

requirements be submitted to the SBA District Office for the geographical area where the work is to be performed. However, the SBA regulation requires the offering letters for sole source requirements offered on behalf of a specific participant be submitted to the SBA district office servicing that concern.

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 1.501-3(a) and 41 U.S.C. 418b, and publication for public comments is not required.

The Councils will consider comments from small entities concerning the existing regulations in the part affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005-46, FAR Case 2009-020) in all 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. chapter 35, et seq.

List of Subjects in 48 CFR Part 19

Government procurement.

Dated: September 21, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

■ 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 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).

■ 2. Amend section 19.804-2 by—

- a. Revising paragraph (b)(1); and
- b. Redesignating paragraph (b)(2) as paragraph (b)(3); and adding a new paragraph (b)(2).

■ The revised and added text reads as follows:

19.804-2 Agency offering.

* * * * *

(b)(1) An agency offering a construction requirement for which no specific offeror is nominated should submit it to the SBA District Office for the geographical area where the work is to be performed.

(2) An agency offering a construction requirement on behalf of a specific offeror should submit it to the SBA District Office servicing that concern.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 23 and 52

[FAC 2005-46; FAR Case 2009-028; Item VI; Docket 2010-0097, Sequence 1]

RIN 9000-AL64

Federal Acquisition Regulation; Encouraging Contractor Policies To Ban Text Messaging While Driving

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 (the Councils) are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement Executive Order 13513, issued on October 1, 2009, entitled “Federal Leadership on Reducing Text Messaging while Driving.” This Executive Order was issued to demonstrate Federal leadership in improving safety on the nation’s roads and highways, and to enhance the efficiency of Federal contracting. The purpose of this policy is to prevent the unsafe practice of text messaging by Federal contractors while driving in connection with Government business. This policy further promotes economy and efficiency in Federal procurement, and seeks to prohibit the disruption of Government business and Federal procurement, as a result of unsafe text messaging practices.

DATES: *Effective Date:* September 29, 2010.

Applicability Date: The rule applies to solicitations issued and contracts awarded on or after September 29, 2010.

However, contracting officers are encouraged to modify existing contracts, in accordance with FAR 1.108(d)(3), to include the FAR clause.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before November 29, 2010 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005-46, FAR Case 2009-028, by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting “FAR Case 2009-028” under the heading “Enter Keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “FAR Case 2009-028.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “FAR Case 2009-028” on your attached document.

- *Fax:* 202-501-4067.

- *Mail:* General Services

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

Instructions: Please submit comments only and cite FAC 2005-46, FAR Case 2009-028, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. William Clark, Procurement Analyst, at (202) 219-1813. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-46, FAR Case 2009-028.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule revises the Federal Acquisition Regulation to implement Executive Order 13513, issued on October 1, 2009 (74 FR 51225, October 6, 2009), entitled “Federal Leadership on Reducing Text Messaging while Driving.”

Text messaging while driving causes drivers to take their eyes off the road and at least one hand off the steering wheel, endangering both themselves and others. In order to implement the Executive order, this interim rule creates a new subpart in FAR part 23 and an associated clause to encourage Federal contractors and subcontractors to adopt and enforce policies that ban text messaging while driving—

- Company-owned or -rented vehicles or Government-owned vehicles; or
- Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

It also encourages Federal contractors, in connection with a Government contract, to conduct initiatives, commensurate with the size of the business, such as—

- Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
- Education, awareness, and other outreach programs to inform employees about the safety risks associated with texting while driving.

The clause does not flow down to subcontracts below the micro-purchase level, because the FAR applies only a very few clauses to acquisitions below the micro-purchase threshold. According to FAR 13.201(d), micro-purchases do not require provisions or clauses except as provided in FAR 4.1104 (Central Contractor Registration) and FAR 32.1110 (Electronic Funds Transfer). Therefore, it is reasonable not to require flow down below the micro-purchase level. However, Federal Contractors are encouraged to comply with this requirement to prevent the unsafe practice of text messaging while driving in connection with Government business. This requirement applies to all solicitations and contracts. This requirement also applies to grants and cooperative agreements. Separate guidance may be issued by the Office of Federal Financial Management regarding grants and cooperative agreements.

This is a significant regulatory action and, therefore, was 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 Councils do not expect this interim rule to 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 this rule is not mandatory for contractors, including small businesses. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

The Councils will also consider comments from small entities concerning the existing regulations in

parts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005–46, FAR Case 2009–028) in all 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. chapter 35, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because this rule implements Executive Order 13513, “Federal Leadership on Reducing Text Messaging While Driving,” which had a required date for agency implementation of 90 days from the date of the order (October 1, 2009). An interim rule is necessary to improve safety on our roads and highways and to enhance the efficiency of Federal contracting. Specifically, this order requires agencies to encourage Federal contractors and subcontractors to adopt and enforce policies banning text messaging while driving company-owned or -rented vehicles or Government-owned vehicles, or while driving personally-owned vehicles when on official Government business or when performing any work for or on behalf of the Government. The Councils believe an interim rule in the FAR will provide the Contracting Officer the relevant regulatory guidance needed when addressing requirements outlined in the Executive Order. However, pursuant to 41 U.S.C. 418b and FAR 1.501–3(b), the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 23 and 52

Government procurement.

Dated: September 21, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 23 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 23 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 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

■ 2. Amend section 23.000 by revising the introductory text; removing from paragraph (e) the period and adding “; and” in its place; and adding paragraph (f) to read as follows:

23.000 Scope.

This part prescribes acquisition policies and procedures supporting the Government’s program for ensuring a drug-free workplace, for protecting and improving the quality of the environment, and encouraging the safe operation of vehicles by—

* * * * *

(f) Encouraging contractors to adopt and enforce policies that ban text messaging while driving.

■ 3. Add Subpart 23.11 to read as follows:

Subpart 23.11—Encouraging Contractor Policies to ban text messaging while driving

Sec.

23.1101 Purpose.
23.1102 Applicability.
23.1103 Definitions.
23.1104 Policy.
23.1105 Contract clause.

Subpart 23.11—Encouraging Contractor Policies to Ban Text Messaging While Driving

23.1101 Purpose.

This subpart implements the requirements of the Executive Order (E.O.) 13513, dated October 1, 2009 (74 FR 51225, October 6, 2009), Federal Leadership on Reducing Text Messaging while Driving.

23.1102 Applicability.

This subpart applies to all solicitations and contracts.

23.1103 Definitions.

As used in this subpart—
Driving—(1) Means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.

(2) Does not include operating a motor vehicle with or without the motor running when one has pulled over to

the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

Text messaging means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park.

23.1104 Policy.

Agencies shall encourage contractors and subcontractors to adopt and enforce policies that ban text messaging while driving—

(a) Company-owned or –rented vehicles or Government-owned vehicles; or

(b) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

23.1105 Contract clause.

The contracting officer shall insert the clause at 52.223–18, Contractor Policy to Ban Text Messaging While Driving, in all solicitations and contracts.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend section 52.212–5 by revising the date of clause; redesignating paragraphs (b)(31) thru (b)(43) as paragraphs (b)(32) thru (b)(44); and adding a new paragraph (b)(31) 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 (Sep 2010)

* * * * *

(b) * * *

(31) 52.223–18, Contractor Policy to Ban Text Messaging while Driving (SEP 2010) (E.O. 13513).

* * * * *

■ 5. Add section 52.223–18 to read as follows:

52.223–18 Contractor Policy to Ban Text Messaging While Driving.

As prescribed in 23.1105, insert the following clause:

CONTRACTOR POLICY TO BAN TEXT MESSAGING WHILE DRIVING (SEP 2010)

(a) Definitions. As used in this clause— Driving—(1) Means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.

(2) Does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

Text messaging means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park.

(b) This clause implements Executive Order 13513, Federal Leadership on Reducing Text Messaging while Driving, dated October 1, 2009.

(c) The Contractor should—

(1) Adopt and enforce policies that ban text messaging while driving—

(i) Company-owned or –rented vehicles or Government-owned vehicles; or

(ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

(2) Conduct initiatives in a manner commensurate with the size of the business, such as—

(i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(d) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts that exceed the micro-purchase threshold.

(End of clause)

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 2005–46; FAR Case 2009–039; Item VII; Docket 2010–0104, Sequence 1]

RIN 9000–AL62

Federal Acquisition Regulation; Buy American Exemption for Commercial Information Technology—Construction Material

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) are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement section 615 of Division C, Title VI, of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117). Section 615 authorizes exemption from the Buy American Act for acquisition of information technology that is a commercial item.

DATES: Effective Date: September 29, 2010.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before November 29, 2010 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–46, FAR Case 2009–039, by any of the following methods:

• Regulations.gov: http://www.regulations.gov. Submit comments via the Federal eRulemaking portal by inputting “FAR Case 2009–039” under the heading “Enter Keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “FAR Case 2009–039.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “FAR Case 2009–039” on your attached document.

• Fax: 202–501–4067.

• Mail: General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.