

Dated: March 15, 2007.

Ralph De Stefano,

Director, Contract Policy Division.

■ 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

■ 2. Amend section 22.807 by adding paragraph (b)(7) to read as follows:

22.807 Exemptions

* * * * *

(b) * * *

(7) *Contracts with religious entities.*

Pursuant to E.O. 13279, Section 202 of E.O. 11246, shall not apply to a Government contractor or subcontractor that is a religious corporation, association, educational institution, or society, with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities. Such contractors and subcontractors are not exempted or excused from complying with the other requirements contained in the order.

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PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.212-5 [Amended]

■ 3. Amend section 52.212-5 by—
 ■ a. Revising the date of the clause to read “(MAR 2007)”; and
 ■ b. Removing from paragraphs (b)(17) and (e)(1)(ii) “(APR 2002)” and adding “(MAR 2007)” in its place.

52.213-4 [Amended]

■ 4. Amend section 52.213-4 by—
 ■ a. Revising the date of the clause to read “(MAR 2007)”;
 ■ b. Removing from paragraph (a)(1)(iii) “(APR 2002)” and adding “(MAR 2007)” in its place; and
 ■ c. Removing from paragraph (a)(2)(vi) “(SEPT 2006)” and adding “(MAR 2007)” in its place.

■ 5. Amend section 52.222-26 by—
 ■ a. Revising the date of the clause to read “(MAR 2007)”;
 ■ b. Redesignating paragraphs (b)(1) through (b)(11), and (c) as paragraphs (c)(1) through (c)(11), and (d), respectively; removing paragraph (b) introductory text and adding paragraphs (b)(1) and (b)(2); and

■ c. Removing from newly designated paragraph (c)(10) “paragraphs (b)(1) through (11) of”.

The revised text reads as follows:

52.222-26 Equal Opportunity.

* * * * *

(b)(1) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(2) If the Contractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the Contractor’s activities (41 CFR 60-1.5).

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52.244-6 [Amended]

■ 6. Amend section 52.244-6 by—
 ■ a. Revising the date of the clause to read “(MAR 2007)”; and
 ■ b. Removing from paragraph (c)(1)(ii) “(MAY 2002)” and adding “(MAR 2007)” in its place.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 2005-16; FAR Case 2006-012; Item IV; Docket 2006-0020, Sequence 24]

RIN 9000-AK51

Federal Acquisition Regulation; FAR Case 2006-012, Contract Terms and Conditions Required to Implement Statute or Executive Orders—Commercial Items

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 required contract clauses that implement provisions of law or executive orders for acquisitions of commercial items.

DATES: *Effective Date:* March 22, 2007.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Michael O. Jackson, Procurement Analyst, at (202) 208-4949. Please cite FAC 2005-16, FAR case 2006-012. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Background

In accordance with Section 8002 of Public Law 103-355 (41 U.S.C. 264, note), contract clauses applicable to acquisitions of commercial items are limited, to the maximum extent practicable, to clauses that are—

(1) Required to implement provisions of law or executive orders applicable to the acquisition of commercial items; or

(2) Determined to be consistent with customary commercial practice.

The FAR clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, incorporates, by reference, the contract clauses that the contracting officer may select to implement provisions of law or executive orders for acquisitions of commercial items. The FAR clause at 52.219-16, Liquidated Damages—Subcontracting Plan, is a contract clause that is required to implement 15 U.S.C. 637(d)(4)(F)(i). However, the FAR clause 52.219-16 is not included in the list of clauses for commercial contracts in FAR 52.212-5. The rule incorporates the FAR clause 52.219-16 in the list of clauses for commercial contracts that the contracting officer may select.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 42344, July 26, 2006. The Councils received no comments on the proposed rule. Therefore, the Councils have adopted the proposed rule as final without change.

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

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space

Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely clarifies existing language and does not change existing policy.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: March 15, 2007.

Ralph De Stefano,
Director, Contract Policy Division.

■ 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 52.212-5 by revising the date of the clause; redesignating paragraphs (b)(10) through (b)(35) as (b)(11) through (b)(36),

respectively, and adding a new paragraph (b)(10) 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 (MAR 2007)
* * * * *

(b) * * *

—(10) 52.219-16, Liquidated Damages—Subcontracting Plan (JAN 1999) (15 U.S.C. 637(d)(4)(F)(i)).

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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; 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) 2005-16 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2005-16 which precedes this document. These documents are also available via the Internet at <http://www.regulations.gov>.

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

LIST OF RULES IN FAC 2005-16

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.