

comply consistently with CAS 401 and 402, it agrees that the contract price shall be adjusted, together with interest, if such failure results in increased cost paid by the U.S. Government. * * * The Contractor agrees that the Disclosure Statement or other form permitted, pursuant to 48 CFR 9903.202-1(e) shall be available for inspection and use by authorized representatives of the United States Government.

(End of clause)

[FR Doc. E8-21365 Filed 9-16-08; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 37 and 52

[FAC 2005-27; FAR Case 2006-027; Item XIII; Docket 2007-0001; Sequence 5]

RIN 9000-AK54

Federal Acquisition Regulation; FAR Case 2006-027, Accepting and Dispensing of \$1 Coin

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 as final, with change, the interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 104 of the Presidential \$1 Coin Act of 2005. Section 104 requires that entities that operate any business on any premises owned or controlled by the United States be capable of accepting and dispensing \$1 coins on January 1, 2008. Subsequent to this, Pub. L. 110-147 amended 31 U.S.C. 5112(p)(1)(A), to allow an exception from the \$1 coin dispensing capability requirement for vending machines that do not receive currency denominations greater than \$1.

DATES: *Effective Date:* September 17, 2008.

Applicability Date: This rule applies to all service contracts that involve business operations conducted in U.S. coins and currency, including vending machines, on any premises owned by the United States or under the control of any agency or instrumentality of the United States. The clause shall be placed in all such solicitations and contracts on and after the effective date

of this rule. Those applicable contracts in existence before January 1, 2008, that do not already have the clause shall be modified to include the clause; those contracts that have the August 2007 edition of the clause shall be modified if the contractor requests, to include the newer version contained in this FAC, without requiring consideration from the contractor.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Jackson, Procurement Analyst, at (202) 208-4949 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755. Please cite FAC 2005-27, FAR case 2006-027.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the FAR to implement the Presidential \$1 Coin Act of 2005 (Pub. L. 109-145). The Presidential \$1 Coin Act of 2005 requires the Secretary of the Treasury to mint and issue annually four new \$1 coins bearing the likenesses of Presidents of the United States in the order of their service and to continue to mint and issue "Sacagawea-design" coins for circulation. In order to promote circulation of the coins, Section 104 of the Public Law also requires that Federal agencies take action so that, by January 1, 2008, entities that operate any business, including vending machines, on any premises owned by the United States or under the control of any agency or instrumentality of the United States, are capable of accepting and dispensing \$1 coins and that the entities display notices of this capability on the business premises. Subsequent to the passage of the Presidential Coin Act, Pub. L. 110-147 amended 31 U.S.C. 5112(p)(1)(A), to allow an exception from the \$1 coin dispensing capability requirement for vending machines that do not receive currency denominations greater than \$1. This will require modification of existing covered contracts whose period of performance extends beyond the January 1, 2008 date in order to assure compliance with Section 104 of the Act, as well as compliance with Pub. L. 110-147.

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 72 FR 46361, August 17, 2007. The 60-day comment period for the interim rule ended October 16, 2007. Three respondents provided comments. The comments are discussed below.

Public Comments

Comment 1: One respondent asked why does the FAR matrix show that

52.237-11 is applicable to R&D contracts and to A&E contracts?

R&D contracts and A&E contracts are usually paid by electronic funds transfer. There is usually no cash payment involved in such contracts. Therefore, why would contractors who provide R&D or A&E services have to be capable of accepting dollar coins?

Response: The inclusion of R&D and A&E contracts in the FAR matrix as applicable to 52.237-11 was an inadvertent error.

Comment 2: One respondent stated in order to implement these widespread and extensive changes to vending machines, our members simply need more time. Contrary to the statement contained in the **Federal Register** notice, this interim rule *does* have a significant economic impact. It is not accurate to state that "receiving and dispensing the new coins as part of business operations should not add to workload or expense" (72 FR 46361, August 17, 2007). Accordingly, we strongly encourage the Councils to account for both the workload and expense by extending the compliance date to July 1, 2008.

Response: Section 104 of the Presidential \$1 Coin Act of 2005 (31 U.S.C. 5112(p)(1)), established the effective date for this provision to be January 1, 2008. The effect of this clause is merely to implement the provision of law. Notwithstanding, the provision of law cannot be modified under these circumstances without further consideration by Congress, who passed the provision of law. Pub. L. 110-147 amended section 5112(p)(1)(A) of title 31, U.S.C., to allow an exception from the \$1 coin dispensing capability requirement for vending machines that do not receive currency denominations greater than \$1. Thus, the exception of the law provides relief for those vending machines.

Comment 3: One respondent requested an amendment to the interim rule published in the **Federal Register**, August 17, 2007, amending 48 CFR 52 (Solicitation Provisions and Contract Clauses), Section 52.237-11 (Accepting and Dispensing of \$1 Coin) to exempt vending machines on Federal property that do not accept currency denominations above \$1 from the requirement to dispense dollar coins.

Response: The very intent of the statute is to require those businesses and instrumentalities operating on Federal property to be able to accept and dispense the \$1 coin if that business or instrumentality is conducting a business whereby coins or currency is exchanged. However, Pub. L. 110-147 amended section 5112(p)(1)(A) of title

31, U.S.C., to allow an exception from the \$1 coin dispensing capability requirement for vending machines that do not receive currency denominations greater than \$1.

Comment 4: One commenter stated the key paragraph within Section 104, (p)(1) is Paragraph A. It states: “any business operations conducted by any such agency, instrumentality, system, or entity that involve coins or currency will be fully capable of accepting and dispensing \$1 coins in connection with such operations;”.

Commenter stated that they believe it is perfectly reasonable to read this paragraph to mean that a vending operation on Federal property in which every vending machine accepts dollar coins, every bill changer in the operation dispenses dollar coins, and every machine that accepts denominations above \$1 dispenses dollar coins in change is in full compliance with this paragraph.

Response: Due to the amended language at Pub. L. 110–147, the commenter is correct.

Comment 5: One commenter stated we note that Paragraph (B) requires the display of signs and notices denoting \$1 coin capability, “including on each vending machine.” Yet Paragraph (A), the key paragraph that imposes the general coin acceptance and dispensing obligation, lacks this individual vending machine requirement. Again, if Congress truly intended to require every vending machine to dispense dollar coins in change, it could easily have stated this in the key Paragraph, Paragraph A. It did not.

Response: See response to comment 3.

Comment 6: One commenter stated requiring vending machines that do not accept denominations higher than \$1 to dispense dollar coins does not serve the purpose of Section 104 of the Presidential Dollar Coin Act of 2005. The purpose of Section 104 of the Act, requiring that dollar coins be available on all Federal property and that signs be posted denoting such availability, is to promote wider distribution and use of dollar coins in commerce. The Preamble to Pub. L. 109–145, enacted January 4, 2005, states that one of the purposes of the Law is “to improve circulation of the \$1 coin.” Requiring machines that accept nothing higher than the \$1 denomination to be modified to dispense dollar coins would not improve circulation of dollar coins. Instead, this requirement would involve needless expense.

Response: Congress did recognize that requiring vending machines that did not receive denominations greater than \$1 coins, but programmed to dispense \$1

coins would impair the public’s ability to circulate \$1 coins. Thus, Pub. L. 110–147 amended section 5112(p)(1)(A) of title 31, U.S.C., to allow an exception from the \$1 coin dispensing capability requirement for vending machines that do not receive currency denominations greater than \$1.

In reviewing the interim FAR language, the reference to “higher than \$1” in FAR Clauses 37.116–1 Presidential \$1 Coin Act of 2005 (new inserted text) and 52.237–11 “Accepting and Dispensing \$1 Coin” paragraph “b”, be modified to change the wording “...higher than \$1...” to read as “...greater than \$1...” since this is more consistent with the reference to a currency denomination.

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 accepting \$1 coins as part of business operations should not add to workload or expense. While it is relatively easy for beverage and other vending machines to accept \$1 coins, configuring the machines to dispense the \$1 coin as change is much more difficult. For several years, most vending machines have been fully capable of accepting the \$1 coin. However, due to the vending price of beverages, machines usually have no reason to dispense \$1 coins as change during a normal transaction, and therefore, are not currently set up for this transaction. In order to dispense a \$1 coin, each machine would need to be individually serviced and retrofitted. In the case of coin mechanisms manufactured before the year 2000, these mechanisms will have to be replaced. The cost of a new mechanism is approximately \$300 - \$400. In the case of mechanisms manufactured after the year 2000, a new coin cassette will cost from \$20 - \$40. However, due to Congress amending the statute and making the \$1 coin dispensing requirement only apply to those machines that receive currency denominations greater than \$1, this eases the burden on industry.

The National Automatic Merchandising Association (NAMA) is the agent that took the lead in causing the amendment to the original statute. The December 2007 amendment made an exception to the rule and added that vending machines that did not receive denominations over \$1 were released from the requirement of dispensing the \$1 coin. NAMA informed that most of their members are small businesses. NAMA is of the belief that the December 2007 amendment to exempt vending machines that do not take greater than \$1 from the dispensing requirement will protect most small businesses. For those machines that take denominations greater than \$1, these machines are relatively new and already accept the \$1 coin and would have to be refitted with dispensers that would cost about \$40. For those older machines that take denominations above \$1, these machines will require new parts at a cost of about \$400.00. NAMA is of the belief that most of the machines that take denominations greater than \$1 are of the newer variety and therefore can be brought into compliance with the dispensing \$1 coin requirement at an expense of \$40. For vending machines already configured to accept and dispense the Sacagawea-design \$1 coin, which has been in circulation since January 2000, there will be no need to change or modify equipment. Contracting officers have been instructed in the Applicability Date of the preamble to modify contracts upon request of the contractor, to change the older version of the clause to the newer version without requiring consideration from the contractor.

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 37 and 52

Government procurement.

Dated: September 9, 2008

Al Matera,

Director, Office of Acquisition Policy.

■ Accordingly, the interim rule amending 48 CFR parts 37 and 52 which was published in the **Federal Register** at 72 FR 46361, August 17, 2007, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 37 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 37—SERVICE CONTRACTING

■ 2. Amend section 37.116–1 by removing from the second sentence the words “United States”; and adding a sentence to the end of the paragraph to read as follows:

37.116–1 Presidential \$1 Coin Act of 2005.

* * * Pub. L. 110–147 amended 31 U.S.C. 5112(p)(1)(A) to allow an exception from the \$1 coin dispensing capability requirement for those vending machines that do not receive currency denominations greater than \$1.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.212–5 by revising the date of the clause and paragraph (c)(7) 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 (SEP 2008).

* * * * *
 (c) * * *
 (7) 52.237–11, Accepting and Dispensing of \$1 Coin (SEP 2008) (31 U.S.C. 5112(p)(1)).

■ 4. Amend section 52.237–11 by revising the date of the clause and paragraph (b) to read as follows:

52.237–11 Accepting and Dispensing of \$1 Coin.

* * * * *
 ACCEPTING AND DISPENSING OF \$1 COIN (SEP 2008)

(b) All business operations conducted under this contract that involve coins or currency, including vending machines, shall be fully capable of—

- (1) Accepting \$1 coins in connection with such operations; and
- (2) Dispensing \$1 coins in connection with such operations, unless the vending machine does not receive currency denominations greater than \$1.

* * * * *
 (End of clause)
 [FR Doc. E8–21369 Filed 9–16–08; 8:45 am]
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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 15 and 52

[FAC 2005–27; Item XIV; Docket FAR–2008–0007; Sequence 1]

Federal Acquisition Regulation; Technical Amendment

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:* September 17, 2008.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4041, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. Please cite FAC 2005–27, Technical Amendment.

List of Subjects in 48 CFR Parts 15 and 52

Government procurement.

Dated: September 9, 2008

Al Matera,
Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 15 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 15 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 15—CONTRACTING BY NEGOTIATION

15.404–1 [Amended]

■ 2. Amend section 15.404–1 by removing from paragraph (a)(7) “<http://www.acq.osd.mil/dpap/contractpricing/index.htm>” and adding “http://www.acq.osd.mil/dpap/cpf/contract_pricing_reference_guides.html” in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.212–5 [Amended]

■ 3. Amend section 52.212–5 by removing from paragraph (b)(26) the word “FAR”.

[FR Doc. E8–21368 Filed 9–16–08; 8:45 am]
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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2008–0003, Sequence 2]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–27; 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) 2005–27 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 2005–27 which precedes this document. These documents are also available via the Internet at <http://www.regulations.gov>.

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

LIST OF RULES IN FAC 2005–27

Item	Subject	FAR case	Analyst
I	Correcting Statutory References Related to the Higher Education Act of 1965	2007–020	Cundiff.