

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

#### IV. 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 contractors are already required to annually track and report their veteran workforces on the VETS-100 Form in accordance with the Vietnam Era Veterans' Readjustment Assistance Act of 1972, as amended by the Jobs for Veterans Act. This rule implemented a new form, VETS-100A that simply includes the revised categories of veterans for reporting purposes.

#### V. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

#### List of Subjects in 48 CFR Parts 1, 22, and 52

Government procurement.

Dated: June 28, 2011.

Laura Auletta,

Acting Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy.

Accordingly, the interim rule amending 48 CFR parts 1, 22, and 52, which was published in the **Federal Register** at 75 FR 60249, September 29, 2010, is adopted as final with the following changes:

#### PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 1. The authority citation for 48 CFR part 22 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 22.1301 by adding, in alphabetical order, the definition "Executive and senior management" to read as follows:

#### 22.1301 Definitions.

\* \* \* \* \*

*Executive and senior management* means—

- (1) Any employee—
  - (i) Compensated on a salary basis at a rate of not less than \$455 per week (or \$380 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging, or other facilities;
  - (ii) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;
  - (iii) Who customarily and regularly directs the work of two or more other employees; and
  - (iv) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; or
- (2) Any employee who owns at least a bona fide 20-percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management.

\* \* \* \* \*

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#### DEPARTMENT OF DEFENSE

#### GENERAL SERVICES ADMINISTRATION

#### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 4

[FAC 2005-53; FAR Case 2009-023; Item II; Docket 2010-0094, Sequence 1]

RIN 9000-AL70

#### Federal Acquisition Regulation; Unique Procurement Instrument Identifier

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to standardize use of unique Procurement Instrument Identifiers (PIID) throughout the Government. The lack of consistent agency policies and procedures for PIIDs subjected users of contract data, including the Federal Government, contractors, and the public, to potential

duplicate, overlapping, or conflicting information from the different Federal agencies.

**DATES:** *Effective Date:* August 4, 2011.

**FOR FURTHER INFORMATION CONTACT:** Mr. Karlos Morgan, Procurement Analyst, at (202) 501-2364 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-53, FAR Case 2009-023.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 75 FR 50731 on August 17, 2010, to standardize the use of unique PIIDs throughout the Government. Four respondents submitted comments on the proposed rule.

##### II. Discussion and Analysis of the Public Comments

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

##### A. Agency and Office Identifier

*Comment:* A respondent provided a suggestion that the prescribed identifiers include not only an agency identifier, but an office identifier as well.

*Response:* At this time, not all agencies have an office-unique identifier. However, as data standardization efforts progress, this may be a future area of consideration.

##### B. Amendments

*Comment:* A respondent suggested that the term "amendments" be removed from the proposed FAR 4.605, as "amendments" are not reported to the Federal Procurement Data System (FPDS).

*Response:* "Amendments" will be removed from the identified part, and replaced with "solicitations", because solicitation numbers are included in FPDS contract action reports.

##### C. Consistent Government Format

*Comment:* Two respondents requested a consistent format for the PIIDs across the Government.

*Response:* At this time it is not cost effective to transition all Federal agencies to a single PIID format across the Government.

#### D. Linkage of Old and New PIIDs

*Comment:* A respondent suggested adding language to proposed FAR 4.1601(f) to require linking any new PIID assigned to an award to the old originating PIID.

*Response:* Language was added to FAR 4.1601(f) as suggested.

#### E. New Contractor Identification

*Comment:* Two respondents suggested the creation of a new contractor identification system within the public domain.

*Response:* This request is out of scope for this case.

### III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### IV. 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 it will not impose new requirements on industry. It only provides internal Government policies and procedures.

### V. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

#### List of Subjects in 48 CFR Part 4

Government procurement.

Dated: June 28, 2011.

**Laura Auletta,**

*Acting Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy.*

Therefore, DoD, GSA, and NASA amend 48 CFR part 4 as follows:

### PART 4—ADMINISTRATIVE MATTERS

■ 1. The authority citation for 48 CFR part 4 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. Add section 4.001 to read as follows:

#### 4.001 Definitions.

As used in this part—  
*Procurement Instrument Identifier (PIID)* means the Government-unique identifier for each solicitation, contract, agreement, or order. For example, an agency may use as its PIID for procurement actions, such as delivery and task orders or basic ordering agreements, the order or agreement number in conjunction with the contract number (see 4.1602).

*Supplementary procurement instrument identifier* means the non-unique identifier for a procurement action that is used in conjunction with the Government-unique identifier. For example, an agency may use as its PIID for an amended solicitation, the Government-unique identifier for a solicitation number (*e.g.*, N0002309R0009) in conjunction with a non-unique amendment number (*e.g.*, 0001). The non-unique amendment number represents the supplementary PIID.

■ 3. Amend section 4.605 by revising paragraph (a) to read as follows:

#### 4.605 Procedures.

(a) *Procurement Instrument Identifier (PIID)*. Agencies shall have in place a process that ensures that each PIID reported to FPDS is unique Governmentwide, for all solicitations, contracts, blanket purchase agreements, basic agreements, basic ordering agreements, or orders in accordance with 4.1601, and will remain so for at least 20 years from the date of contract award. Other pertinent PIID instructions for FPDS reporting can be found at <https://www.fpds.gov>.

■ 4. Add subpart 4.16 to read as follows:

### Subpart 4.16—Unique Procurement Instrument Identifiers

Sec.

4.1600 Scope of subpart.

4.1601 Policy.

4.1602 Identifying the PIID and supplementary PIID.

### Subpart 4.16—Unique Procurement Instrument Identifiers

#### 4.1600 Scope of subpart.

This subpart prescribes policies and procedures for assigning unique Procurement Instrument Identifiers (PIID) for each solicitation, contract, agreement, or order and related procurement instrument.

#### 4.1601 Policy.

(a) *Procurement Instrument Identifier (PIID)*. Agencies shall have in place a process that ensures that each PIID used to identify a solicitation or contract action is unique Governmentwide, and will remain so for at least 20 years from the date of contract award.

(b) Agencies must submit their proposed identifier format to the General Services Administration's Integrated Acquisition Environment Program Office, which maintains a registry of the agency-unique identifier schemes.

(c) The PIID shall consist of alpha characters in the first positions to indicate the agency, followed by alpha-numeric characters according to agency procedures.

(d) The PIID shall be used to identify all solicitation and contract actions. The PIID shall also be used to identify solicitation and contract actions in designated support and reporting systems (*e.g.*, Federal Procurement Data System, Past Performance Information Retrieval System), in accordance with regulations, applicable authorities, and agency policies and procedures.

(e) Agencies shall not change the PIID, unless the conditions in paragraph (f) of this section exist.

(f) If continued use of a PIID is not possible or is not in the Government's best interest solely for administrative reasons (*e.g.*, for implementations of new agency contracting systems), the contracting officer may assign a new PIID by issuing a modification. The modification shall clearly identify both the original and the newly assigned PIID.

#### 4.1602 Identifying the PIID and supplementary PIID.

(a) *Identifying the PIID in solicitation and contract award documentation (including forms and electronic generated formats)*. Agencies shall include all PIIDs for all related procurement actions as identified in paragraphs (a)(1) through (5) of this section.

(1) *Solicitation*. Identify the PIID for all solicitations. For amendments to

solicitations, identify a supplementary PIID, in conjunction with the PIID for the solicitation.

(2) *Contracts and purchase orders.* Identify the PIID for contracts and purchase orders.

(3) *Delivery and task orders.* For delivery and task orders placed by an agency under a contract (e.g., indefinite delivery indefinite quantity (IDIQ) contracts, multi-agency contracts (MAC), Governmentwide acquisition contracts (GWACs), or Multiple Award Schedule (MAS) contracts), identify the PIID for the delivery and task order and the PIID for the contract.

(4) *Blanket purchase agreements and basic ordering agreements.* Identify the PIID for blanket purchase agreements issued in accordance with 13.303, and for basic agreements and basic ordering agreements issued in accordance with subpart 16.7. For blanket purchase agreements issued in accordance with subpart 8.4 under a MAS contract, identify the PIID for the blanket purchase agreement and the PIID for the MAS contract.

(i) *Orders.* For orders against basic ordering agreements or blanket purchase agreements issued in accordance with 13.303, identify the PIID for the order and the PIID for the blanket purchase agreement or basic ordering agreement.

(ii) *Orders under subpart 8.4.* For orders against a blanket purchase agreement established under a MAS contract, identify the PIID for the order, the PIID for the blanket purchase agreement, and the PIID for the MAS contract.

(5) *Modifications.* For modifications to actions described in paragraphs (a)(2) through (4) of this section, and in accordance with agency procedures, identify a supplementary PIID for the modification in conjunction with the PIID for the contract, order, or agreement being modified.

(b) *Placement of the PIID on forms.* When the form (including electronic generated format) does not provide spaces or fields for the PIID or supplementary PIID required in paragraph (a) of this section, identify the PIID in accordance with agency procedures.

(c) *Additional agency specific identification information.* If agency procedures require additional identification information in solicitations, contracts, or other related procurement instruments for administrative purposes, identify it in such a manner so as to separate it clearly from the PIID.

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 9 and 52

[FAC 2005-53; FAR Case 2009-036; Item III; Docket 2010-0109, Sequence 1]

RIN 9000-AL75

#### Federal Acquisition Regulation; Uniform Suspension and Debarment Requirement

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** DoD, GSA, and NASA have adopted as final, with changes, the interim rule amending the Federal Acquisition Regulation (FAR) to implement section 815 of the National Defense Authorization Act for Fiscal Year 2010. Section 815 extends the flow down of limitations on subcontracting with entities that have been debarred, suspended, or proposed for debarment.

**DATES:** *Effective Date:* August 4, 2011.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael O. Jackson, Procurement Analyst, at (202) 208-4949 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-53, FAR Case 2009-036.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 75 FR 77739 on December 13, 2010, to implement section 815 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111-84). Section 815 amends section 2455(c)(1) of the Federal Acquisition Streamlining Act of 1994 (FASA) (31 U.S.C. 6101 note) by amending the definition of “procurement activities” to include subcontracts at any tier, except—

- It does not include subcontracts for commercially available off-the-shelf items (COTS); and
- In the case of commercial items, such term includes only the first-tier subcontracts.

This has the effect, except for commercial items and COTS items, of expanding the requirement of section 2455(a), which states that “No agency shall allow a party to participate in any

procurement \* \* \* activity if any agency has debarred, suspended, or otherwise excluded \* \* \* that party from participation in a procurement \* \* \* activity.”

Therefore, the interim rule amended the FAR clause at 52.209-6, Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, by flowing down the requirements for the contractor or higher-tier subcontractor to check whether a subcontractor beyond the first tier is debarred, suspended, or proposed for debarment, with the stated dollar threshold and exceptions for commercial items and COTS items. As in the current clause, the contractor and higher-tier subcontractors must also notify the contracting officer in writing before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment, providing the contractor’s knowledge of the reasons for the subcontractor being on the Excluded Parties Systems List, and the compelling reasons for doing business with the subcontractor, as well as the systems and procedures the contractor has established to ensure that it is fully protecting the Government’s interests. The contracting officer will now have more visibility into whether lower-tier subcontractors have been debarred, suspended, or proposed for debarment. Because commercial contracts must now flow the requirement down to the first tier, the clause was added to FAR 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

The comment period closed on February 11, 2011. Three respondents submitted comments on the interim rule.

##### II. Discussion/Analysis of the Public Comments

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

###### A. Dollar Threshold in FAR 9.405-2

*Comment:* One respondent recommended a rewrite of FAR 9.405-2 to clarify that the notification requirement does not apply to subcontracts under \$30,000.

*Response:* The Councils agree and have incorporated the requested change.