

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]  
**BILLING CODE 6820-EP-S**

**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

delinquent debts. Offset is a process whereby Federal payments are reduced or “offset” to satisfy a person’s overdue Federal debt, child support obligation, or State tax debt. A payee’s name and taxpayer identification number are matched against a Treasury/FMS database of delinquent debtors for automatic offset of funds. Offset funds are then used to satisfy payment of the delinquent debt to the extent allowed by law.

Under the continuous levy program, delinquent Federal tax debts are collected by levying non-tax payments until the debt is satisfied, as authorized by the 1997 Taxpayer Relief Act. The continuous levy program includes levy of some vendor payments (Treasury disbursed and non-Treasury disbursed payments), Federal employee salary payments, the Office of Personnel Management retirement payments, and Social Security benefit payments. Continuous levy is accomplished through a process almost identical to that of offset. FMS matches delinquent debtor data with payment record data for automated collection of the debt at the time of payment, after the delinquent taxpayer has been afforded due process.

FMS is currently unable to offset or apply a continuous levy to payments made to contractors with delinquent debts when the Governmentwide commercial purchase card is used as the method of payment. When the Governmentwide commercial purchase card is used as the method of payment, the Government does not make a direct payment to the contractor. Instead, the Acquiring Bank submits the payment to the contractor’s bank account. Acquiring Banks (also known as Merchant Banks) are the banks that do business with merchants who accept charge cards. A merchant has an account with this bank and each day deposits the value of the day’s charge card sales. Acquirers buy (acquire) the merchant’s sales slips and credit the ticket’s value to the merchant’s account. The GSA SmartPay® contracted banks are issuing banks and do not directly pay the merchants.

VISA and Master Card are associations, not banks. VISA and Master Card are retail electronic payments networks and global financial services brands. They facilitate global commerce through the transfer of information among financial institutions, merchants, consumers, businesses, and Government entities. To assess the significance of the problem, FMS and VISA matched VISA payments for Governmentwide purchase card transactions for one year. As a result of

the match, FMS determined that approximately \$73.5 million of delinquent debts subject to collection under TOP were not collected because the debtors were paid using the Governmentwide commercial purchase card. The individual payments that otherwise would have been collected were all in excess of the micro-purchase threshold.

To help increase the collection of delinquent debts owed to the Government, the rule amends the FAR to require contracting officers to determine whether the Central Contractor Registration (CCR) indicates that the contractor has delinquent debt that is subject to collection under the TOP. If a debt indicator is found, the Governmentwide commercial purchase card shall not be authorized as a method of payment. The contracting officer is required to check for the flag at the time of contract award or order placement or issuance. The rule also amends the applicable Governmentwide commercial purchase card payment FAR clause at 52.232–36 to advise contractors that the Governmentwide commercial purchase card is not authorized as a method of payment if a debt indicator is included in the CCR for the contractor. The proposed rule included the requirement for the contracting officer to check CCR prior to option exercise, but has been removed by the Councils in the final rule. The Councils removed the requirement to check CCR prior to option exercise because the proposed rule language was considered to be a change to the requirement for exercising an option, which if the method of payment was changed, would result in a contract change outside the scope of exercising an option. This rule will not apply to individual travel charge cards or centrally billed accounts for travel/transportation services.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 72 FR 74255, December 31, 2007. The comment period closed on February 29, 2008. The Councils received comments from seven respondents, one of which was inadvertently sent in error and belonged to a National Oceanic Atmospheric Administration proposed rule that followed this rule in the FRN entitled “Pacific Halibut Fisheries”.

The Councils have made the following changes to the proposed rule:

**a.** FAR 4.1103(a)(3) of the proposed rule has been modified to change the sentence structure from “except when payment by the Governmentwide commercial purchase card is contemplated (see 32.1108 (b)(2))” to “except when use of the Governmentwide commercial purchase

card is contemplated as a method of payment. (See 32.1108(b)(2))”.

**b.** FAR 8.402(g) was added to the rule to clarify that this rule does not apply to orders placed at or below the micro-purchase threshold.

**c.** FAR 13.201(h) was not in the proposed rule and has been added as follows: “When using the Governmentwide commercial purchase card as a method of payment, purchases at or below the micro-purchase threshold are exempt from verification in the Central Contractor Registration (CCR) database as to whether the contractor has a delinquent debt subject to collection under the Treasury Offset Program (TOP)” to make it very clear that purchases under the micro-purchase threshold are exempt from checking the CCR database for a delinquent debt flag. This change from the proposed rule is deemed necessary because of the repeated public comments received on the issue and to provide clarity that purchases under the micro-purchase threshold are exempt from checking the CCR database for the delinquent debt flag.

**d.** FAR 16.505(a)(11) was added to the rule to clarify that this rule does not apply to orders placed at or below the micro-purchase threshold.

**e.** FAR 17.207(f) of the proposed rule which included adding new subparagraphs (1) and (2) was reinstated as currently in the FAR.

**f.** FAR 32.1108(b)(2)(i) of the proposed rule has been modified to delete “program” as it was duplicated in the proposed FAR language. FAR 32.1108(b)(2)(i) was also amended in the final rule to require the contracting officer to check for the debt flag indicator only if payment by the Governmentwide purchase card is anticipated and the contract or order is above the micro-purchase threshold.

The requirement was removed to check the CCR database for the indicator prior to option exercise.

**g.** FAR 32.1108(b)(2)(ii) of the proposed rule has been modified to add language informing contracting officers that contracts to be paid by purchase card must either include FAR 52.232–33 or FAR 52.232–34, so that in the event that payment cannot be made by purchase card, the contractor is aware of the method of payment and the requirements thereof, *i.e.*, active CCR status.

**h.** The last sentence of FAR 32.1108(b)(2)(ii) of the proposed rule which read, “Contracting officers shall not use the presence of the delinquent debt indicator to exclude a contractor from receipt of the contract, order, or exercised option” is renumbered to be

FAR 32.1108(b)(2)(iii) and has been modified to correct grammar and delete the requirement to check CCR for the indicator when exercising an option.

i. FAR 32.1108(b)(2)(iii) of the proposed rule has been modified to correct grammar and reflect the new subparagraph “iv.”

j. Language was added at FAR 32.1110(d) of the rule to inform contracting officers that contracts to be paid by purchase card must either include FAR 52.232–33 or FAR 52.232–34, so that in the event that payment cannot be made by purchase card, the contractor is aware of the method of payment and the requirements thereof, *i.e.*, active CCR status.

k. FAR 52.212–5 was added to the rule in order to change the date of FAR 52.232–36 at paragraph (b)(41). The date of FAR 52.212–5 itself was also changed.

l. In the proposed rule at FAR 52.232–36(a)(2), the clause read “The Governmentwide commercial purchase card is not authorized as a method of payment when the Central Contractor Registration (CCR) indicates that the Contractor has delinquent debt...” In the final rule the word “when” is being replaced with “during any period” so that the beginning of FAR 52.232–36(a)(2) now reads as follows: “The Governmentwide commercial purchase card is not authorized as a method of payment during any period the Central Contractor Registration (CCR) indicates that the Contractor has delinquent debt...” The change from “when” in the proposed rule to “during any period” in the final rule is done for clarification to make it clear that the contracting officer shall not authorize the use of the commercial purchase card for payment at any time when the CCR registration shows that the contractor has delinquent debt that is subject to collection under TOP.

The basis for each change and analysis of all public comments follows.

**1. Comment:** One respondent commented that this rule should exclude Government card purchases made under the simplified acquisition procedures because non-contracting officers will not consistently check the CCR database for the debt collection flag.

**Response:** The FAR change is applicable to all acquisitions that include the CCR clauses (FAR 52.204–7 or FAR 52.212–4(t)). The only exclusions are in FAR 4.1102. Forcing personnel that have been designated as cardholders, but are not contracting officers, to perform the check for the debt flag indicator in the CCR database could be administratively burdensome

and may potentially curtail card usage. When the Governmentwide commercial purchase card is used as a method of payment for purchases above the micro-purchase threshold then contracting officers (COs) are required to check in the CCR database to see if there is a delinquent debt flag identified for the contractor. This has been further clarified with the added language in FAR 13.201(h). In addition, language has been added to the FAR text at FAR 8.402 and FAR 16.505, clarifying that when placing orders at or below the micro-purchase threshold, CCR does not have to be checked for the debt flag indicator.

**2. Comment:** One respondent commented that the proceeds of simplified acquisition procedures are unlikely to make a serious dent in the indebtedness of businesses.

**Response:** The \$73.5 million is a yearly total for the Governmentwide commercial purchase cards only and is considered significant. This remedy is directed specifically at Government contractors who owe delinquent debt, yet continue to do business with the Government. Collections of \$73.5 million per year represent a significant portion of the debt owed by this population. In addition, the collection of the \$3.1 billion is being pursued utilizing other mechanisms.

**3. Comment:** Five respondents recommended this rule be applicable only to purchases above the micro-purchase threshold. One questioned whether the requirement to check CCR was applicable to orders placed on GSA Advantage or DoD eMail by a purchase cardholder who is not a warranted contracting officer.

**Response:** The Councils agree that purchases at or below the micro-purchase threshold are excluded from the requirement to check the CCR database for the debt flag indicator when using the Governmentwide commercial purchase card as a method of payment. FAR 13.201(h) has been added to make it very clear that the CCR database is not required to be checked for the delinquent debt flag whenever the purchase is below the micro-purchase threshold. In addition, language has been added at FAR 8.402 and FAR 16.505, to make it clear that the CCR database is required to be checked for the delinquent debt flag whenever the order is above the micro-purchase threshold when the Governmentwide commercial purchase card is used as a method of payment by a contracting officer.

**4. Comment:** One respondent stated that “it would also be nice if GSA contracts specify that payments may not

be made through the charge card for existing and new contracts.”

**Response:** The responsibility to include the FAR clause at 52.232–36 is whenever the purchase card will be used as a method of payment under a contract as outlined in the prescription in FAR 32.1110(d). The responsibility to check the CCR database for GSA contractors with a delinquent debt flag is a requirement and a duty of the GSA contracting officer prior to award of a contract or issuance or placement of an order. It is the responsibility of the ordering agency/office contracting officer to check the CCR database for contractors with a delinquent debt flag prior to placing an order against a GSA schedule contract when the purchase is above the micro-purchase threshold and when the Governmentwide commercial purchase card is used as the method of payment.

**5. Comment:** One respondent expressed concern about the burden on the contracts/procurement folks of the Government and stated that if the Government really wanted to solve the problem the Government would automate the VISA/Governmentwide commercial purchase card system to perform the debt collection offset.

**Response:** It is within the discretion of the Government to assign duties to Government employees in order to achieve the Government’s policies.

The Federal Contractor Tax Compliance (FCTC) task force and a purchase card subgroup extensively studied and determined that blocking Federal payment to delinquent contractors that way is not an option. According to industry members, the current commercial Merchant Category Code blocking process and authorization and transactions settlement processes do not have the capabilities to block transactions for individual vendors. Therefore blocking transactions at the point of sale for merchants that are delinquent on their taxes is not feasible. Currently there are no commercial systems available that have the technological capability to subject specific purchase card payments to the Federal Payment Levy Program (FPLP). Therefore, it has been determined that it is not currently possible or feasible to implement automating the offset of Governmentwide commercial purchase card payments within the VISA/Governmentwide Purchase Card system.

**6. Comment:** One respondent questioned whether transactions below the micro-purchase threshold were studied.

**Response:** The Financial Management Service within the U.S. Department of

Treasury did study those transactions below the micro-purchase threshold level and the Program Director of the GSA Office of Charge Card Management has stated that while purchases below the micro-purchase threshold represent a large percentage of the volume of purchase card transactions, they represent a relatively small percentage of the dollars expended and not worthy of the administrative burden of checking the CCR database for the debt collection flag.

**7. Comment:** One respondent questioned whether changing the payment method would put an awkward burden on the front-line folks.

**Response:** The requirement to check the CCR database at contract award or order placement or issuance, should be completed in advance so that the payment mechanism could be worked out between the parties. In addition, the Contractor may choose to pay their delinquent debt rather than change the payment method. If the contractor pays the debt, the debt flag will be removed from the CCR database, and this will enable the use of the Governmentwide commercial purchase card as a method of payment. Otherwise, other alternate payment methods/clauses will have to be utilized because the use of the Governmentwide commercial purchase card is prohibited as a payment method if a debt flag is identified for the contractor in the CCR database.

**8. Comment:** One respondent asked what the contracting officer should do if there is no CCR registration or it is inactive when a contracting officer attempts to place an order or exercise an option.

**Response:** The contracting officer should plan well in advance of awarding a contract or placing or issuing an order by checking the CCR database to ensure the contractor registration has not expired. If it has expired, then the contracting officer should encourage the contractor/offeror to renew their registration in CCR prior to placing the order as required by their respective contract or agreement. By now all contractors should have registered in CCR unless they were given an exception. The contracting officer for an order for which there is no CCR registration should assume the contractor was given an exception at the time of contract award and so need not worry about checking for the flag. The proposed rule requirement for the contracting officer to check CCR prior to option exercise has been removed by the Councils in the final rule.

**9. Comment:** One respondent asked what contracting officers are supposed to do if the instant acquisition is exempt

from being registered in the CCR database.

**Response:** If the instant acquisition is exempt from CCR as outlined in FAR 4.1102 then the contracting officer does not have to check CCR for registration. However, if the acquisition is not exempt as prescribed by FAR 4.1102, the contracting officer must make efforts to encourage the contractor/offeror to register in CCR or the offeror will not be permitted to receive an award.

**10. Comment:** One respondent commented that the FAR clause at 52.232-36, Payments by Third Party, should be a required clause when payment by the purchase card is contemplated and therefore, the prescription should be modified as the clause shall be required because it is not discretionary.

**Response:** The Councils agree the clause is not discretionary and believe it is clear in the prescription of the clause at FAR 32.1110(d).

**11. Comment:** One respondent commented that the CCR database has not yet implemented the Federal Debt Flag functionality in the public search record.

**Response:** The CCR database has been modified to include the debt flag indicator and will be fully operational and accessible by the time this case is issued as a final rule.

**12. Comment:** A respondent questioned the inappropriate terms used in the preamble to the proposed rule in the statements "instead, the processing bank for the Governmentwide commercial purchase card pays the contractor" and "To assess the significance of the problem, FMS and Visa, one of the processing banks...".

The respondent asserted that the Acquiring Bank submits the payment to the contractor's bank account. The GSA SmartPay® contracted banks are issuing banks and do not directly pay the merchants. Acquiring Banks (a.k.a. Merchant Banks) are the banks that do business with merchants who accept charge cards. A merchant has an account with this bank and each day deposits the value of the day's charge card sales. Acquirers buy (acquire) the merchant's sales slips and credit the ticket's value to the merchant's account. VISA is an Association, not a bank. VISA is a retail electronic payments network and global financial services brand. It facilitates global commerce through the transfer of information among financial institutions, merchants, consumers, businesses, and Government entities.

**Response:** The Councils agree, with the exception that not only VISA, but Master Card also is an Association, the

Background section of the proposed rule contained an erroneous statement.

**13. Comment:** One respondent stated that, "Our primary objection to the proposed rule is the use of delinquent debts reported under the Treasury Offset Program as a basis for restricting use of a Governmentwide commercial purchase card as a method of payment to contractors. We believe many of the debts reported under TOP are highly inaccurate and do not satisfy the requirements of the Debt Collections Improvement Act of 1996. When the statute was enacted in 1996, it contained a requirement to notify contractors of claims established under the Act. The processes and systems established to notify contractors failed to comply with the statutory notification required. There have been many reports of cases where withholds have been taken in error and cases where advance notice of intent to withhold was not received by a responsible individual in the employ of the company."

**Response:** Before a nontax debt may be submitted to the Treasury Offset Program for collection by offset, agencies must certify to Treasury that the debt is valid and that all due process requirements have been met (31 CFR 285.5(c)(6)). These due process requirements include notice and an opportunity to dispute the debt (31 U.S.C. 3716). Actual receipt of the notice by the debtor is not required provided the agency has made a reasonable attempt to notify the debtor. Debtors are afforded notice and an opportunity to dispute debts prior to an offset or levy under the Treasury Offset Program. In the case of tax debts, the notice requirements contained in the Internal Revenue Code are followed. Additionally, when an offset or levy occurs, a notice is sent to the debtor that includes contact information to address any concerns regarding the offset or levy.

**14. Comment:** One respondent stated that the inaccurate tax information could lead to erroneous award decisions by contracting officers.

**Response:** This rule does not impact contract award decisions by contracting officers. The rule precludes the use of the Governmentwide commercial purchase card as a method of payment only and does not affect the award.

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 only impacts the method by which a contractor can be paid when the contractor has a delinquent debt.

**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 4, 8, 13, 16, 32, and 52**

Government procurement.

Dated: November 30, 2009.

**Al Matera,**

*Director, Acquisition Policy Division.*

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 4, 8, 13, 16, 32, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 4, 8, 13, 16, 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 4—ADMINISTRATIVE MATTERS**

■ 2. Amend section 4.1103 by revising paragraph (a)(3) to read as follows:

**4.1103 Procedures.**

(a) \* \* \*

(3) Need not verify registration before placing an order or call if the contract or agreement includes the clause at 52.204-7, or 52.212-4(t), or a similar agency clause, except when use of the Governmentwide commercial purchase card is contemplated as a method of payment. (See 32.1108(b)(2)).

\* \* \* \* \*

**PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES**

■ 3. Amend section 8.402 by adding paragraph (g) to read as follows:

**8.402 General.**

\* \* \* \* \*

(g) When using the Governmentwide commercial purchase card as a method of payment, orders at or below the micro-purchase threshold are exempt from verification in the Central

Contractor Registration (CCR) database as to whether the contractor has a delinquent debt subject to collection under the Treasury Offset Program (TOP).

■ 4. Revise section 8.405-7 to read as follows:

**8.405-7 Payment.**

Agencies may make payments for oral or written orders by any authorized means, including the Governmentwide commercial purchase card (but see 32.1108(b)(2)).

**PART 13—SIMPLIFIED ACQUISITION PROCEDURES**

■ 5. Amend section 13.003 by revising paragraph (e) to read as follows:

**13.003 Policy.**

\* \* \* \* \*

(e) Agencies shall use the Governmentwide commercial purchase card and electronic purchasing techniques to the maximum extent practicable in conducting simplified acquisitions (but see 32.1108(b)(2)).

\* \* \* \* \*

■ 6. Amend section 13.201 by adding paragraph (h) to read as follows:

**13.201 General.**

\* \* \* \* \*

(h) When using the Governmentwide commercial purchase card as a method of payment, purchases at or below the micro-purchase threshold are exempt from verification in the Central Contractor Registration (CCR) database as to whether the contractor has a delinquent debt subject to collection under the Treasury Offset Program (TOP).

■ 7. Amend section 13.301 by revising the first sentence of paragraph (a) and (c)(3) to read as follows:

**13.301 Governmentwide commercial purchase card.**

(a) Except as provided in 32.1108(b)(2), the Governmentwide commercial purchase card is authorized for use in making and/or paying for purchases of supplies, services, or construction. \* \* \*

\* \* \* \* \*

(c) \* \* \*

(3) Make payments, when the contractor agrees to accept payment by the card (but see 32.1108(b)(2)).

**PART 16—TYPES OF CONTRACTS**

■ 8. Amend section 16.505 by adding paragraph (a)(11) to read as follows:

**16.505 Ordering.**

(a) \* \* \*

(11) When using the Governmentwide commercial purchase card as a method of payment, orders at or below the micro-purchase threshold are exempt from verification in the Central Contractor Registration (CCR) database as to whether the contractor has a delinquent debt subject to collection under the Treasury Offset Program (TOP).

\* \* \* \* \*

**PART 32—CONTRACT FINANCING**

■ 9. Amend section 32.1108 by revising paragraph (b) to read as follows:

**32.1108 Payment by Governmentwide commercial purchase card.**

\* \* \* \* \*

(b)(1) Written contracts to be paid by purchase card should include the clause at 52.232-36, Payment by Third Party, as prescribed by 32.1110(d). However, payment by a purchase card also may be made under a contract that does not contain the clause to the extent the contractor agrees to accept that method of payment.

(2)(i) When it is contemplated that the Governmentwide commercial purchase card will be used as the method of payment, and the contract or order is above the micro-purchase threshold, contracting officers are required to verify (by looking in the Central Contractor Registration (CCR)) whether the contractor has any delinquent debt subject to collection under the Treasury Offset Program (TOP) at contract award and order placement. Information on TOP is available at <http://fms.treas.gov/debt/index.html>.

(ii) The contracting officer shall not authorize the Governmentwide commercial purchase card as a method of payment during any period the CCR indicates that the contractor has delinquent debt subject to collection under the TOP. In such cases, payments under the contract shall be made in accordance with the clause at 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer—Other Than Central Contractor Registration, as appropriate (see FAR 32.1110(d)).

(iii) Contracting officers shall not use the presence of the CCR debt flag indicator to exclude a contractor from receipt of the contract award or issuance or placement of an order.

(iv) The contracting officer may take steps to authorize payment by Governmentwide commercial purchase card when a contractor alerts the contracting officer that the CCR debt flag

indicator has been changed to no longer show a delinquent debt.

\* \* \* \* \*

■ 10. Amend section 32.1110 by adding a new sentence to the end of paragraph (d) to read as follows:

**32.1110 Solicitation provision and contract clauses.**

\* \* \* \* \*

(d) \* \* \* When the clause at 52.232–36 is included in a solicitation or contract, the contracting officer shall also insert the clause at 52.232–33, Payment by Electronic Funds Transfer—Central Contractor Registration, or 52.232–34, Payment by Electronic Funds Transfer—Other Than Central Contractor Registration, as appropriate.

\* \* \* \* \*

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 11. Amend section 52.212–5 by revising the date of the clause and paragraph (b)(40) 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 (FEB 2010)

\* \* \* \* \*

(b) \* \* \*  
 (40) 52.232–36, Payment by Third Party (FEB 2010) (31 U.S.C. 3332).

\* \* \* \* \*

■ 12. Amend section 52.232–36 by revising the date of the clause and paragraphs (a) and (b) to read as follows:

**52.232–36 Payment by Third Party.**

\* \* \* \* \*

PAYMENT BY THIRD PARTY (FEB 2010)  
 (a) *General.* (1) Except as provided in paragraph (a)(2) of this clause, the Contractor agrees to accept payments due under this contract, through payment by a third party in lieu of payment directly from the Government, in accordance with the terms of this clause. The third party and, if applicable, the particular Governmentwide commercial purchase card to be used are identified elsewhere in this contract.

(2) The Governmentwide commercial purchase card is not authorized as a method of payment during any period the Central Contractor Registration (CCR) indicates that the Contractor has delinquent debt that is subject to collection under the Treasury Offset Program (TOP). Information on TOP is available at <http://fms.treas.gov/debt/index.html>. If the CCR subsequently indicates that the Contractor no longer has delinquent debt, the Contractor may request the Contracting Officer to authorize payment by Governmentwide commercial purchase card.

(b) *Contractor payment request.* (1) Except as provided in paragraph (b)(2) of this clause, the Contractor shall make payment requests through a charge to the Government account with the third party, at the time and for the amount due in accordance with those clauses of this contract that authorize the Contractor to submit invoices, contract financing requests, other payment requests, or as provided in other clauses providing for payment to the Contractor.

(2) When the Contracting Officer has notified the Contractor that the Governmentwide commercial purchase card is no longer an authorized method of payment, the Contractor shall make such payment requests in accordance with instructions provided by the Contracting Officer during the period when the purchase card is not authorized.

\* \* \* \* \*

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 7, 11, 12, and 39**

[FAC 2005–38; FAR Case 2005–041; Item III; Docket 2009-0042, Sequence 1]

RIN 9000–AK57

**Federal Acquisition Regulation; FAR Case 2005–041, Internet Protocol Version 6 (IPv6)**

**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 require Internet Protocol Version 6 (IPv6) compliant products be included in all new information technology (IT) acquisitions using Internet Protocol (IP). IP is one of the primary mechanisms that define how and where information moves across networks. The widely-used IP industry standard is IP Version 4 (IPv4). The Office of Management and Budget (OMB) Memorandum M–05–22, dated August 2, 2005, requires all new IT procurements, to the maximum extent practicable, to include IPv6 capable products and standards.

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

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–38, FAR case 2005–041.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

To guide the Federal Government in its transition to IPv6, OMB issued Memorandum M–05–22, Transition Planning for Internet Protocol Version 6, which outlined a transition strategy for agencies to follow and established the goal for all Federal agency network backbones to support IPv6 by June 30, 2008. This guidance initiated the development for an addressing mechanism to increase the amount of available IP address space and support interconnected networks to handle increasing streams of text, voice, and video without compromising IPv4 capability or network security. Such benefits offered by IPv6 include (1) A platform for innovation, collaboration, and transparency; (2) Integrated interoperability and mobility; (3) Improved security features and; (4) Unconstrained address abundance. To begin the planning, agencies can achieve valuable benefits from IPv6 using the “IPv6 Planning Guide and Roadmap” to begin the planning for improvement in operational efficiencies and citizen services. This direction is necessary due to the inability of IPv4 to meet the Government’s long-term business needs because of limited robustness, scalability, and features. In coordination with OMB, the National Institute of Standards and Technology (NIST) developed additional standards and testing infrastructures to support agency plans for IPv6 adoption. The U.S. Government version 6 (USGv6) profile defines effective dates for its mandatory requirements so as to provide vendors a 24-month lead time to implement and test. The earliest effective date in version 1 of the profile is July, 2010. For NIST IPv6 information, visit <http://www.antd.nist.gov/usgv6>.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 71 FR 50011, August 24, 2006, to amend the FAR to ensure that all new IT acquisitions using Internet Protocol are IPv6 compliant. Proactive integration of IPv6 requirements into Federal contracts may reduce the costs and complexity of transition by ensuring that Federal applications can operate in an IPv6