

the Department of the Treasury, Office of Foreign Assets Control (OFAC).

On September 20, 2004, the President signed Executive Order 13357 terminating the national emergency declared in Executive Order 12543 of January 7, 1986, with respect to the policies and actions of the Government of Libya and revoking that Order, as well as revoking Executive Order 12544 of January 8, 1986, and Executive Order 12801 of April 15, 1992, all of which imposed sanctions against Libya in response to the national emergency. This Executive Order 13357 also revoked Executive Order 12538 of November 15, 1985, which prohibited the importation into the United States of petroleum products refined in Libya. Upon issuance of Executive Order 13357, OFAC issued notice that the prohibitions of the Libyan Sanctions Regulations, 31 CFR part 550, would be lifted as of September 21, 2004. OFAC has confirmed that there are no more sanctions against Libya. At a later date, OFAC will add a note to the Libya Sanction Regulations (LSR) to notify the public that those regulations are no longer in effect. In their view, Executive Order 13357, their issuance of a press release, and a statement on their official website that the regulations lifted are sufficient authorization until they publish a notice in the **Federal Register**.

This final rule also makes conforming changes to the clause dates in the clauses at 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, and 52.213–4, Terms and Conditions—Simplified Acquisition (Other than Commercial Items), and updates the OFAC websites.

This is not a significant regulatory action and, therefore, was not 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 Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Parts 25 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2005–07, FAR case 2005–026), in correspondence.

## 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. 3501, *et seq.*

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

Government procurement.

Dated: December 22, 2005.

Gerald Zaffos,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 25 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 25 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 25—FOREIGN ACQUISITION

#### 25.701 [Amended]

■ 2. Amend section 25.701 by removing from the first sentence of paragraph (b) “Libya,”; removing from the second sentence “<http://www.epls.gov/TerList1.htm>” and adding “<http://www.treas.gov/offices/enforcement/ofac/sdn>” in its place; and removing from the third sentence “<http://www.treas.gov/ofac>” and adding “<http://www.treas.gov/offices/enforcement/ofac>” in its place.

### PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

#### 52.212–5 [Amended]

■ 3. Amend section 52.212–5 by removing from the heading of the clause “(SEP 2005)” and adding “(FEB 2006)” in its place; and removing from paragraph (b)(26) of the clause “(MAR 2005)” and adding “(FEB 2006)” in its place.

#### 52.213–4 [Amended]

■ 4. Amend section 52.213–4 by—  
 ■ a. Removing from the heading of the clause “(JUL 2005)” and adding “(FEB 2006)” in its place; and  
 ■ b. Removing from paragraph (a)(1)(iv) of the clause “(MAR 2005)” and adding “(FEB 2006)” in its place.

#### 52.225–13 [Amended]

■ 5. Amend section 52.225–13 by—  
 ■ a. Removing from the heading of the clause “(MAR 2005)” and adding “(FEB 2006)” in its place; and  
 ■ b. Removing from the first sentence of paragraph (b) of the clause “Libya,”; removing from the second sentence “<http://epls.arnet.gov/News.html>” and adding “[enforcement/ofac/sdn” in its place; and removing from the third sentence “<http://www.treas.gov/ofac>” and adding “<http://www.treas.gov/offices/enforcement/ofac>” in its place.](http://www.treas.gov/offices/</a></p>
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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 44 and 52

[FAC 2005–07 FAR Case 2003–024, Item IX]

RIN 9000–AK39

### Federal Acquisition Regulation; Elimination of Certain Subcontract Notification Requirements

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

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to modify the language regarding advance notification requirements. This change is required to implement Section 842 of the National Defense Authorization Act for Fiscal Year 2004, Public Law 108–136, which resulted in revisions to 10 U.S.C. 2306(e).

**DATES:** *Effective Date:* January 3, 2006.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501–0044. Please cite FAC 2005–07, FAR case 2003–024. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

### SUPPLEMENTARY INFORMATION:

#### A. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 70 FR 11761, March 9, 2005, with a request for comments by May 9, 2005. The interim rule revised FAR 44.201–2, Advance notification requirements, and amended Alternate I of FAR clause 52.244–2, Subcontracts. The change is required in order to implement Section 842 of the National Defense Authorization Act for Fiscal Year 2004,

Public Law 108–136. Section 842 removes the requirement for contractors under cost-reimbursement contracts with the Department of Defense (DoD), Coast Guard, and National Aeronautics and Space Administration (NASA) to notify the agency before the award of any cost-plus-fixed-fee subcontract or any fixed-price subcontract that exceeds the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract if the contractor maintains a purchasing system approved by the contracting officer for the contract.

The final rule differs from the interim rule in that it deletes Alternate I in its entirety. The Councils adopted the suggestion in a public comment that deletion of Alternate I would be a less confusing means of implementing the statute than amending Alternate I. Renumbering has occurred in FAR 44.204 and 52.244–2 as a result of the deletion of Alternate I.

In addition, the interim rule made a technical amendment to Alternate II of the FAR clause at 52.244–2, Subcontracts. The interim rule deleted the reference to paragraph (c) from paragraph (f)(2) of Alternate II (now renumbered Alternate I in the final rule) because paragraph (c) applies to fixed-price type contracts, whereas Alternate II (now renumbered Alternate I in the final rule) applies to cost-reimbursement contracts.

Two comments were received from one respondent.

*Comment:* The respondent noted that the purpose of the FAR change is, in the case of DoD, the Coast Guard, and NASA, to eliminate the requirement for the contractor to notify the agency before award of certain subcontracts when the contractor has an approved purchasing system. The respondent stated that the language in the interim rule is confusing and suggested eliminating Alternate I of 52.244–2 instead.

*Response:* Concur. The final rule deletes Alternate I.

*Comment:* The respondent suggested rewriting Alternate II of the FAR clause at 52.244–2 and FAR 44.201–2 to have the language match what is in 52.244–2(d)(1).

*Response:* Nonconcur. Paragraph (d)(1) of the FAR clause at 52.244–2 specifies the contract types—cost-reimbursement, time-and-materials, and labor-hour—subject to subcontract consent requirements. Alternate II specifies the contract types—cost-plus-fixed-fee and fixed-price—subject to advance notification requirements even when subcontract consent is not required. These two procedures are

separate statutory requirements and apply to different contract types.

This is not a significant regulatory action and, therefore, was not 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.*, because it will have a small positive effect. Small businesses do not usually hold prime contracts which are cost-reimbursement contracts, so this section would not apply to them, and any change would not apply.

## 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. 3501, *et seq.*

## List of Subjects in 48 CFR Parts 44 and 52

Government procurement.

Dated: December 22, 2005.

**Gerald Zaffos,**

*Director, Contract Policy Division.*

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 44 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 44 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 44—SUBCONTRACTING POLICIES AND PROCEDURES

■ 2. Amend section 44.204 by revising paragraph (a)(2) to read as follows:

### 44.204 Contract clauses.

(a)(1) \* \* \*

(2) If a cost-reimbursement contract is contemplated, for civilian agencies other than the Coast Guard and the National Aeronautics and Space Administration, the contracting officer shall use the clause with its Alternate I.

\* \* \* \* \*

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.244–2 by—  
 ■ a. Removing Alternate I; and  
 ■ b. Redesignating Alternate II as Alternate I; and revising the introductory paragraph to read as follows:

### 52.244–2 Subcontracts.

\* \* \* \* \*

*Alternate I (JAN 2006).* As prescribed in 44.204(a)(2), substitute the following paragraph (f)(2) for paragraph (f)(2) of the basic clause:

\* \* \* \* \*

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Part 52

[FAC 2005–07; FAR Case 2005–006; Item X]

RIN 9000–AK38

### Federal Acquisition Regulation; Annual Representations and Certifications – NAICS Code/Size

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

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to modify the provision regarding Annual Representations and Certifications to include a section whereby the contracting officer can insert the appropriate North American Industry Classification System (NAICS) code and small business size standard for the procurement. Its exclusion in the original drafting of the subject provision was an oversight. When the FAR provision is included in a solicitation, the provision regarding Small Business Program Representations, where this information is normally placed, is not included. Without this change, there is no standard way in which the NAICS code and small business size standard can be communicated to the vendor.

**DATES:** *Effective Date:* January 3, 2006.