

The Councils published a proposed rule in the **Federal Register** at 74 FR 39597 on August 7, 2009. The Councils received no public comments. Therefore, the Councils are adding “Yeast, active dry and instant active dry.”, and “Pineapple, canned.”, to the list of nonavailable articles at 25.104(a). The list is further corrected to read “Modacrylic fiber” in lieu of “Modacrylic fur ruff”, as explained in the proposed rule.

In addition, as required by FAR 25.104(b), the entire list of nonavailable articles was published for public comment. Because no public comments were received, there will be no further changes to the list at this time.

This is not a significant regulatory action and, therefore, was not subject to review under section 6 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 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 Councils have not identified any domestic small businesses that can fulfill the Government’s requirements for the added items.

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. chapter 35, *et seq.*

List of Subjects in 48 CFR part 25

Government procurement.

Dated: June 2, 2010.

Edward Loeb,

Acting Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 25 as set forth below:

PART 25—FOREIGN ACQUISITION

■ 1. The authority citation for 48 CFR part 25 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).

25.104 [Amended]

■ 2. Amend section 25.104 in paragraph (a) by removing the article “Modacrylic

fur ruff.” and adding “Modacrylic fiber.” in its place; and adding, in alphabetical order, the articles “Pineapple, canned.” and “Yeast, active dry and instant active dry.”.

[FR Doc. 2010-14176 Filed 6-15-10; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 30 and 52

[FAC 2005-42; FAR Case 2009-025; Item IX; Docket 2010-0087, Sequence 1]

RIN 9000-AL58

Federal Acquisition Regulation; FAR Case 2009-025, Disclosure and Consistency of Cost Accounting Practices for Contracts Awarded to Foreign Concerns

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) are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to align the FAR with the revised Cost Accounting Standards (CAS) Board clause, Disclosure and Consistency of Cost Accounting Practices-Foreign Concerns.

DATES: *Effective Date:* June 16, 2010.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before August 16, 2010 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005-42, FAR Case 2009-025, by any of the following methods:

* Regulations.gov: <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by inputting “FAR Case 2009-025” under the heading “Enter Keyword or ID” and selecting “Search”. Select the link “Submit a Comment” that corresponds with “FAR Case 2009-025”. Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “FAR Case 2009-025” on your attached document.

* Fax: 202-501-4067.

* Mail: General Services Administration, Regulatory Secretariat (MVGB), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005-42, FAR Case 2009-025, 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. 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 2005-42, FAR Case 2009-025.

SUPPLEMENTARY INFORMATION:

A. Background

On March 26, 2008, the CAS Board published a final rule in the **Federal Register** at 73 FR 15939 to utilize the clause, Disclosure and Consistency of Cost Accounting Practices-Foreign Concerns, in CAS-covered contracts and subcontracts awarded to foreign concerns.

In order to maintain consistency between CAS and FAR in matters relating to the administration of CAS, the Councils are amending the FAR as follows:

1. FAR 30.201-4(c)(1) and (2), the prescription for use of FAR clause 52.230-4 is revised to reflect the amendments promulgated by the CAS Board on March 26, 2008.

2. FAR 30.201-4(d) is revised to include use of FAR clause 52.230-6, Administration of Cost Accounting Standards, in all contracts containing FAR clause 52.230-4 which is necessary based upon changes promulgated by the CAS Board on March 26, 2008.

3. FAR clause 52.230-4 is replaced in its entirety and re-titled “Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns” to reflect the amendments promulgated by the CAS Board on March 26, 2008.

4. FAR clause 52.230-6, Administration of Cost Accounting Standards, is revised to include reference to FAR clause 52.230-4 based on changes promulgated by the CAS Board on March 26, 2008.

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 Councils do not expect this interim rule 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 contracts and subcontracts with small businesses are exempt from the application of the Cost Accounting Standards. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

The Councils will also consider comments from small entities concerning the existing regulations in parts 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 2005-42, FAR Case 2009-025) 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. chapter 35, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because this rule implements a final rule promulgated by the CAS Board which went into effect on April 25, 2008. Further, the CAS Board rule already went through the public rulemaking process. However, pursuant to Public Law 98-577 and FAR 1.501-3(b), 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 30 and 52

Government procurement.

Dated: June 2, 2010.

Edward Loeb,

Acting Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 30 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 30 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 30—COST ACCOUNTING STANDARDS ADMINISTRATION

■ 2. Amend section 30.201-4 by revising paragraph (c), and removing from paragraph (d)(1) “(b), or (e)” and adding “(b), (c), or (e)” in its place. The revised text to read as follows:

30.201-4 Contract clauses.

* * * * *

(c) *Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns.* (1) The contracting officer shall insert the clause at 52.230-4, Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns, in negotiated contracts with foreign concerns, unless the contract is otherwise exempt from CAS (see 48 CFR 9903.201-1). Foreign concerns do not include foreign governments or their agents or instrumentalities.

(2) The clause at 52.230-4 requires the contractor to comply with 48 CFR 9904.401 and 48 CFR 9904.402 to disclose (if it meets certain requirements) actual cost accounting practices, and to follow consistently its disclosed and established cost accounting practices.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Revise section 52.230-4 to read as follows:

52.230-4 Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns.

As prescribed in 30.201-4(c), insert the following clause:

DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES—FOREIGN CONCERNS (JUN 2010)

(a) The Contractor, in connection with this contract, shall—

(1) Comply with the requirements of 48 CFR 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; and 48 CFR 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose, in effect on the date of award of this contract, as indicated in 48 CFR 9904.

(2) (*Cost Accounting Standard (CAS)–covered Contracts Only*). If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 48 CFR 9903.202-1 through 48 CFR 9903.202-5. 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 U.S. Government.

(3)(i) Follow consistently the Contractor's cost accounting practices. A change to such practices may be proposed, however, by either the U.S. Government or the Contractor, and the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this contract, and the Disclosure Statement, if affected, must be amended accordingly.

(ii) The Contractor shall, when the parties agree to a change to a cost accounting practice and the Contracting Officer has made the finding required in 48 CFR 9903.201-6(c) that the change is desirable and not detrimental to the interests of the U.S. Government, negotiate an equitable adjustment as provided in the Changes clause of this contract. In the absence of the required finding, no agreement may be made under this contract clause that will increase costs paid by the U.S. Government.

(4) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by the U.S. Government. Such adjustment shall provide for recovery of the increased costs to the U.S. Government, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payment by the U.S. Government was made to the time the adjustment is effected.

(b) If the parties fail to agree whether the Contractor has complied with an applicable CAS rule, or regulation as specified in 48 CFR 9903 and 48 CFR 9904 and as to any cost adjustment demanded by the U.S. Government, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the U.S. Government to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that—

(1) If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201–2 is subject to other types of CAS coverage, the substance of the applicable clause prescribed in FAR 30.201–4 shall be inserted.

(2) This requirement shall apply only to negotiated subcontracts in excess of \$650,000.

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201–1.

(End of clause)

■ 4. Amend section 52.230–6 by revising the date of the clause; the second sentence of the introductory text of paragraph (b); the first sentence of paragraph (b)(3); the introductory text of paragraph (b)(4); paragraph (k)(1); the introductory text of paragraph (l); and paragraph (n) to read as follows:

52.230–6 Administration of Cost Accounting Standards.

* * * * *

ADMINISTRATION OF COST ACCOUNTING STANDARDS (JUN 2010)

* * * * *

(b) * * * If a change in cost accounting practice is implemented without submitting the notice required by this paragraph, the CFAO may determine the change to be a failure to follow paragraph (a)(2) of the clause at FAR 52.230–2, Cost Accounting Standards; paragraph (a)(4) of the clause at FAR 52.230–3, Disclosure and Consistency of Cost Accounting Practices; paragraph (a)(4) of the clause at FAR 52.230–4, Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns; or paragraph (a)(2) of the clause at FAR 52.230–5, Cost Accounting Standards—Educational Institution.

* * * * *

(3) For any change in cost accounting practices proposed in accordance with paragraph (a)(4)(ii) or (iii) of the clauses at FAR 52.230–2 and FAR 52.230–5; or with paragraph (a)(3) of the clauses at FAR 52.230–3 and FAR 52.230–4, submit a description of the change not less than 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) before implementation of the change. * * *

(4) Submit a description of the change necessary to correct a failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by

paragraph (a)(5) of the clause at FAR 52.230–2 and FAR 52.230–5; or by paragraph (a)(4) of the clauses at FAR 52.230–3 and FAR 52.230–4)—

* * * * *

(k) * * *

(1) Contract modifications to reflect adjustments required in accordance with paragraph (a)(4)(ii) or (a)(5) of the clauses at FAR 52.230–2 and 52.230–5; or with paragraph (a)(3)(i) or (a)(4) of the clauses at FAR 52.230–3 and FAR 52.230–4; and

* * * * *

(l) For all subcontracts subject to the clauses at FAR 52.230–2, 52.230–3, 52.230–4, or 52.230–5—

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(n) For subcontracts containing the clause or substance of the clause at FAR 52.230–2, FAR 52.230–3, FAR 52.230–4, or FAR 52.230–5, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 2005–42; FAR Case 2009–026; Item X; Docket 2010–0088, Sequence 1]

RIN 9000–AL54

Federal Acquisition Regulation; FAR Case 2009–026, Compensation for Personal Services

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) are issuing an interim rule amending the FAR to align the FAR with the revised Cost Accounting Standards (CAS) Board standards 412, “Cost Accounting Standard for composition and measurement of pension cost;” and 415, “Accounting for the cost of deferred compensation.”

DATES: *Effective Date:* June 16, 2010.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before August 16, 2010 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–42, FAR Case 2009–026, by any of the following methods:

• Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting “FAR Case 2009–026” under the heading “Enter Keyword or ID” and selecting “Search”. Select the link “Submit a Comment” that corresponds with “FAR Case 2009–026”. Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “FAR Case 2009–026” on your attached document.

• Fax: 202–501–4067.

• Mail: General Services

Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–42, FAR Case 2009–026, 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: For clarification of content, contact Mr. Edward N. Chambers, Procurement Analyst, at (202) 501–3221. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–42, FAR Case 2009–026.

SUPPLEMENTARY INFORMATION:

A. Background

The CAS Board published a final rule in the **Federal Register** at 73 FR 23961 on May 1, 2008, to amend CAS 412, “Cost Accounting Standard for composition and measurement of pension cost;” and CAS 415, “Accounting for the cost of deferred compensation.” The CAS Board specified that the accounting of Employee Stock Ownership Plan (ESOP) costs, regardless of type, would be covered by the provisions of CAS 415 only and not by CAS 412. The CAS Board also provided criteria in CAS 415 for measuring ESOP costs and assigning these costs to cost accounting periods. In order to maintain consistency between CAS and FAR in matters relating to the administration of CAS, the Councils are amending the FAR as follows: