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48 CFR Chapter 1

Federal Acquisition Regulations; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2012–0080, Sequence 6]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–61; Introduction

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

and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2005–61. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at <http://www.regulations.gov>.

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

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to each FAR case. Please cite FAC 2005–61 and the specific FAR case numbers. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755.

LIST OF RULES IN FAC 2005–61

Item	Subject	FAR Case	Analyst
I	United States—Korea Free Trade Agreement	2012–004	Davis.
II	Delete Outdated FAR Reference Lague to the DoD Industrial Preparedness Program	2012–026	Lague.
III	NAICS and Size Standards	2012–021	Morgan.
IV	Bid Protest and Appeal Authorities	2012–008	Loeb.
V	Technical Amendments.		

SUPPLEMENTARY INFORMATION:

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 subjects set forth in the documents following these item summaries. FAC 2005–61 amends the FAR as specified below:

Item I—United States-Korea Free Trade Agreement (FAR Case 2012–004)

This final rule adopts without change the interim rule published in the **Federal Register** on March 7, 2012 (77 FR 13952), to implement the United States-Korea Free Trade Agreement. The Republic of Korea is already party to the World Trade Organization Government Procurement Agreement (WTO GPA). The Korea Free Trade Agreement now covers acquisition of supplies and services between \$100,000 and the current WTO GPA threshold of \$202,000. This final rule will not have a significant economic impact on a substantial number of small entities.

Item II—Delete Outdated FAR Reference to the DoD Industrial Preparedness Program (FAR Case 2012–026)

This final rule amends the FAR to delete outdated references to the “DoD Industrial Preparedness Program”, which is no longer in existence. There is no impact to the Government or small business because this program was discontinued in 1992.

Item III—NAICS and Size Standards (FAR Case 2012–021)

This final rule amends the FAR to clarify that new North American Industry Classification System codes are not available for use in Federal contracting until the Small Business Administration publishes corresponding industry size standards. Published size standards are available on the SBA’s Web site and at 13 CFR 121.201. The clarifying language is provided for informational purposes and only addresses internal Government policies and procedures. This rule will not have a significant impact on the Government, and does not impose additional requirements on small businesses.

Item IV—Bid Protest and Appeal Authorities (FAR Case 2012–008)

This final rule amends FAR part 33 to note that there are other Federal-court related protest authorities and dispute-appeal authorities that are not covered by FAR part 33. This rule also provides contracting officers with appropriate references to their office of legal counsel and the Web site for the rules of the U.S. Court of Federal Claims. This is a final rule because it only impacts the Federal Government’s internal operating procedures.

Item V—Technical Amendments

Editorial changes are made at FAR 7.403 and 15.404–1.

Dated: September 7, 2012.
Laura Auletta,

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

Federal Acquisition Circular (FAC) 2005–61 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005–61 is effective September 13, 2012, except for Item II and III which are effective October 15, 2012.

Dated: September 5, 2012.

Amy G. Williams,

Acting Deputy Director, Defense, Procurement and Acquisition Policy.

Dated: September 5, 2012.

Joseph A. Neurauter,

Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

Dated: September 5, 2012.

William P. McNally,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 2012–22572 Filed 9–12–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 4, 25 and 52**

[FAC 2005–61; FAR Case 2012–004; Item I; Docket 2012–0004, Sequence 1]

RIN 9000–AM18

Federal Acquisition Regulation; United States-Korea Free Trade Agreement**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 adopting as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to implement the United States-Korea Free Trade Agreement. The Republic of Korea is already party to the World Trade Organization Government Procurement Agreement, but this trade agreement implements a lower procurement threshold.**DATES:** *Effective Date:* September 13, 2012.**FOR FURTHER INFORMATION CONTACT:** Ms. Cecelia L. Davis, Procurement Analyst, at 202–219–0202 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 2012–004.**SUPPLEMENTARY INFORMATION:****I. Background**

DoD, GSA, and NASA published an interim rule in the **Federal Register** on March 7, 2012 (77 FR 13952), to implement the Free Trade Agreement with the Republic of Korea, which took effect on March 15, 2012. The comment period closed on May 7, 2012. Three respondents submitted comments on the interim rule.

The interim rule added the Republic of Korea to the definition of “Free Trade Agreement country” in multiple locations in the FAR. The Republic of Korea was already listed as a designated country because it is party to the WTO GPA. The excluded services for the Korea FTA are the same as for the WTO GPA. By implementation of this Korea FTA, eligible goods and services from Korea are now covered when valued at or above \$100,000, rather than at or above the WTO GPA threshold of

\$202,000. The threshold for the Korea FTA for construction is the same as the threshold for the WTO GPA for construction.

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 is provided as follows:

A. Summary of Significant Changes

The Councils have adopted the interim rule as final without change.

B. Analysis of Public Comments**1. Impact on U.S. Businesses and Economy**

Comment: One respondent expressed agreement that the United States has the responsibility to do business with Free Trade Agreement countries, but was concerned that lowering the trade agreements threshold from \$202,000 to \$100,000 for goods and services from the Republic of Korea will damage the small American business owners’ chances to compete, because of lower minimum wage in Korea. The respondent was also concerned that lowering the threshold will increase the national deficit. This respondent also stated that the rule will benefit U.S. big business owners to the detriment of small American business owners.

Response: DoD, GSA, and NASA issued this final rule because it implements a statute (United States-Korea Free Trade Agreement Implementation Act, Pub. L. 112–41, enacted on October 21, 2011). The Councils do not have discretion to set trade agreement thresholds.

However, as discussed in the section on Regulatory Flexibility, the lowering of the threshold from \$202,000 to \$100,000 only applies to the supplies and services covered by the Korea Free Trade Agreement. For DoD, it only covers the non-defense items listed at Defense Federal Acquisition Regulations System (DFARS) 225.401–70.

Acquisitions that are set aside or provide other form of preference for small businesses are exempt from the Korea Free Trade 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.

2. Implementation in Contracts for Services

Comment: One respondent questioned how agencies will implement the Korea Free Trade Agreement for services.

Response: This question is not unique to the Korea Free Trade Agreement. The FAR does not provide provisions or clauses for the specific implementation of any trade agreements. The FAR provisions and clauses address only end products, because the provisions and clauses are necessary to—

- Waive the Buy American Act, which only applies to supplies; and
- Implement the purchase restriction at 25.403(c) for acquisitions that exceed the World Trade Organization Government Procurement Agreement (WTO GPA) threshold of \$202,000. Below that threshold, there is no purchase restriction on acquisition of services from nondesignated countries.

The requirements of the Free Trade Agreements relate primarily to acquisition procedures that are already specified in the FAR, e.g., FAR 5.203, Publicizing and response time; FAR 5.207, Preparation and transmittal of synopses; and FAR 15.503, Notifications to unsuccessful offerors (see FAR 25.408 for other applicable procedures).

3. Procuring Entities of the Central Level of the U.S. Government

Comment: One respondent requested that the final rule should include the list of the entities of the U.S. central level of Government, which have certain obligations with respect to Government procurement of goods and services.

Response: The FAR has not included the list of Federal entities subject to any other free trade agreement or the WTO GPA. Therefore, the Councils do not consider inclusion of such a list in the FAR for the Korea Free Trade Agreement to be necessary or appropriate.

4. Past Performance

Comment: One respondent expressed appreciation of the specific reference to Article 17.5.2(b) of the Korea Free Trade Agreement in the **Federal Register** preamble to the interim rule. Article 17.5.2.(b) stipulates that an agency shall not impose a condition that, in order for an offeror to be allowed to submit an offer or be awarded a contract, the offeror has been previously awarded one or more contracts by an agency of the United States Government or that the offeror has prior work experience in the United States. The respondent suggested that Office of Management and Budget

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

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 operating 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 does not have a significant effect beyond the internal operating procedures of the Federal Government, nor will it have a significant cost or administrative impact on contractors or offerors. These requirements affect only the internal operating procedures of the Government.

IV. 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.

V. 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.

VI. 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 19

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 19 as set forth below:

PART 19—SMALL BUSINESS PROGRAMS

■ 1. The authority citation for 48 CFR part 19 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.

19.001 [Amended]

■ 2. Amend section 19.001 by removing from the definition “Industry” the words “(available via the Internet at <http://www.census.gov/epcd/www/naics.html>)”.

■ 3. Amend section 19.102 by—

■ a. Revising paragraph (a);

■ b. Removing from paragraph (b)(1) “via the Internet at <http://www.census.gov/epcd/www/naics.html>” and adding “at <http://www.census.gov/eos/www/naics/>” in its place; and

■ c. Removing paragraph (g) to read as follows:

19.102 Size standards.

(a)(1) The SBA establishes small business size standards on an industry-by-industry basis. (See 13 CFR Part 121). Small business size standards matched to industry NAICS codes are published by the Small Business Administration and are available at <http://www.sba.gov/content/table-small-business-size-standards>.

(2) NAICS codes are updated by the Office of Management and Budget through its Economic Classification Policy Committee every five years. New NAICS codes are not available for use in Federal contracting until the Small Business Administration publishes corresponding industry size standards (see 19.102(a)(1)).

* * * * *

■ 4. Amend section 19.303 by adding a new sentence at the end of paragraph (a) to read as follows:

19.303 Determining North American Industry Classification System (NAICS) codes and size standards.

(a) * * * For information on size standards matched to industry NAICS codes, including the use of new NAICS codes, see also 19.102(a).

* * * * *

[FR Doc. 2012–22578 Filed 9–12–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 33

[FAC 2005–61; FAR Case 2012–008; Item IV; Docket 2012–0008, Sequence 1]

RIN 9000–AM31

Federal Acquisition Regulation; Bid Protest and Appeal Authorities

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 address bid protest and appeal authorities.

DATES: *Effective Date:* September 13, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Procurement Analyst, at 202–501–0650 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 2012–008.

SUPPLEMENTARY INFORMATION:

I. Background

Protests are addressed at FAR subpart 33.1, and contract disputes are addressed at FAR subpart 33.2. The Defense Acquisition Regulations Council and the Civilian Agency Acquisition Council determined that FAR part 33 should be amended to (1) note that there are other Federal-court related protest authorities and dispute-appeal authorities that are not covered by FAR part 33 and (2) provide contracting officers with appropriate references to their office of legal counsel and the Web site for the rules of the U.S. Court of Federal Claims. FAR 33.001 and 33.105 are added and FAR 33.101, Definitions, and 33.102, General, are amended by this final rule.

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 operating 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 refers to the statutory authorities and provides an internal requirement for contracting officers to contact their designated legal advisor for additional information whenever they become aware of any litigation related to their contracts. The FAR does not address the substance of these authorities. These requirements affect only the internal operating procedures of the Government.

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 33

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 33 as set forth below:

PART 33—PROTESTS, DISPUTES, AND APPEALS

■ 1. The authority citation for 48 CFR part 33 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.

■ 2. Add section 33.001 to read as follows:

33.001 General.

There are other Federal court-related protest authorities and dispute-appeal authorities that are not covered by this part of the FAR, e.g., 28 U.S.C. 1491 for Court of Federal Claims jurisdiction. Contracting officers should contact their designated legal advisor for additional information whenever they become aware of any litigation related to their contracts.

3. Amend section 33.101 by adding, in alphabetical order, the definition “Protest venue” to read as follows.

33.101 Definitions.

* * * * *

Protest venue means protests filed with the agency, the Government Accountability Office, or the U.S. Court of Federal Claims. U.S. District Courts do not have any bid protest jurisdiction.

■ 4. Amend section 33.102 by revising the first sentence of paragraph (a) to read as follows.

33.102 General.

(a) Without regard to the protest venue, contracting officers shall consider all protests and seek legal advice, whether protests are submitted before or after award and whether filed directly with the agency, the Government Accountability Office (GAO), or the U.S. Court of Federal Claims. * * *

* * * * *

■ 5. Add section 33.105 to read as follows.

33.105 Protests at the U.S. Court of Federal Claims.

Procedures for protests at the U.S. Court of Federal Claims are set forth in the rules of the U.S. Court of Federal Claims. The rules may be found at <http://www.uscfc.uscourts.gov/rules-and-forms>.

[FR Doc. 2012–22584 Filed 9–12–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 7 and 15

[FAC 2005–61; Item V; Docket 2012–0079; Sequence 4]

Federal Acquisition Regulation; Technical Amendments

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

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation (FAR) in order to make editorial changes.

DATES: *Effective Date:* September 13, 2012.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, 1275 First Street NE., 7th Floor, Washington, DC 20417, 202–501–4755, for information pertaining to status or publication schedules. Please cite FAC 2005–61, Technical Amendments.

SUPPLEMENTARY INFORMATION: In order to update certain elements in 48 CFR parts 7 and 15, this document makes editorial changes to the FAR.

List of Subjects in 48 CFR Parts 7 and 15.

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 parts 7 and 15 as set forth below:

■ 1. The authority citation for 48 CFR parts 7 and 15 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.

PART 7—ACQUISITION PLANNING

■ 2. Amend section 7.403 by revising paragraph (b) to read as follows:

7.403 General Services Administration assistance.

* * * * *

(b) Agencies may request information from the following GSA office: U.S. General Services Administration, Federal Acquisition Service, Office of

Acquisition Management, 2200 Crystal Drive, Room 806, Arlington, VA. 22202. Email: fasam@gsa.gov.

PART 15—CONTRACTING BY NEGOTIATION

15.404–1 [Amended]

■ 3. Amend section 15.404–1 by removing from paragraph (a)(7) “http://www.acq.osd.mil/dpap/cpf/contract_pricing_reference_guides.html” and adding “http://www.acq.osd.mil/dpap/cpic/cp/contract_pricing_reference_guides.html” in its place.

[FR Doc. 2012–22588 Filed 9–12–12; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2012–0081, Sequence 6]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–61; 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 the rule appearing in Federal Acquisition Circular (FAC) 2005–61, 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 this rule by referring to FAC 2005–61, which precedes this document. These documents are also available via the Internet at <http://www.regulations.gov>.

DATES: September 13, 2012.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2005–61 and the FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755.

LIST OF RULES IN FAC 2005–61

Item	Subject	FAR case	Analyst
I	United States-Korea Free Trade Agreement	2012–004	Davis.
II	Delete Outdated FAR Reference to the DoD Industrial Preparedness Program	2012–026	Lague.
III	NAICS and Size Standards	2012–021	Morgan.
IV	Bid Protest and Appeal Authorities	2012–008	Loeb.
V	Technical Amendments.		

SUPPLEMENTARY INFORMATION:

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 subjects set forth in the documents following these item summaries. FAC 2005–61 amends the FAR as specified below:

Item I—United States–Korea Free Trade Agreement (FAR Case 2012–004)

This final rule adopts without change the interim rule published in the **Federal Register** on March 7, 2012 (77 FR 13952), to implement the United States–Korea Free Trade Agreement. The Republic of Korea is already party to the World Trade Organization Government Procurement Agreement (WTO GPA). The Korea Free Trade Agreement now covers acquisition of supplies and services between \$100,000 and the current WTO GPA threshold of \$202,000. This final rule will not have a significant economic impact on a substantial number of small entities.

Item II—Delete Outdated FAR Reference to the DoD Industrial Preparedness Program (FAR Case 2012–026)

This final rule amends the FAR to delete outdated references to the “DoD Industrial Preparedness Program”, which is no longer in existence. There is no impact to the Government or small business because this program was discontinued in 1992.

Item III—NAICS and Size Standards (FAR Case 2012–021)

This final rule amends the FAR to clarify that new North American Industry Classification System codes are not available for use in Federal contracting until the Small Business Administration publishes corresponding industry size standards. Published size standards are available on the SBA’s Web site and at 13 CFR 121.201. The clarifying language is provided for informational purposes and only addresses internal Government policies and procedures. This rule will not have a significant impact on the Government,

and does not impose additional requirements on small businesses.

Item IV—Bid Protest and Appeal Authorities (FAR Case 2012–008)

This final rule amends FAR part 33 to note that there are other Federal-court related protest authorities and dispute-appeal authorities that are not covered by FAR part 33. This rule also provides contracting officers with appropriate references to their office of legal counsel and the Web site for the rules of the U.S. Court of Federal Claims. This is a final rule because it only impacts the Federal Government’s internal operating procedures.

Item V—Technical Amendments

Editorial changes are made at FAR 7.403 and 15.404–1.

Dated: September 7, 2012.

Laura Auletta,

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

[FR Doc. 2012–22589 Filed 9–12–12; 8:45 am]

BILLING CODE 6820–EP–P