-3221. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-36, FAR case 2006-013.

SUPPLEMENTARY INFORMATION:

A. Background

FAR Subpart 28.2 requires agencies to obtain adequate security for bonds when bonds are used with a contract. A corporate or individual surety is an acceptable form of security for a bond. FAR Subpart 28.2 provides that when an individual surety secures a bond with an interest in real estate, the surety must provide evidence of title (i.e., ownership) in the form of a certificate of title prepared by a qualified title attorney or abstractor, or a title insurance policy issued by title insurance company that has been approved by the Department of Justice

(DOJ). Since DOJ no longer maintains a list of approved title insurance companies, agency contracting officers must now take other steps to ensure the adequacy of the title evidence or ensure the surety obtains a title insurance policy for the full amount of the Government’s lien interest from a qualified title insurance company.

This FAR rule revises the types of acceptable title evidence by individual sureties to include mortgagee title insurance or other evidence of title consistent with Section 2 of the DOJ Title Standards 2001, maintained on a DOJ website. FAR clause 52.228-11, Pledges of Assets, is also updated with this new reference.

The rule also provides that contracting officers should request the assistance of agency legal counsel in determining if title evidence from individual sureties is consistent with the Justice Department Standards.

PUBLIC COMMENTS

DoD, GSA, and NASA published a proposed rule in the Federal Register at 72 FR 12584 on March 16, 2007. The Councils received a single comment on the proposed rule. The Councils have partially adopted this comment and revised the final rule accordingly.

Comment: For those cases where real property is pledged to secure a bond, the proposed rule provided that “depending on the value of the property, contracting officers should consider requesting assistance from agency designated legal counsel to determine if the evidence of title is adequate.” The commenter believes this legal consultation should be mandatory.

Response: Partially adopted. The final rule drops the qualifier “depending on the value of the property” on seeking legal counsel when real property is pledged to secure a bond. However, the term “should” has been retained to provide contracting officers with the discretion to use their business judgment.

In considering the public comment, the Government revisited the proposed rule in total. In consultation with the Department of Justice, it was decided that when real property is pledged to secure a bond, instead of only allowing evidence of title that is consistent with DOJ standards as set forth in the proposed rule, that sureties could provide a mortgagee title insurance policy in an insurance amount equal to the amount of the lien. The Department of Justice observed that mortgagee title insurance is the most common form of title evidence in the commercial marketplace.

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 incidence of the use of bonds secured by interest in real property is very low.

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 28 and 52

Government procurement.

Dated: August 4, 2009.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 28 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 28 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 28—BONDS AND INSURANCE

■ 2. Amend section 28.203–3 by revising paragraph (a)(1) and removing from paragraph (d) “shall be” and adding “shall be signed by all owners of the property and” in its place.

■ The revised text reads as follows.

28.203–3 Acceptance of real property.

(a) * * *

(1) A mortgagee title insurance policy, in an insurance amount equal to the amount of the lien, or other evidence of title that is consistent with the requirements of Section 2 of the United States Department of Justice Title Standards at http://www.usdoj.gov/enrd/2001_Title_Standards.html. This title evidence must show fee simple title vested in the surety along with any concurrent owners; whether any real estate taxes are due and payable; and any recorded encumbrances against the

property, including the lien filed in favor of the Government under paragraph (d) of this subsection. Agency contracting officers should request the assistance of their designated agency legal counsel in determining if the title evidence is consistent with the Department of Justice standards;

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.228–11 by—

- a. Revising the date of the clause;
 - b. Removing from paragraph (b)(1) “and/or;” and adding “; and/or” in its place; and
 - c. Revising paragraph (b)(2)(i).
- The revised text reads as follows:

52.228–11 Pledges of Assets.

* * * * *
PLEDGES OF ASSETS (Sept 2009)

* * * * *

(b) * * *

(2) * * *

(i) A mortgagee title insurance policy, in an insurance amount equal to the amount of the lien, or other evidence of title that is consistent with the requirements of Section 2 of the United States Department of Justice Title Standards at http://www.usdoj.gov/enrd/2001_Title_Standards.html. This title evidence must show fee simple title vested in the surety along with any concurrent owners; whether any real estate taxes are due and payable; and any recorded encumbrances against the property, including the lien filed in favor of the Government as required by FAR 28.203–3(d);

* * * * *

[FR Doc. E9–19166 Filed 8–10–09; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 30 and 52

[FAC 2005–36; FAR Case 2007–002; Item VI; Docket 2008–0001, Sequence 22]

RIN 9000–AL09

Federal Acquisition Regulation; FAR Case 2007–002, Cost Accounting Standards (CAS) Administration and Associated Federal Acquisition Regulation Clauses

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

and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to revise the contract clauses related to the administration of the Cost Accounting Standards (CAS) to maintain consistency between the FAR and CAS.

DATES: *Effective Date:* August 11, 2009.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Edward N. Chambers, Procurement Analyst, at (202) 501–3221. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAR Case 2007–002.

SUPPLEMENTARY INFORMATION:

A. Background

The CAS Board published a final rule in the **Federal Register** at 72 FR 32809 on June 14, 2007, revising the contract clauses for CAS administration. The final rule effected the following changes:

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

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

The CAS Board published a final rule in the **Federal Register** at 65 FR 37470 on June 14, 2000, revising the contract clauses for CAS administration. The final rule specified that the interest rate for overpayments by the Government under 48 CFR 9903.201–4(a), (c), and (e) shall be computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)).

In order to maintain consistency between CAS and FAR, the Councils issued an interim rule revising 30.201–4 and 50.230–1 through 50.230–5.

This final rule adopts, without change, the interim rule published in the **Federal Register** at 73 FR 54011 on September 17, 2008. No public comments were received in response to the interim rule.

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

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

B. Regulatory Flexibility Act

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

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 30 and 52

Government procurement.

Dated: August 4, 2009.

Al Matera,

Director, Office of Acquisition Policy.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 30 and 52, which was published in the **Federal Register** at 73 FR 54011 on September 17, 2008, is adopted as a final rule without change.

[FR Doc. E9-19167 Filed 8-10-09; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 32 and 52

[FAC 2005-36; Item VII; Docket 2009-0003, Sequence 4]

Federal Acquisition Regulation; Technical Amendments

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

ACTION: Final rule.

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

DATES: *Effective Date:* August 11, 2009.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, 1800 F Street, NW., Room 4041, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. Please cite FAC 2005-35, Technical Amendments.

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

List of Subjects in 48 CFR Parts 32 and 52

Government procurement.

Dated: August 4, 2009.

Al Matera,

Director, Office of Acquisition Policy.

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

■ 1. The authority citation for 48 CFR parts 32 and 52 continues to read as follows:

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

PART 32—CONTRACT FINANCING

32.503-9 [Amended]

■ 2. Amend section 32.503-9 in paragraph (a)(7) by removing paragraph “(a)(4)” and adding paragraph “(a)(5)” in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.213-4 [Amended]

■ 3. Amend section 52.213-4 by revising the date of the clause; and removing from paragraph (a)(2)(vi) “(Mar 2009)” and adding August 11, 2009 in its place.

■ 4. Amend section 52.244-6 by—
■ a. Revising the date of the clause; and
■ b. Revising paragraphs (c)(1)(i), (c)(1)(ii), (c)(1)(iii), (c)(1)(vii), and (c)(1)(ix) to read as follows: 52.244-6 Subcontracts for Commercial Items.

* * * * *

SUBCONTRACTS FOR COMMERCIAL ITEMS (August 11, 2009)

* * * * *

(c)(1) * * *

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (Dec 2008) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)), if the subcontract exceeds \$5,000,000 and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures

of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

(ii) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act. (iii) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$550,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

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(vii) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201), if flow down is required in accordance with paragraph (g) of FAR clause 52.222-39.

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(ix) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. App. 1241 and 10 U.S.C. 2631), if flow down is required in accordance with paragraph (d) of FAR clause 52.247-64.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2009-0002, Sequence 7]

Federal Acquisition Regulation; Federal Acquisition Circular 2005-36; 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) 2005–36 which amend

the FAR. Interested parties may obtain further information regarding these rules by referring to FAC 2005–36 which precedes this document. These documents are also available via the Internet at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Hada Flowers, FAR Secretariat, (202) 208–7282. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2005–36

Item	Subject	FAR case	Analyst
I	Federal Technical Data Solution (FedTeDS)	2008–038	Loeb.
II	Fair Labor Standards Act and Service Contract Act Price Adjustment Clauses	2007–021	Murphy.
III	New Designated Country—Taiwan	2009–014	Murphy.
IV	Prohibition on Restricted Business Operations in Sudan and Imports from Burma	2008–004	Murphy.
V	List of Approved Attorneys, Abstractors, and Title Companies	2006–013	Chambers.
VI	Cost Accounting Standards (CAS) Administration and Associated Federal Acquisition Regulation Clauses.	2007–002	Chambers.
VII	Technical Amendments		

SUPPLEMENTARY INFORMATION:

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

FAC 2005–36 amends the FAR as specified below:

Item I—Federal Technical Data Solution (FedTeDS) (FAR Case 2008–038)

This final rule amends the Federal Acquisition Regulation (FAR) subparts 5.1, 5.2, and 7.1 to remove all references to the Federal Technical Data Solution (FedTeDS) System, and refer to the enhanced capabilities of the Governmentwide Point of Entry (GPE) system. The FedTeDS system was used to post on-line technical data packages and other items associated with solicitations that required some level of access control. It was interfaced directly with the GPE system. In April 2008, the newest version of the GPE was launched. This version incorporated the capabilities of FedTeDS, allowing the FedTeDS system to be retired. This rule will only have a slight impact on Government. It will inform and direct both internal and external users to the new system and website. This rule does not have a significant impact on any automated systems.

Item II—Fair Labor Standards Act and Service Contract Act Price Adjustment Clauses (FAR Case 2007–021)

This final rule amends the Federal Acquisition Regulation (FAR) to specifically require the incorporation of FAR clauses 52.222–43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) and 52.222–44, Fair Labor Standards Act and Service Contract Act—Price Adjustment, in

time-and-materials and labor-hour service contracts that are subject to the Service Contract Act.

Item III—New Designated Country—Taiwan (FAR Case 2009–014) (Interim)

This interim rule implements in FAR Parts 22, 25, and 52, as appropriate, the designation of Taiwan under the World Trade Organization Agreement on Government Procurement, which took effect on July 15, 2009. This FAR change allows contracting officers to purchase goods and services made in Taiwan without application of the Buy American Act if the acquisition is covered by the World Trade Organization Agreement on Government Procurement.

Item IV—Prohibition on Restricted Business Operations in Sudan and Imports From Burma (FAR Case 2008–004)

This final rule converts the interim rule published in the **Federal Register** at 73 FR 33636 on June 12, 2008, to a final rule with changes. This final rule implements Section 6 of the Sudan Accountability and Divestment Act of 2007, which requires certification in each contract entered into by an executive agency that the contractor does not conduct certain business operations in Sudan. In addition, in accordance with Executive Orders 13310 and 13448, the Councils added Burma to the list of countries from which most imports are prohibited.

Item V—List of Approved Attorneys, Abstractors, and Title Companies (FAR Case 2006–013)

This final rule amends Federal Acquisition Regulation (FAR) 28.203–3 and 52.228–11 to update the procedures for the acceptance of a bond with a security interest in real property. The FAR has relied on the Department of

Justice (DOJ) to provide a “List of Approved Attorneys, Abstractors, and Title Companies”. However, DOJ has discontinued maintenance of the List. Replacing the List, DOJ published “Title Standards 2001”, establishing the evidence requirements for acceptance of title to real property for individual sureties.

The rule also provides that in lieu of evidence of title that is consistent with DOJ standards, that sureties may provide a mortgagee title insurance policy in an insurance amount equal to the amount of the lien.

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

This final rule converts, without change, the interim rule published in the **Federal Register** at 73 FR 54011 September 17, 2008. No comments were received in response to the interim rule. The interim rule amended the Federal Acquisition Regulation (FAR) to revise FAR 30.201–4(b)(1) and FAR 52.230–1 through 52.230–5 to maintain consistency between the Federal Acquisition Regulation (FAR) and Cost Accounting Standards (CAS) regarding the administration of the CAS Board’s rules, regulations and standards.

Effective June 14, 2007, the CAS Board amended the contract clauses contained in its rules and regulations at 48 CFR 9903.201–4, pertaining to the administration of CAS, to adjust the CAS applicability threshold in accordance with section 822 of the 2006 National Defense Authorization Act (Pub. L. 109–163). That section amended 41 U.S.C. 422(f)(2)(A) to require that the threshold for CAS applicability be the same as the threshold for compliance with the Truth in Negotiations Act (TINA).

Item VII—Technical Amendments

Editorial changes are made at FAR 32.503–9, 52.213–4, and 52.244–6.

Dated: August 4, 2009.

Al Matera,

Director, Office of Acquisition Policy.

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