

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR—2007—0002, Sequence 1]

Federal Acquisition Regulation; Federal Acquisition Circular 2005—16; Introduction

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

and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of interim and final 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—16. 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 or subject area. Please cite FAC 2005—16 and specific FAR case number(s). For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501—4755.

LIST OF RULES IN FAC 2005—16

Item	Subject	FAR case	Analyst
I	Implementation of Wage Determinations OnLine (WDOL)	2005—033	Woodson.
II	Termination or Cancellation of Purchase Orders	2005—029	Jackson.
III	Contracts with Religious Entities (Interim)	2006—019	Woodson.
IV	Contract Terms and Conditions Required to Implement Statute or Executive Orders—Commercial Items.	2006—012	Jackson.

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—16 amends the FAR as specified below:

Item I—Implementation of Wage Determinations OnLine (WDOL) (FAR Case 2005—033)

This final rule implements the Department of Labor (DOL) Wage Determinations OnLine (WDOL) Internet website as the source for Federal contracting agencies to obtain wage determinations issued by the DOL for service contracts subject to the McNamara-O’Hara Service Contract Act (SCA) and for construction contracts subject to the Davis-Bacon Act (DBA). The rule amends the FAR to direct Federal contracting agencies to obtain DBA and SCA wage determinations from the WDOL website.

The WDOL and e98 processes replace the paper Standard Forms 98 and 98a. In addition, Standard Forms 98, 98a, and 99 are deleted from FAR Part 53. This final rule also incorporates new geographical jurisdictions for DOL’s Wage and Hour Regional Offices and eliminates FAR references to the Government Printing Office publication of general wage determinations.

Item II—Termination or Cancellation of Purchase Orders (FAR Case 2005—029)

The rule revises the Federal Acquisition Regulation (FAR) to correct the inadvertent omission of an appropriate reference in FAR Part 13.302—4(a) for termination for cause of those purchase orders that have been accepted in writing. This FAR revision is a correction to a reference and not a change to the contract termination options available in 52.212—4(l) or (m). If a purchase order that has been accepted in writing by the contractor is to be terminated, contracting officers have the option to terminate for cause as well as terminate for convenience.

Item III—Contracts with Religious Entities (FAR Case 2006—019) (Interim)

This interim rule amends FAR Subpart 22.8, Equal Employment Opportunity, and the associated clause at 52.222—26, Equal Opportunity, to add an exemption for religious entities to the prohibition of discrimination on the basis of religion. Executive Order (E.O.) 13279 amended Section 204 of E.O. 11246 to permit religious entities to consider employment of individuals of a particular religion to perform work connected with carrying on the entity’s activities. Religious entities remain subject to other Equal Employment Opportunity requirements. When awarding a contract to a religious entity that contains the clause at FAR 52.222—26, Equal Opportunity, the requirements of the clause with respect to employment of individuals of a

particular religion to perform work connected with the carrying on of the contractor’s activities do not apply to a contractor that is a religious corporation, association, educational institution, or society.

Item IV—Contract Terms and Conditions Required to Implement Statute or Executive Orders—Commercial Items (FAR Case 2006—012)

The final rule revises the Federal Acquisition Regulation (FAR) to update the required contract clauses that implement provisions of law or executive orders for acquisitions of commercial items.

Dated: March 15, 2007.

Ralph De Stefano,
Director, Contract Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005-16 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 2005-16 is effective March 22, 2007.

Dated: March 7, 2007.

Shay D. Assad,

Director, Defense Procurement and Acquisition Policy.

Dated: March 14, 2007.

Roger D. Waldron,

Acting Senior Procurement Executive, General Services Administration.

Dated: March 7, 2007.

Tom Luedtke,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 07-1359 Filed 3-21-07; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 22, 47, 52, and 53

[FAC 2005-16; FAR Case 2005-033; Item I; Docket 2007-0001, Sequence 1]

RIN 9000-AK47

Federal Acquisition Regulation; FAR Case 2005-033; Implementation of Wage Determinations OnLine (WDOL)

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed to adopt the interim rule published in the **Federal Register** at 71 FR 36930, June 28, 2006, as a final rule without change. This final rule amends the Federal Acquisition Regulation (FAR) to implement the Wage Determinations OnLine (WDOL) Internet website as the source for Federal contracting agencies to obtain wage determinations issued by the Department of Labor (DOL) for service contracts subject to the McNamara-O'Hara Service Contract Act (SCA) and for construction contracts subject to the Davis-Bacon Act (DBA).

DATES: Effective Date: March 22, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Woodson, Procurement Analyst, at (202) 501-3775 for clarification of content. Please cite FAC 2005-16, FAR case 2005-033. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 71 FR 36930, June 28, 2006. The interim rule amended FAR Part 22 to implement Wage Determinations Online (WDOL) Internet Website (<http://www.wdol.gov>) as the source for Federal contracting agencies to obtain wage determinations issued by the Department of Labor (DOL) for service contracts subject to the Service Contract Act (SCA) and for construction contracts subject to the Davis-Bacon Act (DBA). The rule incorporated new geographical jurisdictions for DOL's Wage and Hour Regional Offices and eliminated FAR references to the Government Printing Office (GPO) publication of general wage determinations.

The interim rule eliminated the requirement for the contracting officer to submit a copy of collective bargaining agreements (CBAs) to the DOL for the purpose of obtaining a wage determination under Section 4(c) of the SCA, unless directed by the DOL to do so. The rule also deleted the FAR clause at 52.222-47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreements (CBA), because the WDOL process makes it unnecessary. Additionally, the rule revised FAR clause 52.222-49, Service Contract Act—Place of Performance Unknown, to make conforming changes to FAR references, and deleted Standard Forms 98, 98a, and 99 from FAR Part 53 in their entirety.

Comment. In response to the interim rule, one comment was received. The commenter was concerned with the risk of issuing the most current wage determination and allowing offerors to amend their proposal after the source selection decision is made but prior to award, noting the possible impact on the proposed price and source selection decision. The commenter recommended revising the language for contracting by negotiation in FAR 22.1012-1(c) to be similar to contracting for sealed bidding or allow the contracting officer to incorporate a wage determination after award similar to the language provided in FAR clause 52.222-30, Davis Bacon Act—Price Adjustment (None or Separately Specified Method).

The Councils considered the comment to be outside the scope of the rule and referred the comment to the Department of Defense Labor Committee for their review and input. Therefore, the councils have agreed to implement

the interim rule as written without changes.

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

B. Regulatory Flexibility Act

The 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 involves internal Government processes between the DOL and Federal contracting agencies. During the design phase of WDOL.gov, the WDOL Task Force coordinated with a number of labor organizations, contractors, the Contract Services Association, and various Federal contracting agencies to address and satisfy any concerns about the effect of the rule on all interested parties, including small entities. The only comment received on the interim rule was determined to be outside the scope of the 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. 3501, *et seq.*

List of Subjects in 48 CFR Parts 4, 22, 47, 52, and 53

Government procurement.

Dated: March 15, 2007.

Ralph De Stefano,

Director, Contract Policy Division.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 4, 22, 47, 52, and 53, which was published in the **Federal Register** at 71 FR 36930, June 28, 2006, is adopted as a final rule without change.

[FR Doc. 07-1358 Filed 3-21-07; 8:45 am]

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