

**IV. Regulatory Flexibility Act**

The change may 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.* The Initial Regulatory Flexibility Analysis (IRFA) is summarized as follows:

The objective of this rule is to implement section 825 of the NDAA for FY 2011, which extended the sunset date for Title 10 agencies and section 813 of the NDAA for FY 2012, which extended the sunset date for Title 41 agencies.

The authority to file protests against the award of task or delivery orders is relatively new, and there is little data available, as such protests may be filed with the agency or Government Accountability Office (GAO). GAO has exclusive jurisdiction of a protest of an order valued in excess of \$10 million. Data on agency-level protests is not compiled outside the agency concerned; therefore estimates are based on the total number of protests filed at the GAO in FYs 2009, 2010 and 2011. The data was extracted from GAO's report to the Congress for those fiscal years.

Offerors can protest to the agency or to the GAO. Assuming that one-half of all protests are filed with the GAO and the other half are filed with the agency, then the average number of protests filed per fiscal year would be 6,700 (see below):

Fiscal Year 2009 protests to GAO .....	2,000
Fiscal Year 2010 protests to GAO .....	2,300
Fiscal Year 2011 protests to GAO .....	2,400
	6,700
Divided by	3
Average annual GAO protests	2,233
Multiplied by	2
	4,467

Protests may be filed against the award of contracts as well as certain task or delivery orders. There are few prohibitions on the grounds for protests against the award of a contract. However, protests against the award of a task or delivery order are limited to (a) a protest on the grounds that the order increases the scope, period, or maximum value of the contract; or (b) a protest of an order valued in excess of \$10 million. Therefore, it is reasonable to assume that less than 50 percent of the total number of protests filed is against the award of a task or delivery order. A generous estimate is approximately one-fourth, or 1,117. Likewise, only a percentage of the protests against the award of a task or delivery order are made by small businesses. Even if we assume that percentage to be one-half, then the number of protests filed by small businesses against the award of a task or delivery order is estimated to be 559.

# protests of task/delivery orders by small businesses .....	559
% of protests sustained .....	× .03

# of task/delivery orders protests sustained ..... 17

The number 17 represents the number of small business task or delivery order protests sustained in a fiscal year. This number is representative of protests against awards by all Government agencies.

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 Regulatory Secretariat will be submitting a copy of the Initial Regulatory Flexibility Analysis (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 subparts 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 2005–60, FAR Case 2012–007) in correspondence.

**V. 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).

**VI. 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 statutory authority for Title 41 offerors to file certain bid protests lapsed May 27, 2011, but was reinstated in the National Defense Authorization Act for Fiscal Year 2012, effective December 31, 2011. Similar authority for Title 10 offerors was extended by a January 7, 2011, statute, and has already been implemented in the FAR. If this rule is not published on an interim basis, offerors could be misinformed about their legal right to file certain protests. Disappointed Title 41 offerors would be unclear on whether to file bid protests of civilian agency task and delivery

order awards at either the GAO or the Court of Federal Claims. This interim rule clarifies that GAO has exclusive jurisdiction of a protest of an order valued in excess of \$10 million. 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: July 16, 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 16 as follows:

**PART 16—TYPES OF CONTRACT**

■ 1. The authority citation for 48 CFR part 16 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. Amend section 16.505 by removing from paragraph (a)(10)(i) introductory text “under Subpart 33.1” and adding “under subpart 33.1” in its place; and revising paragraph (a)(10)(ii) to read as follows:

**16.505 Ordering.**

(a) \* \* \*  
(10) \* \* \*

(ii) The authority to protest the placement of an order under (a)(10)(i)(B) of this section expires on September 30, 2016 (10 U.S.C. 2304a(d), 10 U.S.C. 2304c(e), 41 U.S.C. 4103(d), and 41 U.S.C. 4106(f)).

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 29**

[FAC 2005–60; FAR Case 2012–019; Item IV; Docket 2012–0019; Sequence 1]

RIN 9000–AM29

**Federal Acquisition Regulations; DARPA-New Mexico Tax Agreement**

**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 add the United States Defense Advanced Research Projects Agency (DARPA) to the list of agencies that have entered into separate tax agreements with the State of New Mexico (NM). The DARPA–NM tax agreement eliminates the double taxation of Government cost-reimbursement contracts when DARPA contractors and their subcontractors purchase tangible personal property to be used in performing services in whole or in part in the State of New Mexico, and for which title to such property will pass to the United States upon delivery of the property to the contractor and its subcontractors by the vendor.

**DATES:** *Effective date:* August 27, 2012.

**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 2005–60, FAR Case 2012–019.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On August 18, 2011, DARPA and the Taxation and Revenue Department of the State of New Mexico entered into the DARPA–NM tax agreement to eliminate the double taxation of Government cost-reimbursement contracts when DARPA contractors and their subcontractors purchase tangible personal property to be used in performing services in whole or in part in the State of New Mexico and for which title to such property will pass to the United States upon delivery of the property to the contractor and its subcontractors by the vendor.

**II. Discussion**

The FAR is amended to add the United States Defense Advanced Research Projects Agency to the list of participating agencies under FAR 29.401–4(c). DARPA joins the list of other agencies with existing tax agreements with the State of New Mexico.

**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. 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 Federal Acquisition Regulation. 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 recognizes actions taken by DARPA that do not have a significant effect on contractors or offerors.

**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 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 29**

Government procurement.

Dated: July 16, 2012.

**Laura Auletta,**

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

Therefore, DoD, GSA, and NASA amend 48 CFR part 29 as follows:

**PART 29—TAXES**

■ 1. The authority citation for 48 CFR part 29 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.

**29.401–4 [Amended]**

■ 2. Amend section 29.401–4 in paragraph (c)(1) by adding to the listing, in alphabetical order, “United States Defense Advanced Research Projects Agency;”.

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 53**

[FAC 2005–60; FAR Case 2011–022; Item V; Docket 2011–0093, Sequence IV]

RIN 9000–AM15

**Federal Acquisition Regulation: Clarification of Standards for Computer Generation of Forms**

**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 remove any reference to Federal Information Processing Standard (FIPS) 161 and codify requirements for standards already in use.

**DATES:** *Effective Date:* August 27, 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 2005–60, FAR Case 2011–022.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 76 FR 79609 on December 22, 2011, to implement the removal of FIPS 161. FIPS 161 is being removed based on the notice posted in the **Federal Register** at 73 FR 51276 on September 2, 2008, by the Department of Commerce. This FIPS requirement was withdrawn by the Secretary of Commerce because it was obsolete and had not been updated to adopt current voluntary industry standards, Federal specifications, Federal data standards, or current good practices for information security. The withdrawal of this standard created a