

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

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TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL ITEMS) (MAR 2009)

\* \* \* \* \*  
(b) \* \* \*  
(2) \* \* \*  
(iii) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations. (MAR 2009) (Pub. L. 110-247) (Applies to contracts greater than \$25,000 that provide for the provision, the service, or the sale of food in the United States.)

\* \* \* \* \*  
■ 6. Add section 52.226-6 to read as follows:

**52.226-6 Promoting Excess Food Donation to Nonprofit Organizations.**

As prescribed in 26.404, insert the following clause:

PROMOTING EXCESS FOOD DONATION TO NONPROFIT ORGANIZATIONS (MAR 2009)

(a) *Definitions.* As used in this clause—  
*Apparently wholesome food* means food that meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

*Excess food* means food that—  
(1) Is not required to meet the needs of the executive agencies; and  
(2) Would otherwise be discarded.

*Food-insecure* means inconsistent access to sufficient, safe, and nutritious food.

*Nonprofit organization* means any organization that is—

(1) Described in section 501(c) of the Internal Revenue Code of 1986; and  
(2) Exempt from tax under section 501(a) of that Code.

(b) In accordance with the Federal Food Donation Act of 2008 (Pub. L. 110-247), the Contractor is encouraged, to the maximum extent practicable and safe, to donate excess, apparently wholesome food to nonprofit organizations that provide assistance to food-insecure people in the United States.

(c) *Costs.* (1) The Contractor, including any subcontractors, shall assume the responsibility for all the costs and the logistical support to collect, transport, maintain the safety of, or distribute the excess, apparently wholesome food to the nonprofit organization(s) that provides assistance to food-insecure people.

(2) The Contractor will not be reimbursed for any costs incurred or associated with the donation of excess foods. Any costs incurred for excess food donations are unallowable.

(d) *Liability.* The Government and the Contractor, including any subcontractors, shall be exempt from civil and criminal

liability to the extent provided under the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791). Nothing in this clause shall be construed to supersede State or local health regulations (subsection (f) of 42 U.S.C. 1791).

(e) *Flowdown.* The Contractor shall insert this clause in all contracts, task orders, delivery orders, purchase orders, and other similar instruments greater than \$25,000 with its subcontractors or suppliers, at any tier, who will perform, under this contract, the provision, service, or sale of food in the United States.

(End of clause)

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 3, 47, and 52**

[FAC 2005-31; Item VI; Docket FAR-2009-0003; Sequence 2]

**Federal Acquisition Regulation; Technical Amendments**

**AGENCIES:** 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 in order to make editorial changes.

**DATES:** *Effective Date:* March 19, 2009.

**FOR FURTHER INFORMATION CONTACT:** The Regulatory Secretariat, Room 4041, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. Please cite FAC 2005-31, Technical Amendments.

**List of Subjects in 48 CFR Parts 3, 47, and 52**

Government procurement.

Dated: March 13, 2009.

**Al Matera,**  
*Director, Office of Acquisition Policy.*

■ Therefore, DoD, GSA, and NASA amends 48 CFR parts 3, 47, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 3, 47, 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 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST**

■ 2. Revise section 3.503-2 to read as follows:

**3.503-2 Contract clause.**

The contracting officer shall insert the clause at 52.203-6, Restrictions on Subcontractor Sales to the Government, in solicitations and contracts exceeding the simplified acquisition threshold. For the acquisition of commercial items, the contracting officer shall use the clause with its Alternate I.

**PART 47—TRANSPORTATION**

**47.103-1 [Amended]**

■ 3. Amend section 47.103-1 by removing from paragraph (c) “ATTN: FBA, 1800 F Street, NW., Washington, DC 20405” and adding “Transportation Audit Division (QMCA), Crystal Plaza 4, Room 300, 2200 Crystal Drive, Arlington, VA 22202.” in its place.

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 4. Amend section 52.225-11 by revising the date in Alternate I; and revising paragraph (b)(1) of Alternate I to read as follows:

**52.225-11 Buy American Act—Construction Materials under Trade Agreements.**

\* \* \* \* \*  
*Alternate I* (MAR 2009). \* \* \*  
\* \* \* \* \*

(b) *Construction materials.* (1) This clause implements the Buy American Act (41 U.S.C. 10a - 10d) by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and all the Free Trade Agreements except NAFTA and the Bahrain FTA apply to this acquisition. In accordance with 41 U.S.C. 431, the component test of the Buy American Act is waived for construction material that is a COTS item (See FAR 12.505(a)(2)). Therefore, the Buy American Act restrictions are waived for designated country construction materials other than Bahrainian or Mexican construction materials.

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