

9.407-3 Procedures.

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(e) * * *

(3) With regard to information that may be covered by a disclosure exemption under the Freedom of Information Act, the suspending official shall follow the procedures at 9.105-2(b)(2)(iv).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.301 [Amended]

■ 6. Amend section 12.301 by removing paragraph (d)(4).

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 7. Amend section 42.1503 by revising the introductory text of paragraph (f)(1); and adding paragraph (f)(3) to read as follows:

42.1503 Procedures.

* * * * *

(f) * * *

(1) Agencies shall ensure information is accurately reported in the FAPIIS module of PPIRS within 3 calendar days after a contracting officer—

* * * * *

(3) With regard to information that may be covered by a disclosure exemption under the Freedom of Information Act, the contracting officer shall follow the procedures at 9.105-2(b)(2)(iv).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. Amend section 52.209-9 by revising the date of the clause and paragraph (b); and adding paragraphs (c) and (d) to read as follows:

52.209-9 Updates of Publicly Available Information Regarding Responsibility Matters.

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Updates of Publicly Available Information Regarding Responsibility Matters (JAN 2012)

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(b) As required by section 3010 of the Supplemental Appropriations Act, 2010 (Pub. L. 111-212), all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available. FAPIIS consists of two segments—

(1) The non-public segment, into which Government officials and the Contractor post information, which can only be viewed by—

(i) Government personnel and authorized users performing business on behalf of the Government; or

(ii) The Contractor, when viewing data on itself; and

(2) The publicly-available segment, to which all data in the non-public segment of FAPIIS is automatically transferred after a waiting period of 14 calendar days, except for—

(i) Past performance reviews required by subpart 42.15;

(ii) Information that was entered prior to April 15, 2011; or

(iii) Information that is withdrawn during the 14-calendar-day waiting period by the Government official who posted it in accordance with paragraph (c)(1) of this clause.

(c) The Contractor will receive notification when the Government posts new information to the Contractor's record.

(1) If the Contractor asserts in writing within 7 calendar days, to the Government official who posted the information, that some of the information posted to the non-public segment of FAPIIS is covered by a disclosure exemption under the Freedom of Information Act, the Government official who posted the information must within 7 calendar days remove the posting from FAPIIS and resolve the issue in accordance with agency Freedom of Information procedures, prior to reposting the releasable information. The contractor must cite 52.209-9 and request removal within 7 calendar days of the posting to FAPIIS.

(2) The Contractor will also have an opportunity to post comments regarding information that has been posted by the Government. The comments will be retained as long as the associated information is retained, i.e., for a total period of 6 years. Contractor comments will remain a part of the record unless the Contractor revises them.

(3) As required by section 3010 of Pub. L. 111-212, all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available.

(d) Public requests for system information posted prior to April 15, 2011, will be handled under Freedom of Information Act procedures, including, where appropriate, procedures promulgated under E.O. 12600.

(End of clause)

■ 9. Amend section 52.212-5 by revising the date of the clause; and redesignating paragraphs (b)(7) through (b)(50) as (b)(8) through (b)(51), respectively; and adding new (b)(7) to read as follows:

52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

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Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (JAN 2012)

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(b) * * *

(7) 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters (JAN 2012) (41 U.S.C. 2313).

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 31 and 52

[FAC 2005-55; FAR Case 2010-005; Item VI; Docket 2010-0005, Sequence 1]

RIN 9000-AM00

Federal Acquisition Regulation; Updated Financial Accounting Standards Board Accounting References

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 update references to authoritative accounting standards owing to the Financial Accounting Standards Board's Accounting Standards Codification of Generally Accepted Accounting Principles.

DATES: Effective Date: February 2, 2012.

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 2005-55, FAR Case 2010-005.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the Federal Register at 76 FR 8989 on February 16, 2011, to update the references based upon the Financial Accounting Standards Board's (FASB) Statement Number 168 which stated that the FASB Accounting Standards Codification (ASC) would become the source of authoritative U.S. Generally Accepted Accounting Principles (GAAP) recognized by the FASB to be applied to nongovernmental entities. The revisions are intended to have no effect other than to simply replace the superseded references with

updated references. The Regulatory Secretariat received one response to the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council reviewed the public comment in the development of the final rule. A discussion of the comment follows:

Executive Compensation Reporting

Comment: The respondent inquired if the executive compensation reporting language applied to private companies that through the normal course of business have no interest in disclosing this information to the public/Government.

Response: This comment is outside the scope of this case, which was limited to simply replacing superseded FAR references with updated references. FAR 4.1403 delineates which Government contracts require the reporting of executive compensation (FAR clause 52.204–10).

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 the rule makes administrative changes only by merely updating references to authoritative accounting standards owing to the Financial Accounting Standard Board's Accounting Standards Codification of Generally Accepted Accounting Principles.

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 31 and 52

Government procurement.

Dated: December 21, 2011.

Laura Auletta,

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

Therefore, DoD, GSA, and NASA amend 48 CFR parts 31 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 31 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 31—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 2. Amend section 31.205–11 by revising the introductory text of paragraph (h) to read as follows:

31.205–11 Depreciation.

* * * * *

(h) A “capital lease,” as defined in Financial Accounting Standards Board's Accounting Standards Codification (FASB ASC) 840, Leases, is subject to the requirements of this cost principle. (See 31.205–36 for Operating Leases.) FASB ASC 840 requires that capital leases be treated as purchased assets, *i.e.*, be capitalized, and the capitalized value of such assets be distributed over their useful lives as depreciation charges or over the leased life as amortization charges, as appropriate, except that—

* * * * *

■ 3. Amend section 31.205–36 by revising paragraph (a) to read as follows:

31.205–36 Rental costs.

(a) This subsection is applicable to the cost of renting or leasing real or personal property acquired under “operating leases” as defined in Financial Accounting Standards Board's Accounting Standards Codification (FASB ASC) 840, Leases. (See 31.205–11 for Capital Leases.)

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend section 52.204–10 by revising the date of the clause, and in

paragraph (a), in the definition “Total compensation”, revising paragraph (2) to read as follows:

52.204–10 Reporting Executive Compensation and First-Tier Subcontract Awards.

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Reporting Executive Compensation and First-Tier Subcontract Awards (FEB 2012)

* * * * *

Total compensation * * *

(2) *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Financial Accounting Standards Board's Accounting Standards Codification (FASB ASC) 718, Compensation-Stock Compensation.

* * * * *

■ 5. Amend section 52.212–5 by revising the date of the clause and paragraph (b)(4) to read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (FEB 2012)

* * * * *

(b) * * *

(4) 52.204–10, Reporting Executive Compensation and First-Tier Subcontract Awards (Feb 2012) (Pub. L. 109–282) (31 U.S.C. 6101 note).

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■ 6. Amend section 52.213–4 by revising the date of the clause and paragraph (a)(2)(i) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (FEB 2012)

(a) * * *

(2) * * *

(i) 52.204–10, Reporting Executive Compensation and First-Tier Subcontract Awards (FEB 2012)

(Pub. L. 109–282) (31 U.S.C. 6101 note).

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