

(h) *Review and justification of pass-through contracts.* (1) The requirements of this paragraph (h) are applicable to all agencies. The requirements apply by law to the Department of Defense, the Department of State, and the United States Agency for International Development, per section 802 of the National Defense Authorization Act (NDAA) for Fiscal Year 2013. The requirements apply as a matter of policy to other Federal agencies.

(2) Except as provided in paragraph (h)(3) of this section, when an offeror for a contract or a task or delivery order informs the contracting officer pursuant to 52.215-22 that it intends to award subcontracts for more than 70 percent of the total cost of work to be performed under the contract, task or delivery order, the contracting officer shall—

(i) Consider the availability of alternative contract vehicles and the feasibility of contracting directly with a subcontractor or subcontractors that will perform the bulk of the work. If such alternative approaches are selected, any resulting solicitations shall be issued in accordance with the competition requirements under FAR part 6;

(ii) Make a written determination that the contracting approach selected is in the best interest of the Government; and

(iii) Document the basis for such determination.

(3) Contract actions awarded pursuant to subparts 19.5, 19.8, 19.13, 19.14, or 19.15 are exempt from the requirements of this paragraph (h) (see section 1615 of the National Defense Authorization Act for Fiscal Year 2014 (Pub. L. 113-66)).

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 42

[FAC 2005-82; FAR Case 2014-010; Item III; Docket No. 2014-0010, Sequence No. 1]

RIN 9000-AM79

#### Federal Acquisition Regulation; Enhancements to Past Performance Evaluation Systems

**AGENCY:** 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 accommodate the recent merger of the Architect-Engineer Contract Administration Support System (ACASS) and the Construction Contractor Appraisal Support System (CCASS) modules within the Contractor Performance Assessment Reporting System (CPARS) database.

**DATES:** *Effective:* June 8, 2015.

**FOR FURTHER INFORMATION CONTACT:** Mr. Curtis E. Glover, Sr., Procurement Analyst, at 202-501-1448, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite FAC 2005-82, FAR Case 2014-010.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 79 FR 54949 on September 15, 2014, to standardize the past performance reporting requirements under the CPARS database in FAR subpart 42.15. One respondent submitted comments on the proposed rule.

##### II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (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:

###### A. Summary of Changes

There are no changes made in the final rule as a result of the public comments.

###### B. Public Comments

###### 1. Continue To Use ACASS

*Comment:* The respondent requests that ACASS continue to be utilized because the ratings are more descriptive and appropriate to the design professionals than those in CPARS.

*Response:* ACASS will not continue to be utilized since the ACASS module was merged into CPARS on July 1, 2014. Appendix 3 of the “Guidance for Contractor Performance Assessment Reporting System (CPARS),” dated July 2014, provides specific instructions on describing the different aspects of the quality of the contractor’s work and the contractor’s management of a quality control program in the narrative of a

CPARS evaluation for an Architect-Engineer contract or order. This guidance is accessible electronically at <https://www.cpars.gov/cparsfiles/pdfs/CPARS-Guidance.pdf>.

###### 2. “Overall Rating” Added to CPARS

*Comment:* The respondent requests an “Overall Rating” be added to the CPARS rating system, similar to the ACASS system.

*Response:* An overall rating of contractor performance in CPARS is not advantageous, because the weight of the specific evaluation areas (quality, schedule, cost control, management, utilization of small business and regulatory compliance) is different for each contract being evaluated and each solicitation in which the offeror’s past performance is being evaluated.

###### 3. Interim Evaluations

*Comment:* The respondent suggests that the interim evaluation in CPARS be superseded by the final evaluation.

*Response:* The final evaluation is the last rating provided to date on a contract. Interim evaluations, combined with the final evaluation (or last evaluation to date), remain available in order to provide the entire picture of contractor performance under the contract for future source selection purposes.

##### C. Other Changes

For clarity, the final rule adds a reference to the past performance thresholds at paragraphs (b) through (f) of section 42.1502.

##### 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. Regulatory Flexibility Act

DoD, GSA, and NASA 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 removes references to the ACASS and CCASS modules since these modules were merged into CPARS on July 1, 2014. This action will standardize the past performance reporting requirements for architect-engineer contracts and construction contracts under the CPARS database. This change does not impose any new requirements on small entities.

#### V. 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 Subject in 48 CFR Part 42

Government procurement.

Dated: April 30, 2015.

**William Clark,**

*Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.*

Therefore, DoD, GSA, and NASA amend 48 CFR part 42 as set forth below:

#### PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 1. The authority citation for 48 CFR part 42 continues 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 42.1502 by revising paragraph (a) to read as follows:

##### 42.1502 Policy.

(a) *General.* Past performance evaluations shall be prepared at least annually and at the time the work under a contract or order is completed. Past performance evaluations are required for contracts and orders as specified in paragraphs (b) through (f) of this section, including contracts and orders performed outside the United States. These evaluations are generally for the entity, division, or unit that performed the contract or order. Past performance information shall be entered into CPARS, the Governmentwide evaluation reporting tool for all past performance reports on contracts and orders. Instructions for submitting evaluations into CPARS are available at <http://www.cpars.gov/>.

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 4, 22, 39, and 52

[FAC 2005-82; Item IV; Docket No. 2015-0052; Sequence No. 1]

#### Federal Acquisition Regulation; Technical Amendments

**AGENCY:** 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 (FAR) in order to make editorial changes.

**DATES:** *Effective:* May 7, 2015.

**FOR FURTHER INFORMATION CONTACT:** The Regulatory Secretariat Division (MVCB), 1800 F Street NW., 2nd Floor, Washington, DC 20405, 202-501-4755, for information pertaining to status or publication schedules. Please cite FAC 2005-82, Technical Amendments.

**SUPPLEMENTARY INFORMATION:** In order to update certain elements in 48 CFR parts 4, 22, 39, and 52 this document makes editorial changes to the FAR.

#### List of Subject in 48 CFR Parts 4, 22, 39, and 52

Government procurement.

Dated: April 30, 2015.

**William Clark,**

*Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.*

Therefore, DoD, GSA, and NASA amend 48 CFR parts 4, 22, 39, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 4, 22, 39, and 52 continues to read as follow:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

#### PART 4—ADMINISTRATIVE MATTERS

##### 4.905 [Amended]

■ 2. Amend section 4.905 by removing from paragraph (a) “provisionat” and adding “provision at” in its place.

#### PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 3. Amend section 22.102-2 by revising the first sentence of paragraph (a) to read as follows:

##### 22.102-2 Administration.

(a) Agencies shall cooperate with, and encourage contractors to use to the fullest extent practicable, the DOL Employment and Training Administration (DOLETA) at <http://www.doleta.gov>, and its affiliated local offices in meeting contractors' labor requirements. \* \* \*

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#### PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

##### 39.101 [Amended]

■ 4. Amend section 39.101 by removing from paragraph (a)(1)(ii) “(EPEAT)” and adding “(EPEAT®)” in its place.

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

■ 5. Amend section 52.212-4 by revising the date of the clause and adding paragraph (v) to read as follows:

##### 52.212-4 Contract Terms and Conditions—Commercial Items.

\* \* \* \* \*

##### Contract Terms and Conditions—Commercial Items (May 2015)

\* \* \* \* \*

(v) *Incorporation by reference.* The Contractor's representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

\* \* \* \* \*

■ 6. Amend section 52.212-5 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraph (b)(36)(i) “(Jun 2014)+(E.O.s)” and adding “(JUN 2014) (E.O.s)” in its place;

■ c. Removing from paragraph (b)(36)(ii) “(ii) Alternate I” and adding and “ \_\_\_\_\_ (ii) Alternate I” in its place;

■ d. Removing from paragraph (b)(39)(ii) “(ii) Alternate I” and adding “ \_\_\_\_\_ (ii) Alternate I” in its place; and

■ e. Revising paragraph (e)(1)(v).

The revision reads as follows:

##### 52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

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##### Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (May 2015)

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