

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 15, 16, 31, 42, and 52

[FAC 2005–89; FAR Case 2014–023; Item II; Docket No. 2014–0023, Sequence No. 1]

RIN 9000–AN17

Federal Acquisition Regulation; OMB Circular Citation Update

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SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to update outdated Office of Management and Budget (OMB) Circular citation references.

DATES: Effective: August 15, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Kathlyn J. Hopkins, Procurement Analyst, at 202–969–7226, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2005–89, FAR Case 2014–023.

SUPPLEMENTARY INFORMATION:

I. Background

On December 26, 2013, the Office of Management and Budget (OMB) published new guidance at 2 CFR part 200 entitled Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (OMB Uniform Guidance); this became effective on December 26, 2014, after Federal agencies adopted the guidance as a set of binding regulations. This new OMB Uniform Guidance supersedes and streamlines requirements from OMB Circulars A–21, A–87, A–89, A–102, A–110, A–122, and A–133, and the guidance in Circular A–50 on Audit Followup. As such, this final rule replaces OMB citations in the FAR to the circulars cited above that have been replaced by this new OMB Uniform Guidance, and cross references to new terminology in the OMB Uniform Guidance.

The cost principles under OMB’s Uniform Guidance apply to contracts with non-profits, educational institutions, state and local governments, and Indian tribal

governments. All other FAR contractual requirements (e.g., contract administration, audit) take precedence over the OMB Uniform Guidance when there is a conflict.

This rule also creates a definition with an abbreviated title in FAR section 2.101 for FAR citations to this OMB Uniform Guidance.

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 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.

III. 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 that applies to the publication of the FAR. 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 merely replaces outdated OMB Circular references in the FAR with current references that do not have a significant effect on contractors or offerors.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant FAR revision within the meaning of FAR 1.501–1 and 41 U.S.C. 1707 and does not require publication for public comment.

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 Subjects in 48 CFR Parts 2, 15, 16, 31, 42, and 52

Government procurement.

Dated: June 30, 2016.

William F. 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 2, 15, 16, 31, 42, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 15, 16, 31, 42, and 52 continues to read as follows:

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

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 in paragraph (b)(2) by adding in alphabetical order the definition “OMB Uniform Guidance at 2 CFR part 200” to read as follows:

2.101 [Amended]

* * * * *
(b) * * *
(2) * * *

OMB Uniform Guidance at 2 CFR part 200 is the abbreviated title for Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200), which supersedes OMB Circulars A–21, A–87, A–89, A–102, A–110, A–122, and A–133, and the guidance in Circular A–50 on Audit Followup.

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PART 15—CONTRACTING BY NEGOTIATION

15.209 [Amended]

■ 3. Amend section 15.209 by removing from paragraph (b)(1) introductory text, “OMB Circular No. A–133” and adding “Audit Requirements in the OMB Uniform Guidance at 2 CFR part 200, subpart F” in its place.

PART 16—TYPES OF CONTRACTS

16.307 [Amended]

■ 4. Amend section 16.307 by removing from paragraph (a)(5) “OMB Circular No. A–122” and adding “the OMB Uniform Guidance at 2 CFR part 200, appendix VIII” in its place.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 5. Amend section 31.104 by revising the introductory text to read as follows:

31.104 Contracts with educational institutions.

This category includes all contracts and contract modifications for research and development, training, and other work performed by educational institutions (defined as institutions of higher education in the OMB Uniform Guidance at 2 CFR part 200, subpart A, and 20 U.S.C. 1001).

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31.105 [Amended]

■ 6. Amend section 31.105 by removing from paragraph (a) “OMB Circular A–122 (see 31–108)” and adding “OMB Uniform Guidance at 2 CFR part 200, appendix VIII (see 31.108)” in its place.

■ 7. Revise section 31.108 to read as follows:

31.108 Contracts with nonprofit organizations.

Subpart 31.7 provides principles and standards for determining costs applicable to contracts with nonprofit organizations other than educational institutions (see subpart 31.3), State and local governments (see subpart 31.6), and those nonprofit organizations exempted under the OMB Uniform Guidance at 2 CFR part 200, appendix VIII (see subpart 31.2 for the cost principles applicable to nonprofit organizations exempt from the cost principles in the OMB Uniform Guidance at 2 CFR part 200).

■ 8. Revise section 31.302 to read as follows:

31.302 General.

The OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix III, provides principles for determining the costs applicable to research and development, training, and other work performed by educational institutions (defined as institutions of higher education in the OMB Uniform Guidance at 2 CFR part 200, subpart A, and 20 U.S.C. 1001) under contracts with the Government.

■ 9. Amend section 31.303 by revising paragraph (a) to read as follows:

31.303 Requirements.

(a) Contracts that refer to this subpart 31.3 for determining allowable costs under contracts with educational institutions (defined as institutions of higher education in the OMB Uniform Guidance at 2 CFR part 200, subpart A, and 20 U.S.C. 1001) shall be deemed to

refer to, and shall have the allowability of costs determined by the contracting officer in accordance with, the OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix III, in effect on the date of the contract.

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31.602 [Amended]

■ 10. Amend section 31.602 by removing “Office of Management and Budget (OMB) Circular No. A–87, Cost Principles for State and Local Governments, Revised,” and adding “The OMB Uniform Guidance at 2 CFR part 200, subpart E and appendices V and VII” in its place.

31.603 [Amended]

■ 11. Amend section 31.603 by removing from paragraph (a) “the revision of OMB Circular A–87 which is” and adding “the OMB Uniform Guidance at 2 CFR part 200, subpart E and appendices V and VII,” in its place.

■ 12. Revise section 31.702 to read as follows:

The OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix IV, sets forth principles for determining the costs applicable to work performed by nonprofit organizations (as defined in the OMB Uniform Guidance at 2 CFR part 200) under contracts (as well as grants and other agreements) with the Government. See 31.108 for exceptions to the cost principles for nonprofit organizations.

31.703 [Amended]

■ 13. Amend section 31.703 by removing from paragraph (a) “the revision of OMB circular A–122” and adding “the OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix IV” in its place.

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 14. Amend section 42.003 by revising paragraph (a) to read as follows:

42.003 Cognizant Federal agency.

(a) For contractors other than educational institutions and nonprofit organizations, the cognizant Federal agency normally will be the agency with the largest dollar amount of negotiated contracts, including options. For educational institutions (defined as institutions of higher education in the OMB Uniform Guidance at 2 CFR part 200, subpart A, and 20 U.S.C. 1001) and nonprofit organizations (as defined in the OMB Uniform Guidance at 2 CFR part 200), the cognizant Federal agency for indirect costs is established

according to the OMB Uniform Guidance at 2 CFR part 200, appendices III and IV, respectively.

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■ 15. Amend section 42.101 by revising paragraph (b) to read as follows:

42.101 Contract audit responsibilities.

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(b) Normally, for contractors other than educational institutions and nonprofit organizations, the Defense Contract Audit Agency (DCAA) is the responsible Government audit agency. However, there may be instances where an agency other than DCAA desires cognizance of a particular contractor. In those instances, the two agencies shall agree on the most efficient and economical approach to meet contract audit requirements. For educational institutions (defined as institutions of higher education in the OMB Uniform Guidance at 2 CFR part 200, subpart A, and 20 U.S.C. 1001) and nonprofit organizations (as defined in the OMB Uniform Guidance at 2 CFR part 200), audit cognizance will be determined according to the provisions of the OMB Uniform Guidance at 2 CFR part 200, subpart F.

■ 16. Amend section 42.703–2 by revising paragraphs (b)(2)(ii) through (iv) to read as follows:

42.703–2 Certificate of indirect costs.

* * * * *

(b) * * *

(2) * * *

(ii) A State or local government subject to the OMB Uniform Guidance at 2 CFR part 200, subpart E and appendices V and VII;

(iii) An educational institution (defined as an institution of higher education in the OMB Uniform Guidance at 2 CFR part 200, subpart A, and 20 U.S.C. 1001) subject to the OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix III; and

(iv) A nonprofit organization (as defined in the OMB Uniform Guidance at 2 CFR part 200) subject to the OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix IV.

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■ 17. Amend section 42.705–3 by revising paragraphs (a)(2) and (3); and adding paragraph (b)(8) to read as follows:

42.705–3 Educational institutions.

(a) * * *

(2) The OMB Uniform Guidance at 2 CFR part 200, appendix III assigns each educational institution (defined as an institution of higher education in the OMB Uniform Guidance at 2 CFR part

200, subpart A, and 20 U.S.C. 1001) to a single Government agency for the negotiation of indirect cost rates and provides that those rates shall be accepted by all Federal agencies. Cognizant Government agencies and educational institutions are listed in the Directory of Federal Contract Audit Offices (see 42.103).

(3) The cognizant agency for indirect costs shall establish the billing rates and final indirect cost rates at the educational institution (defined as an institution of higher education in 2 CFR 200, subpart A, and 20 U.S.C. 1001) consistent with the requirements of this subpart, Subpart 31.3, and the OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix III. The agency shall follow the procedures outlined in 42.705-1(b).

* * * * *

(b) * * *

(8) The OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix III, provides additional guidance on how long predetermined rates may be used.

■ 18. Revise section 42.705-4 to read as follows:

42.705-4 State and local governments.

The OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix V, concerning cost principles for state and local governments (see Subpart 31.6) establishes the cognizant agency concept and the procedures for determining a cognizant agency for approving State and local government indirect costs associated with federally-funded programs and activities. The indirect cost rates negotiated and approved by the cognizant agency for indirect costs will be used by all Federal agencies that also award contracts to these same State and local governments.

42.705-5 [Amended]

■ 19. Amend section 42.705-5 by removing “OMB Circular No. A-122” and adding “the OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix IV; but see appendix VIII for nonprofit organizations exempt from subpart E)” in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 20. Amend section 52.215-2 by revising the date of Alternate II and paragraph (h) to read as follows:

52.215-2 Audit and Records-Negotiation.

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Alternate II (Aug 2016). * * *

(h) The provisions of the OMB Uniform Guidance at 2 CFR part 200, subpart F apply to this contract.

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■ 21. Amend section 52.230-5 by revising the date of the clause and paragraphs (a)(1) and (2) and (a)(4)(iv) to read as follows:

52.230-5 Cost Accounting Standards—Educational Institution.

* * * * *

Cost Accounting Standards—Educational Institution (Aug 2016)

(a) * * *

(1) *(CAS-covered Contracts only)*. If a business unit of an educational institution (defined as an institution of higher education in the OMB Uniform Guidance at 2 CFR part 200, subpart A and 20 U.S.C. 1001) is required to submit a Disclosure Statement, disclose in writing the Contractor’s cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for accumulating and allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets, and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor’s cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement, if required, must be amended accordingly. If an accounting principle change mandated under OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix III, requires that a change in the Contractor’s cost accounting practices be made after the date of this contract award, the change must be applied prospectively to this contract and the Disclosure Statement, if required, must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with paragraph (a)(4) or (a)(5) of this clause, as appropriate.

* * * * *

(4) * * *

(iv) Agree to an equitable adjustment as provided in the Changes clause of this contract, if the contract cost is materially affected by an accounting principle amendment required under the OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix III, which, on becoming effective after the date of contract award,

requires the Contractor to make a change to the Contractor’s established cost accounting practices.

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■ 22. Amend section 52.249-5 by revising the date of the clause and paragraph (f) to read as follows:

52.249-5 Termination for Convenience of the Government (Educational and Other Nonprofit Institutions).

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Termination for Convenience of the Government (Educational and Other Nonprofit Institutions) (Aug 2016)

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(f) The cost principles and procedures in subpart 31.3 of the Federal Acquisition Regulation (FAR), Contracts with Educational Institutions (defined as institutions of higher education in the OMB Uniform Guidance in 2 CFR part 200, subpart A, and 20 U.S.C. 1001), as in effect on the date of the contract, shall govern all costs claimed, agreed to, or determined under this clause; however, if the Contractor is not an educational institution and is a nonprofit organization (as defined in the OMB Uniform Guidance at 2 CFR part 200), the cost principles and procedures in subpart 31.7 of the FAR, Contracts with Nonprofit Organizations, shall apply; unless the Contractor is a nonprofit institution listed in the OMB Uniform Guidance at 2 CFR part 200, appendix VIII, as exempted from the cost principles in subpart E, in which case the cost principles at FAR 31.2 for commercial organizations shall apply to such contractor.

[FR Doc. 2016-16246 Filed 7-13-16; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 8

[FAC 2005-89; FAR Case 2016-008; Item III; Docket No. 2016-0008; Sequence No 1]

RIN 9000-AN22

Federal Acquisition Regulation; FPI Blanket Waiver Threshold

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 increase the blanket waiver threshold for small dollar-value purchases from Federal Prison Industries (FPI) by Federal agencies.