

assumption is made that half of the protests sustained are on DoD, NASA, or Coast Guard task or delivery orders, then it can be estimated that extending the sunset date for protests against task or delivery order awards by Title 10 agencies will result in an additional 8 awards to small businesses per fiscal year that the protest authority remains in effect.

There is no requirement for small entities to submit any information under this provision. Therefore, no professional skills are necessary on the part of small entities for compliance, and the cost to small entities associated with this provision is \$0.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no practical alternatives that will accomplish the objectives of the interim rule, *i.e.*, implementation of a statutory mandate.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in the subpart 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 2005–53, FAR Case 2011–015) in correspondence.

IV. Paperwork Reduction Act

The interim 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).

V. 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 the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383) was enacted on January 7, 2011, and requires the extension of the sunset date for the affected agencies to be published in the FAR prior to the expiration of the previous sunset date, May 27, 2011. However, pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD, GSA, and NASA will consider public

comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Part 16

Government procurement.

Dated: June 28, 2011.

Laura Auletta,

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

Therefore, DoD, GSA, and NASA amend 48 CFR part 16 as set forth below:

PART 16—TYPES OF CONTRACTS

■ 1. The authority citation for 48 CFR part 16 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 16.505 by revising paragraph (a)(9)(ii) to read as follows:

16.505 Ordering.

* * * * *

(a) * * *

(9) * * *

(ii) The authority to protest the placement of an order under this subpart expires on September 30, 2016, for DoD, NASA and the Coast Guard (10 U.S.C. 2304a(d) and 2304c(e)), and on May 27, 2011, for other agencies (41 U.S.C. 4103(d) and 4106(f)).

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 23 and 52

[FAC 2005–53; FAR Case 2009–028; Item V; 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: Final rule.

SUMMARY: DoD, GSA, and NASA have adopted as final, with changes, the interim rule amending the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.)

13513, dated October 1, 2009, entitled “Federal Leadership on Reducing Text Messaging while Driving.”

DATES: *Effective Date:* August 4, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. William Clark, Procurement Analyst, at (202) 219–1813, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–53, FAR Case 2009–028.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 75 FR 60264 on September 29, 2010, to amend the FAR to implement E.O. 13513 (October 1, 2009), published in the **Federal Register** at 74 FR 51225 on October 6, 2009, entitled “Federal Leadership on Reducing Text Messaging while Driving.” The rule requires Government agencies to encourage Federal contractors and subcontractors to adopt and enforce policies that ban text messaging while driving. This requirement applies to all solicitations and contracts entered into on or after September 29, 2010. The interim rule encouraged contracting officers to modify existing contracts to include the FAR clause 52.223–18, Contractor Policy to Ban Text Messaging While Driving. The clause in the interim rule indicated that Federal contractors should adopt and enforce policies banning 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. The interim rule clause also indicated that Federal contractors should conduct initiatives such as—

(1) Establishing new rules and programs or re-evaluating existing programs to prohibit text messaging while driving; and

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

As a result of public comments, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) changed “should” to “encouraged to” in this final rule clause. The revised language better aligns with the intent of the Executive Order. A corresponding change has been made to the clause title. Five respondents submitted comments on the interim rule.

II. Discussion and Analysis of the Public Comments

The Councils reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

Comments: A respondent recommended that the clause should not be adopted and incorporated into the FAR because it does not mandate that contractors perform any action and does not include any enforcement language. Another respondent commented that it would be a much stronger stance to make it mandatory that all Federal contractors and subcontractors “enforce” these policies in states with text-messaging bans.

Response: The purpose of this rule is to implement E.O. 13513, which requires each Federal agency only to encourage contractors and subcontractors to adopt and enforce policies that ban texting while driving. The Executive Order does not include enforcement provisions.

Comment: A respondent recommended that the final rule be modified to include the Federal Motor Carrier Safety Administration (FMCSA) definitions of electronic device, texting, and driving at 49 CFR 390.5 and 49 CFR 392.80.

Response: The FMCSA regulations are more restrictive than FAR 52.223–18, which only encourages the adoption of policies to ban text messaging while driving. The FAR rule does not include enforcement methods or consequences for not adopting policies, unlike the FMCSA regulations. The Department of Transportation (DOT) was consulted regarding this comment, and DOT agreed that no changes to the definitions are required.

Comment: A respondent stated that the provisions at 41 U.S.C. 430 and 431 are intended to limit the clauses that are to be applied to contractors that sell commercial items to the Government so that commercial item contracts reflect customary commercial terms and conditions to the extent practicable. The respondent recommended that the final rule exempt commercial and commercially available off-the-shelf contracts and limit application of the rule to subcontracts over \$25,000.

Response: This rule requires each Federal agency only to encourage adoption and enforcement policies that ban texting while driving. Implementing such policies in any contract or subcontract is not mandatory. In addition, 41 U.S.C. 430 (renumbered as 41 U.S.C. 1906) and 41 U.S.C. 431

(renumbered as 41 U.S.C. 1907) do not address waiver of Executive orders.

Comment: A respondent noted that this rule will improve the safety of our roads and provides Government contractors with a better understanding of the risks associated with texting while driving.

Response: Noted.

Comment: One respondent suggested that because the rule is not mandatory, the title of FAR clause 52.223–18 should begin with “Encouragement of,” and the introductory paragraph at FAR 52.223–18(c) should begin with “The Contractor is encouraged to” instead of “The Contractor should.”

Response: The Councils agree that the recommended changes better represent the purpose of the rule. The final rule reflects the recommended changes.

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 this rule only encourages contractors to adopt policies that ban texting while driving. The adoption of such policies is not mandatory for contractors, including small businesses.

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 23 and 52

Government procurement.

Dated: June 28, 2011.

Laura Auletta,

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

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR parts 23 and 52, which was published in the **Federal Register** at 75 FR 60264 on September 29, 2010, is adopted as final with the following changes:

■ 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. Revise section 23.1105 to read as follows:

23.1105 Contract clause.

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

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.212–5 by revising the date of the clause and paragraph (b)(36) 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 (AUG 2011)

* * * * *

(b) * * *

____ (36) 52.223–18, Encouraging Contractor Policies to Ban Text Messaging While Driving (AUG 2011)

* * * * *

■ 4. Amend section 52.223–18 by revising the section heading, the heading and date of the clause, and the paragraph (c) introductory text to read as follows:

52.223-18 Encouraging Contractor Policies To Ban Text Messaging While Driving.

* * * * *

Encouraging Contractor Policies To Ban Text Messaging While Driving (AUG 2011)

* * * * *

(c) The Contractor is encouraged to—

* * * * *

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 2005-53; FAR Case 2009-034; Item VI; Docket 2010-0098, Sequence 1]

RIN 9000-AL73

Federal Acquisition Regulation; TINA Interest Calculations

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 revise the FAR clauses on price reduction for defective pricing to require compound interest calculations be applied to Government overpayments as a result of defective cost or pricing data.

DATES: Effective Date: August 4, 2011.

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 2005-53, FAR Case 2009-034.

SUPPLEMENTARY INFORMATION:

I. Background

On September 14, 2009, the U.S. Court of Appeals for the Federal Circuit (CAFC) issued a decision regarding the method of interest calculation on Cost Accounting Standards (CAS) cost impacts (see GATES v. Raytheon Co., 584 F.3d 1062 (Fed. Cir. 2009)). The interest on CAS cost impacts is set by reference in the enabling statute to 26 U.S.C. 6621. The CAFC ruled that the

citation led to calculation of the interest using daily compounding. The Truth in Negotiation Act (TINA) also references 26 U.S.C. 6621 for interest calculation. (See 41 U.S.C. 3507 and 10 U.S.C. 2306a).

A proposed rule was published on September 22, 2010, (75 FR 57719) with regard to the application of compound interest calculations to Government overpayments as a result of defective cost or pricing data. This rule replaces the term "simple interest" as the requirement for calculating interest for Truth in Negotiations Act cost impacts with the phrase "Interest compounded daily as required by 26 U.S.C. 6622." Thus, compound interest calculations will be applied to Government overpayments as a result of defective cost or pricing data. DoD, GSA, and NASA received no comments on the proposed rule.

II. 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.

III. 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 merely clarifies the statutory method for calculating interest in the rare instances when a contractor is found to be in violation of TINA. Since TINA requirements generally do not apply to contracts with small entities, and since the numbers of contractors found to have submitted defective cost or pricing data are a minute subset of contractors to whom TINA applies, the rule is not expected to apply to a substantial number of small entities. Furthermore, the differential in interest

computing methods is not expected to amount to a significant economic impact.

IV. 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 Part 52

Government procurement.

Dated: June 28, 2011.

Laura Auletta,

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

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

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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

■ 2. Amend section 52.214-27 by revising the date of the clause and paragraph (e)(1) to read as follows:

52.214-27 Price Reduction for Defective Certified Cost or Pricing Data—Modifications—Sealed Bidding.

* * * * *

Price Reduction for Defective Certified Cost or Pricing Data—Modifications—Sealed Bidding (AUG 2011)

* * * * *

(e) * * *

(1) Interest compounded daily, as required by 26 U.S.C. 6622, on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

* * * * *

■ 3. Amend section 52.215-10 by revising the date of the clause and paragraph (d)(1) to read as follows:

52.215-10 Price Reduction for Defective Certified Cost or Pricing Data.

* * * * *

Price Reduction for Defective Certified Cost or Pricing Data (AUG 2011)

* * * * *

(d) * * *

(1) Interest compounded daily, as required by 26 U.S.C. 6622, on the amount of such overpayment to be computed from the date(s)