

sale of food, to the maximum extent practicable and safe, to donate apparently wholesome excess food to nonprofit organizations that provide assistance to food-insecure people in the United States.

The contracting officer is required to insert the clause at FAR 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations, in solicitations and contracts greater than \$25,000 for the provision, service, or sale of food in the United States. Contractors would only be impacted if they decided to donate the excess food; they would bear all the costs of donating the excess food. The Act would extend to the Government and the contractor, when donating food, the same civil or criminal liability protection provided to donors of food under the Bill Emerson Good Samaritan Food Donation Act of 1996.

Item V—Postretirement Benefits (PRB), FAS 106 (FAR Case 2006-021)

Currently FAR 31.205-6(o) allows contractors to choose among three different accounting methods for PRB costs; pay-as-you-go (cash basis), terminal funding, and accrual basis using generally accepted accounting principles by applying Statement 106 of Financial Accounting Standards (FAS 106). The FAR also requires that any accrued PRB costs be paid to an insurer or trustee. This final rule amends the FAR to permit the use of Internal Revenue Code sections 419 and 419A contribution rules as an alternative method of determining the amount of accrued PRB costs on Government cost-based contracts.

Item VI—Travel Costs (FAR Case 2006-024)

This final rule amends the FAR to change the travel cost principle (FAR 31.205-46) to ensure a consistent application of the limitation on allowable contractor airfare costs. This rule applies the standard of the lowest fare available to the contractor. This rule takes notice that contractors frequently obtain fares that are lower than those available to the general public as a result of direct negotiation. The cost principle is clarified by removing the terms “coach or equivalent” and “standard” from the description of the classes of allowable airfares, since these terms increasingly do not describe actual classes of airline service. Thus, even when a “coach” fare may be available, given the great variety of fares often available, the “coach” fare may not be the lowest fare available, in particular when a contractor has a negotiated agreement with a carrier.

Item VII—Technical Amendments

Editorial changes are made at FAR 6.302-2, 8.703, 15.305, 52.209-6, and 52.212-5.

Dated: November 30, 2009.

Al Matera,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005-38 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 2005-38 is effective December 10, 2009, except for Items V and VI, which are effective January 11, 2010, and Item II, which is effective February 1, 2010.

Dated: November 25, 2009.

Shay D. Assad,

Director, Defense Procurement and Acquisition Policy.

Dated: November 24, 2009.

David A. Drabkin,

Senior Procurement Executive, Office of Acquisition Policy, U.S. General Services Administration.

Dated: November 20, 2009.

James A. Balinskas,

Director, Contract Management Division, Office of Procurement, National Aeronautics and Space Administration.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 22, and 52

[FAC 2005-38; FAR Case 2009-017; Item I; Docket 2009-0040, Sequence 1]

RIN 9000-AL47

Federal Acquisition Regulation; FAR Case 2009-017, Revocation of Executive Order 13201, Notification of Employee Rights Concerning Payment of Union Dues or Fees

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 (the Councils) are issuing a final rule amending the Federal Acquisition Regulation (FAR) to delete FAR Subpart 22.16 and the corresponding clause at FAR 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees, which implemented Executive Order (E.O.) 13201 of February 17, 2001, of the same title. E.O. 13201 required contractors to post a notice informing employees of their rights concerning payment of union dues or fees and detailed that employees could not be required to join unions or maintain membership in unions to retain their jobs. E.O. 13201 was revoked by E.O. 13496 of January 30, 2009, Notification of Employee Rights Under Federal Labor Laws.

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

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501-0044. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-38, FAR case 2009-017.

SUPPLEMENTARY INFORMATION:

A. Background

On January 30, 2009, the President issued E.O. 13496 (74 F.R. 6107, February 4, 2009) which requires contractors to post a notice informing employees of their rights under Federal labor laws, including the National Labor Relations Act, 29 U.S.C. 151 *et seq.* This Act encourages collective bargaining, allowing workers to freely associate, self-organize, and designate representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection. E.O. 13496 revoked the prior E.O. 13201. The new E.O. sets forth a different policy that will be included in the FAR as a separate rule in conjunction with guidance from the Secretary of Labor on the appropriate content for a replacement notice to employees. Therefore, the language at FAR Subpart 22.16 that prescribes the policy and procedures of E.O. 13201 is no longer applicable.

This final rule amends the FAR to delete FAR Subpart 22.16 in its entirety as well as the corresponding clause at FAR 52.222-39. FAR clauses 52.212-5 and 52.244-6 are also amended to delete any references to the revoked E.O. 13201 and FAR clause 52.222-39. The Department of Labor rescinded its

implementing regulations on March 30, 2009 (74 F.R. 14045).

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 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 2, 22, 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 2005-38, FAR case 2009-017), in all correspondence.

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 2, 22, and 52

Government procurement.

Dated: November 30, 2009.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 22, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 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 2—DEFINITIONS OF WORDS AND TERMS

2.101 [Amended]

2. Amend section 2.101 in paragraph (b)(2), in the definition “United States”, by removing paragraph (5), and redesignating paragraphs (6) through (9) as paragraphs (5) through (8), respectively.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 22.16—[Removed and reserved]

3. Remove and reserve subpart 22.16.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 4. Amend section 52.212-5 by—
 - a. Revising the date of the clause;
 - b. Removing paragraph (b)(26), and redesignating paragraphs (b)(27) through (b)(43) as (b)(26) through (b)(42), respectively;
 - c. Removing and reserving paragraph (e)(1)(vii); and
 - d. In Alternate II by—
 - i. Revising the date of the alternate; and
 - ii. Removing paragraph (e)(1)(ii)(G), and redesignating paragraphs (e)(1)(ii)(H) through (e)(1)(ii)(N) as paragraphs (e)(1)(ii)(G) through (e)(1)(ii)(M), respectively.
- The revised text reads 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 (DEC 2009)

* * * * *
Alternate II (DEC 2009). * * *
 * * * * *

5. Amend section 52.213-4 by revising the date of the clause and paragraph (a)(2)(vi) 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) (DEC 2009)

(a) * * *
 (2) * * *
 (vi) 52.244-6, Subcontracts for Commercial
 Items (DEC 2009).
 * * * * *

52.222-39 [Removed and reserved]

6. Remove and reserve section 52.222-39.

52.244-6 [Amended]

7. Amend section 52.244-6 by revising the date of the clause to read “(DEC 2009)”; and by removing and reserving paragraph (c)(1)(vii).
 [FR Doc. E9-28929 Filed 12-9-09; 8:45 am]
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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 8, 13, 16, 32, and 52

[FAC 2005-38; FAR Case 2006-026; Item II; Docket 2009-0041, Sequence 1]

RIN 9000-AK87

Federal Acquisition Regulation; FAR Case 2006-026, Governmentwide Commercial Purchase Card Restrictions for Treasury Offset Program Debts

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 amending the Federal Acquisition Regulation (FAR) to restrict the use of the Governmentwide commercial purchase card as a method of payment for offerors with debts subject to the Treasury Offset Program.

DATES: *Effective Date:* February 1, 2010.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Michael Jackson, Procurement Analyst, at (202) 208-4949. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-38, FAR case 2006-026.

SUPPLEMENTARY INFORMATION:

A. Background

The Debt Collection Improvement Act of 1996 and other statutes provide the tools for administering a centralized program for the collection of delinquent, non-tax and tax debts. The Financial Management Service (FMS), a bureau of the Department of the Treasury, is charged with implementing the Government’s delinquent debt collection program. Since 1996, FMS has collected more than \$24.4 billion in delinquent debt. In fiscal year 2006, collections of delinquent debt remained at a constant \$3.1 billion. To collect delinquent debts owed to Federal agencies and States, FMS uses the Treasury Offset Program (TOP). Information on TOP is available at <http://fms.treas.gov/debt/index.html>. TOP uses both “offsets” and “continuous levies” to collect