

\_\_\_\_\_ (iii) 52.219–22, Small Disadvantaged Business Status.

\_\_\_\_\_ (A) Basic.

\_\_\_\_\_ (B) Alternate I.

\_\_\_\_\_ (iv) 52.222–18, Certification

Regarding Knowledge of Child Labor for Listed End Products.

\_\_\_\_\_ (v) 52.222–48, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment Certification.

\_\_\_\_\_ (vi) 52.222–52 Exemption from Application of the Service Contract Act to Contracts for Certain Services—Certification.

\_\_\_\_\_ (vii) 52.223–9, with its Alternate I, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (Alternate I only).

\_\_\_\_\_ (viii) 52.223–13, Certification of Toxic Chemical Release Reporting.

\_\_\_\_\_ (ix) 52.227–6, Royalty Information.

\_\_\_\_\_ (A) Basic.

\_\_\_\_\_ (B) Alternate I.

\_\_\_\_\_ (x) 52.227–15, Representation of Limited Rights Data and Restricted Computer Software.

(d) \* \* \* After reviewing the ORCA database information, the offeror verifies by submission of the offer that the representations and certifications currently posted electronically that apply to this solicitation as indicated in paragraph (c) of this provision have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR 4.1201); except for the changes identified below [*offeror to insert changes, identifying change by clause number, title, date*]. \* \* \*

\* \* \* \* \*

[End of provision]

■ 10. Amend section 52.212–3 by revising the date of the provision and paragraph (k)(1)(i) to read as follows:

**52.212–3 Offeror Representations and Certifications—Commercial Items.**

\* \* \* \* \*

**OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS (FEB 2009)**

\* \* \* \* \*

(k) \* \* \*

[ ](1) \* \* \*

(i) The items of equipment to be serviced under this contract are used regularly for other than Governmental purposes and are sold or traded by the offeror (or subcontractor in the case of an exempt subcontract) in substantial quantities to the general public in the course of normal business operations;

\* \* \* \* \*

[End of provision]

■ 11. Amend section 52.212–5 by—

■ a. Revising the date of the clause;

■ b. Revising paragraph (c)(6);

■ c. Removing from paragraph (e)(1) “in paragraphs (e)(1)(i) through (xi) of this

paragraph” and adding “in this paragraph (e)(1)” in its place; and

■ d. Revising paragraph (e)(1)(x).

■ The revised text reads 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 (FEB 2009)**

\* \* \* \* \*

(C) \* \* \*

(6) 52.222–53, Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements (FEB 2009) (41 U.S.C. 351, *et seq.*).

\* \* \* \* \*

(e)(1) \* \* \*

(x) 52.222–53, Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements (FEB 2009) (41 U.S.C. 351, *et seq.*).

\* \* \* \* \*

[End of clause]

■ 12. Amend section 52.222–48 by revising the date of the provision and paragraph (a)(1) to read as follows:

**52.222–48 Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment Certification.**

\* \* \* \* \*

**EXEMPTION FROM APPLICATION OF THE SERVICE CONTRACT ACT TO CONTRACTS FOR MAINTENANCE, CALIBRATION, OR REPAIR OF CERTAIN EQUIPMENT CERTIFICATION (FEB 2009)**

\* \* \* \* \*

(a) \* \* \*

(1) The items of equipment to be serviced under this contract are used regularly for other than Government purposes, and are sold or traded by the offeror (or subcontractor in the case of an exempt subcontract) in substantial quantities to the general public in the course of normal business operations;

\* \* \* \* \*

[End of provision]

■ 13. Amend section 52.222–53 by revising the date of the clause and paragraph (e) to read as follows:

**52.222–53 Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements.**

\* \* \* \* \*

**EXEMPTION FROM APPLICATION OF THE SERVICE CONTRACT ACT TO CONTRACTS FOR CERTAIN SERVICES— REQUIREMENTS (FEB 2009)**

\* \* \* \* \*

(e)(1) Except for services identified in FAR 22.1003–4(d)(1)(iv), the subcontractor for exempt services shall be selected for award based on other factors in addition to price or cost with the combination of other factors at least as important as price or cost; or

(2) A subcontract for exempt services shall be awarded on a sole source basis.

\* \* \* \* \*

[End of clause]

[FR Doc. E9–532 Filed 1–14–09; 8:45 am]

BILLING CODE 6820–EP–S

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 5, 6, and 24**

[FAC 2005–30; FAR Case 2008–003; Item IV; Docket 2008–0001, Sequence 08]

RIN 9000–AL13

**Federal Acquisition Regulation; FAR Case 2008–003, Public Disclosure of Justification and Approval Documents for Noncompetitive Contracts—Section 844 of the National Defense Authorization Act for Fiscal Year 2008**

**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) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 844 of the National Defense Authorization Act for Fiscal Year 2008 “Public Disclosure of Justification and Approval Documents for Noncompetitive Contracts” (FY08 NDAA). Section 844 of the FY08 NDAA stipulates the requirements regarding the public availability of justification and approval documents after the award of Federal contracts, except for information exempt from public disclosure.

**DATES:** *Effective Date:* February 17, 2009.

*Applicability Date:* This interim rule applies to all contracts awarded from a 6.303–1 justification and approval document on or after the effective date.

*Comment Date:* Interested parties should submit written comments to the FAR Secretariat on or before March 16,

2009 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAC 2005–30, FAR case 2008–003, by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting “FAR Case 2008–003” under the heading “Comment or Submission”. Select the link “Send a Comment or Submission” that corresponds with FAR Case 2008–003. Follow the instructions provided to complete the “Public Comment and Submission Form”. Please include your name, company name (if any), and “FAR Case 2008–003” on your attached document.

- Fax: 202–501–4067.

- Mail: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW, Room 4035, ATTN: Hada Flowers, Washington, DC 20405.

**Instructions:** Please submit comments only and cite FAC 2005–30, FAR case 2008–003, 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:** Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775 for clarification of content. Please cite FAC 2005–30, FAR case 2008–003. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

The National Defense Authorization Act for Fiscal Year 2008, Section 844 “Public Disclosure of Justification and Approval Documents for Noncompetitive Contracts” amends 10 U.S.C. 2304 and 41 U.S.C. 253 regarding procurements made under subsection (c) (*i.e.*, other than competitive procedures) to require public availability of the justification and approval documents after contract award except for information exempt from public disclosure under 5 U.S.C. 552. The provisions of Section 844 require the head of an executive agency to make certain justification and approval documents relating to the use of noncompetitive procedures in contracting available on the website of an agency and through a governmentwide website selected by the Administrator for Federal Procurement Policy within 14 days of contract award. In the case of noncompetitive contracts

awarded on the basis of unusual and compelling urgency, the documents must be posted within 30 days of contract award. The Competition in Contracting Act (Public Law 98–369) already requires that such justification and approval documents be made available for public inspection, subject to the exemptions from public disclosures provided in the Freedom of Information Act (5 U.S.C. 552).

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 interim rule is not expected 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 does not revise or change existing regulations pertaining to small business concerns seeking Government contracts. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 5, 6, and 24 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2005–30, FAR case 2008–003), 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. 3501, *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 the provision of the National Defense Authorization Act for Fiscal Year 2008, Section 844 was enacted on January 28, 2008. The Councils believe that the interim rule in the FAR will provide contracting officers the relevant regulatory guidance needed when addressing requirements outlined in this

notice. The rule will also benefit industry by increasing transparency and accountability in federal contracting. This interim rule is applicable to all contracts awarded from a 6.303–1 justification and approval document on or after the effective date of this rule. However, pursuant to Public Law 98–577 and FAR 1.501, 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 5, 6, and 24**

Government procurement.

Dated: December 24, 2008

**Edward Loeb,**

*Acting Director, Office of Acquisition Policy.*

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 5, 6, and 24 as set forth below:

1. The authority citation for 48 CFR parts 5, 6, and 24 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 5—PUBLICIZING CONTRACT ACTIONS**

■ 2. Amend section 5.301 by adding paragraph (d) to read as follows:

###### **5.301 General.**

\* \* \* \* \*

(d) Justifications for other than full and open competition must be posted in accordance with 6.305.

■ 3. Add section 5.406 to read as follows:

###### **5.406 Public disclosure of justification and approval documents for noncompetitive contracts.**

Justifications for other than full and open competition must be posted in accordance with 6.305.

##### **PART 6—COMPETITION REQUIREMENTS**

■ 4. Revise section 6.305 to read as follows:

###### **6.305 Availability of the justification.**

(a) Except for paragraph (b) of this section, the agency shall make publicly available within 14 days after contract award the justification required by 6.303–1 as required by 10 U.S.C. 2304(f)(4) and 41 U.S.C. 253(f)(4)—

(1) At the GPE [www.fedbizopps.gov](http://www.fedbizopps.gov); and

(2) On the website of the agency, which may provide access to the justifications by linking to the GPE.

(b) In the case of a contract award permitted under 6.302–2, the

justification shall be posted within 30 days after contract award.

(c) Contracting officers shall carefully screen all justifications for contractor proprietary data and remove all such data, and such references and citations as are necessary to protect the proprietary data, before making the justifications available for public inspection. Contracting officers shall also be guided by the exemptions to disclosure of information contained in the Freedom of Information Act (5 U.S.C. 552) and the prohibitions against disclosure in 24.202 in determining whether other data should be removed.

## PART 24—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

■ 5. Amend section 24.203 by adding after the second sentence and at the end of paragraph (b) new sentences to read as follows:

### 24.203 Policy.

\* \* \* \* \*

(b) \* \* \* Other exemptions include agency personnel practices, and law enforcement. \* \* \* A Freedom of Information Act guide and other resources are available at the Department of Justice website under FOIA reference materials: <http://www.usdoj.gov/oip>.

[FR Doc. E9-555 Filed 1-14-09; 8:45 am]

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 7, 18, 28, 32, 33, 43, 50, and 52

[FAC 2005-30; FAR Case 2006-023; Item V; Docket 2007-0001; Sequence 8]

RIN 9000-AK75

### Federal Acquisition Regulation; FAR Case 2006-023, SAFETY Act: Implementation of DHS Regulations

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed to convert the interim rule that published in the *Federal Register* at 72 FR 63027,

November 7, 2007 to a final rule. The final rule amends the Federal Acquisition Regulation (FAR) to implement the Department of Homeland Security (DHS) regulations on the SAFETY Act.

**DATES:** Effective Date: February 17, 2009.

**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 FAR Secretariat at (202) 501-4755. Please cite FAC 2005-30, FAR case 2006-023.

### SUPPLEMENTARY INFORMATION:

#### A. Background

DoD, GSA, and NASA published an interim rule in the *Federal Register* at 72 FR 63027, November 7, 2007. Seven respondents submitted comments on the interim rule. All respondents generally supported the concepts of the FAR interim rule, but provided suggestions to improve clarity and better achieve the implementation of the SAFETY Act.

##### 1. Definitions.

a. *Pre-qualification designation notice (50.201 and associated clauses).* In the definition “pre-qualification designation notice” one respondent suggested that the word “successful” prior to “offeror” be deleted because the interim rule allows all offerors to submit streamlined SAFETY Act applications, not just the successful offeror.

*Response:* The Councils have accepted this suggestion and the definition of “pre-qualification designation notice” has been modified throughout the final rule.

b. *“Block designation and “block certification.”* One respondent was concerned that there is no definition of the terms “block designation” and block certification.”

*Response:* These definitions were embedded within the definition of “SAFETY Act designation” and “SAFETY Act certification.” These terms are now separately defined, to make it easier to locate the definitions.

##### 2. General (50.203(a)).

The respondent suggested that because SAFETY Act protections extend to purchasers and users of technologies that the phrase in 50.203(a)(2) be amended to reflect this.

*Response:* Paragraph (a)(2) of the interim rule reads as follows:

“(2) Provide risk management and litigation management protections for sellers of QATTs and others in the supply and distribution chain.”

Risk management and litigation management are addressed in section

864 and 863 of the SAFETY Act respectively, and in 6 CFR 25.5 and 25.7 of the DHS regulations. The required amount of liability insurance purchased by the seller must provide protection for contractors, subcontractors, suppliers, vendors, and customers of the Seller, as well as contractors, subcontractors, suppliers, and vendors of the customer, to the extent of their potential liability for involvement in the manufacture, qualification, sale, use, or operation of the QATT. See Section 864 of the SAFETY Act. Accordingly, the phrase, “and others in the supply and distribution chain,” accurately reflects this required coverage. Therefore, no change has been made to the rule as a result of this comment.

##### 3. Policy (50.204).

a. *Benefits to the Government.* The respondent thought that because the SAFETY Act also benefits the Government with respect to its potential liability, the requiring activities should not only encourage contractors to submit SAFETY Act applications, but also support these applications.

*Response:* The subject of any benefit the Government may ultimately enjoy with respect to a decreased liability is one that cannot be addressed in the context of this FAR case. The implications are too far reaching and would require a thorough analysis of many of the Government’s waivers of sovereign immunity. However, to the extent that one of the criteria for the Department of Homeland Security (DHS) to determine whether to issue a designation is a determination made by a Federal, State, or local official that the technology is appropriate for preventing, detecting, identifying, or deterring acts of terrorism or limiting the harm such acts might cause, the FAR case has been amended to specifically reflect this possibility in 50.204(a) by changing the paragraph to read:

##### 50.204 Policy.

(a) Agencies should—

(1) Determine whether the technology to be procured is appropriate for SAFETY Act protections and, if appropriate, formally relay this determination to DHS for purposes of supporting contractor application(s) for SAFETY Act protections in relation to criteria (b)(viii) of 6 CFR 25.4, *Designation of Qualified Anti-Terrorism Technologies*;

##### b. Authorities and responsibilities.

One respondent wanted to clarify that determination of whether the SAFETY Act is applicable is within the exclusive purview and discretion of DHS. The respondent therefore recommended that the policy at 50.204(a)(1) should be revised to replace “should” with “shall consult with DHS to...”