

guidance on “best practices for collecting and using current and past performance information” be updated by adding best practices related to Articles 17.5.2(b) of the Korea Free Trade Agreement.

*Response:* Changes to the Office of Management and Budget guidance are outside the scope of this rule. The Councils note, however, that FAR 15.305(a)(2)(iv) already requires that, in the case of an offeror without a record of relevant past performance or for whom information on past performance is not available, the offeror may not be evaluated favorably or unfavorably on past performance.

### 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 a significant 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 Korea is already a designated country under the WTO GPA. Although the rule opens up Government procurement to the goods and services of Korea at or above the threshold of \$100,000, the Department of Defense only applies the trade agreements to the non-defense items listed at DFARS 225.401–70, and acquisitions that are set aside or provide other form of preference for small businesses are exempt from coverage of the agreement. FAR 19.502–2 states that acquisitions that do not exceed \$150,000 (except as described in paragraph (1) of the definition of “simplified acquisition threshold” at 2.101) are automatically reserved exclusively for small business concerns, unless the contracting officer

determines that there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns.

### V. Paperwork Reduction Act

The rule affects the certification and information collection requirements in the provisions at FAR 52.212–3 and 52.225–4, 52.225–6, and 52.225–11 currently approved under the Office of Management and Budget Control Numbers 9000–0136, 9000–0130, 9000–0025, and 9000–0141 respectively, in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The impact, however, is negligible because it is just a question of which category offered goods from the Republic of Korea would be listed under.

### List of Subjects in 48 CFR Parts 4, 25, and 52

Government procurement.

Dated: September 7, 2012.

**Laura Auletta,**

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

### Interim Rule Adopted as Final Without Changes

■ Accordingly, the interim rule amending 48 CFR parts 4, 25, and 52, which was published in the **Federal Register** at 77 FR 13952 on March 7, 2012, is adopted as a final rule without changes.

[FR Doc. 2012–22574 Filed 9–12–12; 8:45 am]

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 6

[FAC 2005–61; FAR Case 2012–026; Item II; Docket 2012–0026, Sequence 1]

RIN 9000–AM35

### Federal Acquisition Regulation; Delete Outdated FAR Reference to the DoD Industrial Preparedness Program

**AGENCY:** 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 delete references to the obsolete “DoD Industrial Preparedness Program”.

**DATES:** *Effective Date:* October 15, 2012

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah Lague, Procurement Analyst, at 202–694–8149, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–61, FAR Case 2012–026.

### SUPPLEMENTARY INFORMATION:

#### I. Background

DoD, GSA, and NASA are issuing a final rule to delete references to the obsolete “DoD Industrial Preparedness Program” at FAR 6.302–3(b)(iv).

In 1992, DoD rescinded the following regulations for the DoD’s Industrial Preparedness Program: DoD Directive 4005.1, Industrial Preparedness Program; and DoD Instruction 4005.3, Industrial Preparedness Planning. References to the program have already been removed from the Defense Federal Acquisition Regulation Supplement (DFARS) (71 FR 39004, July 11, 2006).

#### II. Publication of This Final Rule for Public Comment Is Not Required by Statute

“Publication of proposed regulations”, 41 U.S.C. 1707, is the statute which applies to the publication of the FAR. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operation procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment because it only deletes references to an obsolete program; which has neither a significant effect beyond the internal operation procedures of the agency issuing the policy, regulation, procedure or form, nor has a significant cost or administrative impact on contractors or offerors.

### 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 Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant FAR revision, and 41 U.S.C. 1707 does not require publication for public comment.

#### 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 Subject in 48 CFR Part 6

Government procurement.

Dated: September 7, 2012.

**Laura Auletta,**

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

Therefore, DoD, GSA, and NASA amend 48 CFR part 6 as set forth below:

#### PART 6—COMPETITION REQUIREMENTS

■ 1. The authority citation for 48 CFR part 6 is revised to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

##### 6.302–3 [Amended]

■ 2. Amend section 6.302–3 by removing paragraph (b)(1)(iv); and redesignating paragraphs (b)(1)(v) through (b)(1)(vii) as paragraphs (b)(1)(iv) through (b)(1)(vi), respectively.

[FR Doc. 2012–22577 Filed 9–12–12; 8:45 am]

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 19

[FAC 2005–61; FAR Case 2012–021; Item III; Docket 2012–0021, Sequence 1]

RIN 9000–AM32

#### Federal Acquisition Regulation; NAICS and Size Standards

**AGENCY:** 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 clarify that new North American Industry Classification System (NAICS) codes are not available for use in Federal contracting until the Small Business Administration (SBA) publishes corresponding industry size standards. Other corresponding changes were also made. Published industry size standards are available on SBA's Web site.

**DATES:** *Effective Date:* October 15, 2012

**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 2005–61 FAR Case 2012–021.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Every five years the Economic Classification Policy Committee (ECPC), an interagency committee established by the Office of Management and Budget (OMB), reviews NAICS codes for potential revisions to the classification system. The ECPC determines the feasibility and adherence to the underlying principles of NAICS, determines if the proposed changes are acceptable, and makes final recommendations to OMB for additions and changes to the NAICS manual.

The Small Business Administration (SBA) is responsible for developing size standards for each NAICS category on an industry by industry basis. Before a size standard is made available for use by industry, the SBA must solicit comments from the public through the rulemaking process and then coordinate

with General Services Administration to update the associated acquisition systems, to reflect industry size standards that have been adopted for new NAICS codes. SBA publishes the corresponding industry size standards on their Web site at <http://www.sba.gov/content/table-small-business-size-standards> and at 13 CFR 121.201.

Contracting officers must identify, in the solicitation or request for proposal, both the NAICS code that best describes the principal nature of the product or service being acquired and the size standard that has been established by the SBA for the NAICS code so that offerors can correctly represent themselves as a large or small business concern. The process used by OMB/ECPC for developing new NAICS codes and the process used by SBA to approve size standards for new NAICS codes, are not performed simultaneously. Therefore, it is important that new language be added to the FAR to clarify that new NAICS codes are not available for use in Federal contracting until SBA publishes corresponding industry size standards.

##### II. Discussion and analysis.

This final rule revises—

(1) FAR 19.001, to remove the Uniform Resource Locator (URL) for the NAICS manual, at the end of the definition for “Industry,” since this information is already provided in FAR 19.102(b)(1).

(2) FAR 19.102(a) to restructure as paragraphs (a)(1) and (a)(2). FAR 19.102(a)(1) provides the updated URL for the table of small business size standards and matching NAICS codes, and FAR 19.102(a)(2) adds language in the FAR which clarifies that new NAICS codes are not available for use in Federal contracting until SBA publishes corresponding industry size standards on its Web site;

(3) FAR 19.102(b)(1) to provide the updated URL for the NAICS manual;

(4) FAR 19.102(g) to delete this information as it is already provided in FAR 19.102(a)(1); and

(5) FAR 19.303(a), which discusses the determination and selection of NAICS codes, to include a reference to FAR 19.102(a).

##### III. Publication of This Final Rule for Public Comment Is Not Required by Statute.

“Publication of proposed regulations”, 41 U.S.C. 1707, is the statute which applies to the publication of the FAR. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or