

**52.223-18 Encouraging Contractor Policies To Ban Text Messaging While Driving.**

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**Encouraging Contractor Policies To Ban Text Messaging While Driving (AUG 2011)**

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(c) The Contractor is encouraged to—

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 52**

[FAC 2005-53; FAR Case 2009-034; Item VI; Docket 2010-0098, Sequence 1]

RIN 9000-AL73

**Federal Acquisition Regulation; TINA Interest Calculations**

**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 revise the FAR clauses on price reduction for defective pricing to require compound interest calculations be applied to Government overpayments as a result of defective cost or pricing data.

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

**FOR FURTHER INFORMATION CONTACT:** Mr. Edward N. Chambers, Procurement Analyst, at (202) 501-3221 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 2009-034.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On September 14, 2009, the U.S. Court of Appeals for the Federal Circuit (CAFC) issued a decision regarding the method of interest calculation on Cost Accounting Standards (CAS) cost impacts (see *GATES v. Raytheon Co.*, 584 F.3d 1062 (Fed. Cir. 2009)). The interest on CAS cost impacts is set by reference in the enabling statute to 26 U.S.C. 6621. The CAFC ruled that the

citation led to calculation of the interest using daily compounding. The Truth in Negotiation Act (TINA) also references 26 U.S.C. 6621 for interest calculation. (See 41 U.S.C. 3507 and 10 U.S.C. 2306a).

A proposed rule was published on September 22, 2010, (75 FR 57719) with regard to the application of compound interest calculations to Government overpayments as a result of defective cost or pricing data. This rule replaces the term “simple interest” as the requirement for calculating interest for Truth in Negotiations Act cost impacts with the phrase “Interest compounded daily as required by 26 U.S.C. 6622.” Thus, compound interest calculations will be applied to Government overpayments as a result of defective cost or pricing data. DoD, GSA, and NASA received no comments on the proposed rule.

**II. 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.

**III. 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 merely clarifies the statutory method for calculating interest in the rare instances when a contractor is found to be in violation of TINA. Since TINA requirements generally do not apply to contracts with small entities, and since the numbers of contractors found to have submitted defective cost or pricing data are a minute subset of contractors to whom TINA applies, the rule is not expected to apply to a substantial number of small entities. Furthermore, the differential in interest

computing methods is not expected to amount to a significant economic impact.

**IV. 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 52**

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 52 as set forth below:

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

■ 1. The authority citation for 48 CFR part 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).

■ 2. Amend section 52.214-27 by revising the date of the clause and paragraph (e)(1) to read as follows:

**52.214-27 Price Reduction for Defective Certified Cost or Pricing Data—Modifications—Sealed Bidding.**

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**Price Reduction for Defective Certified Cost or Pricing Data—Modifications—Sealed Bidding (AUG 2011)**

\* \* \* \* \*

(e) \* \* \*

(1) Interest compounded daily, as required by 26 U.S.C. 6622, on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

\* \* \* \* \*

■ 3. Amend section 52.215-10 by revising the date of the clause and paragraph (d)(1) to read as follows:

**52.215-10 Price Reduction for Defective Certified Cost or Pricing Data.**

\* \* \* \* \*

**Price Reduction for Defective Certified Cost or Pricing Data (AUG 2011)**

\* \* \* \* \*

(d) \* \* \*

(1) Interest compounded daily, as required by 26 U.S.C. 6622, on the amount of such overpayment to be computed from the date(s)

of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

\* \* \* \* \*

■ 4. Amend section 52.215–11 by revising the date of the clause and paragraph (e)(1) to read as follows:

**52.215–11 Price Reduction for Defective Certified Cost or Pricing Data—Modifications.**

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**Price Reduction for Defective Certified Cost or Pricing Data—Modifications (AUG 2011)**

\* \* \* \* \*

(e) \* \* \*

(1) Interest compounded daily, as required by 26 U.S.C. 6622, on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary

of the Treasury under 26 U.S.C. 6621(a)(2); and

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

[Docket FAR 2011–0077, Sequence 5]

**Federal Acquisition Regulation; Federal Acquisition Circular 2005–53; Small Entity Compliance Guide**

**AGENCY:** 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 DOD, GSA,

and NASA. 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) 2005–53, which amend the Federal Acquisition Regulation (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 2005–53, which precedes this document. These documents are also available via the Internet at <http://www.regulations.gov>.

**DATES:** For effective dates see separate documents, which follow.

**FOR FURTHER INFORMATION CONTACT:** The analyst whose name appears in the table below. Please cite FAC 2005–53 and the specific FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755.

**SUPPLEMENTARY INFORMATION:**

**LIST OF RULES IN FAC 2005–53**

| Item      | Subject                                                                           | FAR case | Analyst   |
|-----------|-----------------------------------------------------------------------------------|----------|-----------|
| I .....   | Equal Opportunity for Veterans .....                                              | 2009–007 | McFadden. |
| II .....  | Unique Procurement Instrument Identifier .....                                    | 2009–023 | Morgan.   |
| III ..... | Uniform Suspension and Debarment Requirement .....                                | 2009–036 | Jackson.  |
| IV * ..   | Extension of Sunset Date for Protests of Task and Delivery Orders (Interim) ..... | 2011–015 | Lague.    |
| V .....   | Encouraging Contractor Policies To Ban Text Messaging While Driving .....         | 2009–028 | Clark.    |
| VI ...    | TINA Interest Calculations .....                                                  | 2009–034 | Chambers. |

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item numbers and subject set forth in the documents following these item summaries. FAC 2005–53 amends the FAR as specified below:

**Item I—Equal Opportunity for Veterans (FAR Case 2009–007)**

The interim rule, published September 29, 2010, is adopted as final with minor changes. A definition from the clause at FAR 52.222–35 for “executive and senior management” is added to FAR subpart 22.13. The interim rule implemented Department of Labor regulations on equal opportunity provisions for various categories of military veterans.

**Item II—Unique Procurement Instrument Identifier (FAR Case 2009–023)**

This final rule amends the FAR to define the requirement for an agency

unique procurement instrument identifier (PIID) and, to extend the requirement for using PIIDs to solicitations, contracts, and related procurement instruments.

This final rule adds two new definitions at 4.001, revises 4.605(a), and adds a new FAR subpart 4.16—Unique Procurement Instrument Identifiers, to prescribe policies and procedures for assigning PIIDs. The Government expects that these changes will reduce data errors and interoperability problems across the Federal Government’s business processes which were created by inconsistent and non-unique PIID assignment and use. These changes will not impose new requirements on small businesses, as the rule only addresses internal Government policy and procedures.

**Item III—Uniform Suspension and Debarment Requirement (FAR Case 2009–036)**

This rule adopts as final, with minor changes, an interim rule which implemented section 815 of the National Defense Authorization Act for Fiscal Year 2010, Public Law 111–84. The law requires that suspension and debarment requirements flow down to all subcontracts except contracts for commercially available off-the-shelf items, and in the case of commercial items, first-tier subcontracts only.

This requirement protects the Government against contracting with entities at any tier who are debarred, suspended, or proposed for debarment. This rule does not have a significant impact on the Government, contractors, or any automated systems.