

The specifics of the statutory requirement do not allow for alternative implementation strategies.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat. The Regulatory Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

#### V. Paperwork Reduction Act

This rule affects the information collection requirements in the provisions at FAR subpart 42.15, currently approved under OMB Control Number 9000-0142, entitled "Past Performance Information," in the amount of 1,200,000 hours, in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). This rule would shorten the contractors' response time, but it would not expand the reporting requirement. Therefore, the impact is considered negligible because contractors are already allowed to submit comments, rebutting statements, or additional information regarding agency evaluations of their performance. The number of contractors providing comments will be unaffected by this rule. Further, the type of information provided is not impacted by this proposed rule.

#### List of Subjects in 48 CFR Part 42

Government procurement.

Dated: May 22, 2014.

William Clark,

Acting Director, Office of Government-wide Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR part 42 as set forth below:

#### PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 1. The authority citation for 48 CFR part 42 continues to read as follows:

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

■ 2. Amend section 42.1503 by revising the third sentence in paragraph (d); and paragraph (f) to read as follows:

##### 42.1503 Procedures.

\* \* \* \* \*

(d) \* \* \* Contractors shall be afforded up to 14 calendar days from the date of notification of availability of the past performance evaluation to submit comments, rebutting statements, or additional information. \* \* \*

\* \* \* \* \*

(f) Agencies shall prepare and submit all past performance evaluations

electronically in the CPARS at <http://www.cpars.gov>. These evaluations, including any contractor-submitted information (with indication whether agency review is pending), are automatically transmitted to PPIRS at <http://www.ppirs.gov> not later than 14 days after the date on which the contractor is notified of the evaluation's availability for comment. The Government shall update PPIRS with any contractor comments provided after 14 days, as well as any subsequent agency review of comments received. Past performance evaluations for classified contracts and special access programs shall not be reported in CPARS, but will be reported as stated in this subpart and in accordance with agency procedures. Agencies shall ensure that appropriate management and technical controls are in place to ensure that only authorized personnel have access to the data and the information safeguarded in accordance with 42.1503(d).

\* \* \* \* \*

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#### DEPARTMENT OF DEFENSE

##### GENERAL SERVICES ADMINISTRATION

##### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 52

[FAC 2005-74; FAR Case 2012-016; Item V; Docket No. 2012-0016, Sequence No. 1]

RIN 9000-AM50

#### Federal Acquisition Regulation; Defense Base Act

**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 clarify contractor and subcontractor responsibilities to obtain workers' compensation insurance or to qualify as a self-insurer, and other requirements, under the terms of the Longshore and Harbor Workers' Compensation Act (LHWCA) as extended by the Defense Base Act (DBA).

**DATES:** Effective: July 1, 2014.

**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 2005-74, FAR Case 2012-016.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 78 FR 17176 on March 20, 2013, to make the necessary regulatory revisions to revise the FAR to clarify contractor and subcontractor responsibilities to obtain workers' compensation insurance or to qualify as a self-insurer, and other requirements, under the terms of the LHWCA, 33 U.S.C. 901, *et seq.*, as extended by the DBA, 42 U.S.C. 1651, *et seq.* Three respondents submitted comments on the proposed rule.

##### II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the 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. Summary of Significant Changes

This final rule includes one change to align the FAR with Department of Labor's (DOL) regulations and implementation of section 30(a) of the LHWCA. This change involves deleting proposed paragraph (b) of FAR clause 52.228-3, which stated that the actions set forth under paragraphs (a)(2) through (a)(8) may be performed by the contractor's agent or insurance carrier. The DOL's regulations place the responsibility for reporting injuries on the employer, see 20 CFR 703.115. The removal of proposed FAR 52.228-3 paragraph (b) also promotes consistency with the statutory requirements.

##### B. Analysis of Public Comments

##### 1. Support of the Proposed Rule

*Comment:* Two respondents expressed support for the rule.

*Response:* The public's support for this rule is acknowledged.

##### 2. Clarify Term "Days"

*Comment:* One respondent recommends that the ten-day reporting period within the report of injury requirements set forth in proposed FAR 52.228-3 paragraph (a)(2) should be revised to read "ten business days." The respondent asserts this modification will clarify the reporting period.

*Response:* The intent of this rule is to alert contractors to their obligations

under the LHWCA, rather than to alter those obligations. The respondent's suggested revisions could result in altering a contractor's obligations and therefore are beyond the scope of the FAR rule. The DOL's regulation interprets the ten-day injury reporting period set forth in LHWCA section 30(a), 33 U.S.C. 930(a), as ten calendar days. See 20 CFR 702.201(a) (using unqualified term "days" to describe reporting period). Thus, adding "business" days would alter the intent of the law.

### 3. Inclusion of "Work-Related" Terminology

*Comment:* The respondent states that the terms injury and death should be modified by adding the phrase "work-related" before both. The respondent asserts that this modification will serve to clarify a contractor's obligation.

*Response:* The Councils do not recommend adding the phrase "work-related" to the terms "injury" and "death." The added phrase is not necessary as the LHWCA defines an injury in 33 U.S.C. 902(2) and the concept of work-relatedness is subsumed in the term "injury." Moreover, the question whether a particular injury is work-related is often a difficult issue to resolve, and a contractor may not be able to decide whether a particular injury arose out of and in the course of employment within the meaning of the statute. By leaving the terms "injury" and "death" unqualified, contractors will be encouraged to err on the side of reporting any incident that may be work-related.

### 4. Inclusion of "Actual" Terminology

*Comment:* One respondent suggests that the provision should specify that the contractor's "actual/constructive" knowledge of the injury triggers the reporting period. The respondent recommends this revision to further clarify a contractor's obligation.

*Response:* DOL's governing rules use the unqualified term "knowledge of an employee's injury or death" when describing the event that triggers the reporting period. This FAR rule simply tracks that language.

### 5. Conflicts With Current Practice

*Comment:* One respondent states that FAR 52.228-3 paragraph (b), which allows the contractor's agent or insurance carrier to submit the first report of injury referenced in paragraph (a)(2), is inconsistent with section 30(a) of the LHWCA, 33 U.S.C. 930(a), as extended by the DBA, and the DOL's current practice. The respondent argues

that it is inappropriate to redefine this statutory provision through a FAR clause. The respondent recommends the proposed paragraph (b) should be amended to conform to current practice both under the DBA and LHWCA.

*Response:* The Councils concur with the respondent. The intent of this FAR rule is to clarify and inform contractors of their obligations under the DBA and the DOL's regulations, not to alter those requirements. Section 30(a) of the LHWCA, as implemented by the DOL's regulations, places the responsibility for reporting injuries on the employer. See 20 CFR 703.115. Accordingly, the Councils are removing the proposed FAR 52.228-3 paragraph (b) to promote consistency with the statutes referenced above.

### 6. Contractors Should Provide Insurance

*Comment:* One respondent states that the contractors should have sufficient insurance to be able to pay compensation if an employee is injured.

*Response:* The Councils concur that the views of this respondent are in accord with the intent of the law, this FAR rule, and the existing FAR clause 52.228-3.

### 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

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

DoD, GSA, and NASA do not expect this rule to 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 this rule merely clarifies the existing prescriptions and clauses relating to contractor and subcontractor responsibilities to obtain workers' compensation insurance or to

qualify as a self-insurer, and other requirements, under the terms of the LHWCA as extended by the DBA, and implemented in DOL Regulations. No comments from small entities were submitted in reference to the Regulatory Flexibility Act request under the proposed rule.

The rule imposes no reporting, recordkeeping, or other information collection requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules, and there are no known significant alternatives to the rule.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat. The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

### V. Paperwork Reduction Act

The rule does not contain any new 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: May 22, 2014.

**William Clark,**

*Acting Director, Office of Government-wide Acquisition Policy, Office of Government-wide 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 51 U.S.C. 20113.

■ 2. Revise section 52.228-3 to read as follows:

#### 52.228-3 Workers' Compensation Insurance (Defense Base Act).

As prescribed in 28.309(a), insert the following clause:

#### Workers' Compensation Insurance (Defense Base Act) (Jul 2014)

(a) The Contractor shall—

(1) Before commencing performance under this contract, establish provisions to provide for the payment of disability compensation and medical benefits to covered employees and death benefits to their eligible survivors, by purchasing workers' compensation insurance or qualifying as a self-insurer under the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 932) as extended by the Defense Base Act (42 U.S.C. 1651, *et seq.*), and continue to maintain provisions to provide such Defense Base Act benefits until contract performance is completed;

(2) Within ten days of an employee's injury or death or from the date the Contractor has knowledge of the injury or death, submit Form LS-202 (Employee's First Report of Injury or Occupational Illness) to the Department of Labor in accordance with the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 930(a), 20 CFR 702.201 to 702.203);

(3) Pay all compensation due for disability or death within the time frames required by the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 914, 20 CFR 702.231 and 703.232);

(4) Provide for medical care as required by the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 907, 20 CFR 702.402 and 702.419);

(5) If controverting the right to compensation, submit Form LS-207 (Notice of Controversion of Right to Compensation) to the Department of Labor in accordance with the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 914(d), 20 CFR 702.251);

(6) Immediately upon making the first payment of compensation in any case, submit Form LS-206 (Payment Of Compensation Without Award) to the Department of Labor in accordance with the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 914(c), 20 CFR 702.234);

(7) When payments are suspended or when making the final payment, submit Form LS-208 (Notice of Final Payment or Suspension of Compensation Payments) to the Department of Labor in accordance with the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 914(c) and (g), 20 CFR 702.234 and 702.235); and

(8) Adhere to all other provisions of the Longshore and Harbor Workers' Compensation Act as extended by the Defense Base Act, and Department of Labor regulations at 20 CFR Parts 701 to 704.

(b) For additional information on the Longshore and Harbor Workers' Compensation Act requirements see <http://www.dol.gov/owcp/dlhwc/lbdba.htm>.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts to which the Defense Base Act applies.

(End of clause)

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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 the rules appearing in Federal Acquisition Circular (FAC) 2005-74, which amends 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 2005-74, which precedes this document. These documents are also available via the Internet at <http://www.regulations.gov>.

**DATES:** May 30, 2014.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2005-74 and the FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755.

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

[Docket No. FAR 2014-0052, Sequence No. 2]

**Federal Acquisition Regulation; Federal Acquisition Circular 2005-74; Small Entity Compliance Guide**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA),

**RULES LISTED IN FAC 2005-74**

Item	Subject	FAR case	Analyst
*I .....	Commercial and Government Entity Code .....	2012-024	Loeb.
*II .....	Repeal of the Recovery Act Reporting Requirements .....	2014-016	Glover.
*III .....	Expansion of Applicability of the Senior Executive Compensation Benchmark.	2012-017	Chambers.
*IV .....	Contractor Comment Period, Past Performance Evaluations .....	2012-028	Glover.
*V .....	Defense Base Act .....	2012-016	Chambers.

**SUPPLEMENTARY INFORMATION:**

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2005-74 amends the FAR as specified below:

**Item I—Commercial and Government Entity Code (FAR Case 2012-024)**

This final rule adds subpart 4.18, "Commercial and Government Entity Code," and related provisions and clauses, to the FAR. The new subpart requires the use of Commercial and Government Entity (CAGE) codes, including North Atlantic Treaty Organization (NATO) Cage (NCAGE) codes for foreign entities, for awards

valued above the micro-purchase threshold. The final rule also requires offerors, if owned by another entity, to identify that entity during System for Award Management (SAM) registration. The rule effective date is November 1, 2014.

**Item II—Repeal of the Recovery Act Reporting Requirements (FAR Case 2014-016)**

This final rule adopts as final, with changes, two interim rules published on March 31, 2009, and July 2, 2010, under FAR case numbers 2009-009 and 2010-008. The interim rules amended the FAR to implement reporting requirements of the American Recovery and Reinvestment Act in subpart 4.15, 42.15, and clause 52.204-11, American Recovery and Reinvestment Act-

Reporting Requirements. Future reporting requirements after January 31, 2014, were repealed by section 627 of Division E of the Consolidated Appropriations Act, FY 2014 (Pub. L. 113-76). The reporting Web site has closed for future reporting. This rule does not change the reporting required by the Federal Funding Accountability and Transparency Act of 2006 (FFATA) on existing contracts, as implemented in FAR subpart 4.14 and clause 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards. Therefore, contractors and agencies are still required to continue their FFATA reporting on existing contracts, as implemented in FAR subpart 4.14 and clause 52.204-10, Reporting Executive