

differences in airfare based upon timing and load factors. Employees of the same contractor on the same flight might incur different airfare prices based on supply and demand. Determination of allowable airfare based upon this proposed rule of the “available air fare standard” will be more difficult to determine than exists under the current cost principle. We see no need for the proposed revision as it appears to be based upon the premise that there is only one negotiated price a contractor will pay for a flight.

Response: This amendment does not establish any “available air fare standard” nor does the amendment presume that there is only one negotiated price a contractor can pay for a particular flight. The final rule eliminates the reference to “coach or equivalent”.

10. *Comment:* There are two parts to this comment. (1) The proposed amendment is perceived to require a comparison of coach class fares available to determine the lowest available for allowability purposes; as such, the comparison would be impossible to apply systematically for a number of reasons, most notably the disparity in the nature of price reductions. A specific flight with a negotiated airfare may appear to be the lowest cost when purchasing the ticket, but in fact a flight with a different airline providing a volume rebate later has a lower net cost. Throughout the cost principles is the underlying concept that only reasonable costs will be reimbursed. The measure of what is reasonable has never been interpreted to represent only the absolutely lowest cost available. (2) Also, elimination of the word “standard” from paragraph (b) of the cost principle creates a conflict with paragraph (c)(2) of the cost principle which requires comparison to “standard airfare” for travel costs by contractor-owned, -leased, or chartered aircraft.

Response: With respect to the first comment, the Councils do not believe the revision will be impossible to apply systematically. The amendment is not intended to guide contractors through the decision-making process of selecting the most economical airfare with the lowest net cost when multiple corporate airfare agreements are in place, as this is properly addressed in the contractor’s policies and procedures that should be applied appropriately and reasonably in the circumstances of each travel mission and its associated scheduling requirements. In relying on the contractor’s procedures to select the most economical airfare appropriate in the circumstances, this amendment only

seeks to clarify for the contractor that it should use the lowest airfare available to the contractor that meets the schedule requirements of the trip rather than considering only airfare available to the general public for the same flight. This amendment makes explicit that the lowest of the two should be selected as the appropriate baseline.

With respect to the second comment, the noted “conflict” created among paragraphs (b) and (c)(2) by the elimination of the word “standard” from (b), the Councils appreciate the commenter’s observation and have replaced the word “standard” with “allowable” in paragraph (c)(2) where applicable.

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 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.* The Councils believe that few small businesses have negotiated rate agreements with airlines. The rule will primarily affect businesses with negotiated rate agreements who otherwise might seek to charge negotiated rates for first class or business travel which are lower than the coach rate available to the general public. Finally, no comments were received from small businesses on the Regulatory Flexibility Act statement in the proposed 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. chapter 35, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: November 30, 2009.

Al Matera,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 31 as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 1. The authority citation for 48 CFR part 31 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 31.205–46 by revising paragraph (b); and by removing from paragraph (c)(2) introductory text the word “standard” and replacing it with the word “allowable” wherever it appears (twice). The revised text reads as follows:

31.205–46 Travel costs.

* * * * *

(b) Airfare costs in excess of the lowest priced airfare available to the contractor during normal business hours are unallowable except when such accommodations require circuitous routing, require travel during unreasonable hours, excessively prolong travel, result in increased cost that would offset transportation savings, are not reasonably adequate for the physical or medical needs of the traveler, or are not reasonably available to meet mission requirements. However, in order for airfare costs in excess of the above airfare to be allowable, the applicable condition(s) set forth above must be documented and justified.

* * * * *

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 6, 8, 15, and 52

[FAC 2005–38; Item VII; Docket 2009–0003; Sequence 6]

Federal Acquisition Regulation; Technical Amendments

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:* December 10, 2009.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, 1800 F Street,

NW., Room 4041, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. Please cite FAC 2005-38, Technical Amendments.

SUPPLEMENTARY INFORMATION: This document makes amendments to the Federal Acquisition Regulation in order to make editorial changes.

List of Subjects in 48 CFR Parts 6, 8, 15, and 52

Government procurement.

Dated: November 30, 2009.

Al Matera,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 6, 8, 15, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 6, 8, 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 6—COMPETITION REQUIREMENTS

■ 2. Amend section 6.302-2 by revising paragraph (d) to read as follows:

6.302-2 Unusual and compelling urgency.

* * * * *

(d) *Period of Performance.* (1) The total period of performance of a contract awarded using this authority—

(i) May not exceed the time necessary—

(A) To meet the unusual and compelling requirements of the work to be performed under the contract; and

(B) For the agency to enter into another contract for the required goods and services through the use of competitive procedures; and

(ii) May not exceed one year unless the head of the agency entering into the

contract determines that exceptional circumstances apply.

(2) The requirements in paragraph (d)(1) of this section shall apply to any contract in an amount greater than the simplified acquisition threshold.

(3) The determination of exceptional circumstances is in addition to the approval of the justification in 6.304.

(4) The determination may be made after contract award when making the determination prior to award would unreasonably delay the acquisition.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.703 [Amended]

■ 3. Amend section 8.703 by removing “<http://www.abilityone.gov/jwod/PL.html>” and adding “<http://www.abilityone.gov/index.html>” in its place.

PART 15—CONTRACTING BY NEGOTIATION

15.305 [Amended]

■ 4. Amend section 15.305 by removing from paragraph (a)(5) “15.304(c)(3)(iii)” and adding “15.304(c)(3)(ii)” in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.209-6 [Amended]

■ 5. Amend section 52.209-6 by removing from the introductory paragraph “9.409(b)” and adding “9.409” in its place.

52.212-5 [Amended]

■ 6. Amend section 52.212-5, in Alternate I, by removing “12.301(b)(4)” and adding “12.301(b)(4)(i)” in its place.

[FR Doc. E9-28937 Filed 12-9-09; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2009-0002, Sequence 9]

Federal Acquisition Regulation; Federal Acquisition Circular 2005-38; 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) 2005-38 which amend the FAR. Interested parties may obtain further information regarding these rules by referring to FAC 2005-38 which precedes this document. These documents are also available via the Internet at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Hada Flowers, FAR Secretariat, (202) 208-7282. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2005-38

Item	Subject	FAR case	Analyst
I	Revocation of Executive Order 13201, Notification of Employee Rights Concerning Payment of Union Dues or Fees.	2009-017	Cundiff.
II	Governmentwide Commercial Purchase Card Restrictions for Treasury Offset Program Debts ...	2006-026	Jackson.
III	Internet Protocol Version 6 (IPv6)	2005-041	Woodson.
IV	Federal Food Donation Act of 2008 (Pub. L. 110-247)	2008-017	Jackson.
V	Postretirement Benefits (PRB), FAS 106	2006-021	Chambers.
VI	Travel Costs	2006-024	Chambers.
VII	Technical Amendments		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005-38 amends the FAR as specified below:

Item I—Revocation of Executive Order 13201, Notification of Employee Rights Concerning Payment of Union Dues or Fees (FAR Case 2009-017)

This final rule amends the FAR to delete FAR subpart 22.16 and the corresponding FAR clause at 52.222-39,