

## PART 5—PUBLICIZING CONTRACT ACTIONS

- 2. Amend section 5.102 by—
  - a. Revising paragraph (a)(4) and the introductory text of paragraph (a)(5);
  - b. Removing paragraph (a)(5)(iii); and
  - c. Redesignating paragraph (a)(5)(iv) as (a)(5)(iii).
- The revised text reads as follows:

### 5.102 Availability of solicitations.

(a) \* \* \*

(4) When an agency determines that a solicitation contains information that requires additional controls to monitor access and distribution (e.g., technical data, specifications, maps, building designs, schedules, etc.), the information shall be made available through the enhanced controls of the GPE, unless an exception in paragraph (a)(5) of this section applies. The GPE meets the synopsis and advertising requirements of this part.

(5) The contracting officer need not make a solicitation available through the GPE as required in paragraph (a)(4) of this section, when—

\* \* \* \* \*

### 5.207 [Amended]

- 3. Amend section 5.207 by removing from paragraph (c)(18) “FedTeDS (<https://www.fedteds.gov>)” and adding “<http://www.fedbizopps.gov>” in its place.

## PART 7—ACQUISITION PLANNING

### 7.105 [Amended]

- 4. Amend section 7.105 by removing from paragraph (b)(15) “Federal Technical Data Solution (FedTeDS)” and adding “enhanced controls of the GPE at <http://www.fedbizopps.gov>” in its place.

[FR Doc. E9–19162 Filed 8–10–09; 8:45 am]

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 22 and 52

[FAC 2005–36; FAR Case 2007–021; Item II; Docket 2009–0004; Sequence 2]

RIN 9000–AL14

#### Federal Acquisition Regulation; FAR Case 2007–021, Fair Labor Standards Act and Service Contract Act Price Adjustment Clauses

**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 specifically require the incorporation of FAR clauses 52.222–43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) and 52.222–44, Fair Labor Standards Act and Service Contract Act—Price Adjustment, in time-and-materials and labor-hour service contracts that are subject to the Service Contract Act. No comments were received in response to the proposed rule.

**DATES:** *Effective Date:* September 10, 2009.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Ms. Meredith Murphy, Procurement Analyst, at (202) 208–6925. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–36, FAR case 2007–021.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This final rule amends the FAR to revise the clause prescriptions at FAR 22.1006(c)(1) and (2) to specifically require that time-and-materials and labor-hour service contracts subject to the Service Contract Act contain the appropriate price adjustment clauses set forth at FAR 52.222–43 and 52.222–44.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 74 FR 872 on January 9, 2009.

Despite the fact that the previous prescriptions did not require use of the clauses in time-and-materials or labor-hour contracts, there was actually broad usage of the clause(s) in such contracts. This change will achieve consistency throughout the Government acquisition community and resolve potential inequities where the clauses have not been applied. It will achieve an equitable result for contractors and will also allow the Government to avoid use of other means of adjusting contract unit price labor rates which may be more costly to the Government. Other means of adjusting contract labor rates, such as allowing for wage/benefit escalation, equitable adjustment or economic price adjustment, would likely include profit, overhead, and general and administrative expenses. The FAR clauses at 52.222–43 and 52.222–44 explicitly exclude these additional costs.

The clause prescriptions at FAR 22.1006(c)(1) and (c)(2) currently require that Service Contract Act wage determination updates be applied to contracts subject to the FAR clause at 52.222–41, Service Contract Act of 1965 but, as required by FAR clause 52.222–41, minimum monetary wages and fringe benefits to be paid to service employees under the contract may be subject to adjustment, under wage determinations issued by the Department of Labor. While there may be other means permitted to adjust fixed labor rates on time-and-materials or labor-hour contracts, those other means do not achieve the consistent results that use of the Service Contract Act price adjustment clause(s) will achieve.

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 merely clarifies the existing prescriptions relating to service contracts. FAR clause 52.222–41 requires contractors to comply with wage determinations of the Department of Labor and may require adjustment to wage rates during the term of the contract. Most contracts that include

this clause therefore provide some mechanism for dealing with the potential required price adjustment. The Councils have been advised that use of these clauses for time-and-materials and labor-hour service contracts is already widespread. Uniform use of the appropriate clause will ensure consistency in the adjustment method for any required increase in wage rate, but should not have a significant cost impact.

### 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. Chapter 35, *et seq.*

### List of Subjects in 48 CFR Parts 22 and 52

Government procurement.

Dated: August 4, 2009.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 22 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 22 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 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

#### 22.1006 [Amended]

■ 2. Amend section 22.1006 by removing from paragraphs (c)(1) and (c)(2) “fixed-price” and adding “fixed-price, time-and-materials, or labor-hour” in its place.

### PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

#### 52.212-5 [Amended]

■ 3. Amend section 52.212-5 by removing from the date of the clause “(June 2009)” and adding “(Sep 2009)” in its place; by removing from paragraph (c)(3) “(Nov 2006)” and adding “(Sep 2009)” in its place; and by removing from paragraph (c)(4) “(Feb 2002)” and adding “(Sep 2009)” in its place.

■ 4. Amend section 52.222-43 by revising the date of the clause, introductory text in paragraph (d), and the third and fourth sentences of paragraph (f) to read as follows:

#### 52.222-43 Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts).

\* \* \* \* \*

FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT—PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS) (Sep 2009)

\* \* \* \* \*

(d) The contract price, contract unit price labor rates, or fixed hourly labor rates will be adjusted to reflect the Contractor’s actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with or the decrease is voluntarily made by the Contractor as a result of:

\* \* \* \* \*

(f) \* \* \* The notice shall contain a statement of the amount claimed and the change in fixed hourly rates (if this is a time-and-materials or labor-hour contract), and any relevant supporting data, including payroll records, that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price, contract unit price labor rates, or fixed hourly rates shall be modified in writing. \* \* \*

\* \* \* \* \*

■ 5. Amend section 52.222-44 by revising the date of the clause, introductory text of paragraph (c), and the third and fourth sentences of paragraph (e) to read as follows:

#### 52.222-44 Fair Labor Standards Act and Service Contract Act—Price Adjustment.

\* \* \* \* \*

FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT—PRICE ADJUSTMENT (Sep 2009)

\* \* \* \* \*

(c) The contract price, contract unit price labor rates, or fixed hourly labor rates will be adjusted to reflect increases or decreases by the Contractor in wages and fringe benefits to the extent that these increases or decreases are made to comply with—

\* \* \* \* \*

(e) \* \* \* The notice shall contain a statement of the amount and the change in fixed hourly rates (if this is a time-and-materials or labor-hour contract) claimed and any relevant supporting data that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price, contract unit price labor rates, or fixed hourly rates shall be modified in writing. \* \* \*

\* \* \* \* \*

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 22, 25, and 52

[FAC 2005-36; FAR Case 2009-014; Item III; Docket 2009-0027, Sequence 1]

RIN 9000-AL34

### Federal Acquisition Regulation; FAR Case 2009-014, New Designated Country—Taiwan

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

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to add Taiwan (known in the World Trade Organization as “the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei)”) as a designated country, due to the accession of Taiwan to membership in the World Trade Organization Agreement on Government Procurement.

**DATES:** *Effective Date:* August 11, 2009.

*Comment Date:* Interested parties should submit written comments to the Regulatory Secretariat on or before October 13, 2009 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAC 2005-36, FAR case 2009-014, by any of the following methods:

• Regulations.gov: <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by inputting “FAR Case 2009-014” under the heading “Comment or Submission”. Select the link “Send a Comment or Submission” that corresponds with FAR Case 2009-014. Follow the instructions provided to complete the “Public Comment and Submission Form”. Please include your name, company name (if any), and “FAR Case 2009-014” on your attached document.

• Fax: 202-501-4067.

• Mail: General Services

Administration, Regulatory Secretariat (VPR), 1800 F Street, NW, Room 4041, ATTN: Hada Flowers, Washington, DC 20405.