

## DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (OCT 2008)

(a) \* \* \*

(4) \* \* \* Such adjustment shall provide for recovery of the increased costs to the United States 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)), from the time the payment by the United States was made to the time the adjustment is effected.

\* \* \* \* \*

**52.230-4 [Amended]**

■ 6. Amend section 52.230-4 by revising the date of the clause date to read "(OCT 2008)"; and removing "6621" and adding "6621(a)(2)" in its place each time it appears.

**52.230-5 [Amended]**

■ 7. Amend section 52.230-5 by—

■ a. Revising the date of the clause date to read "(OCT 2008)";

■ b. Removing from paragraph (a)(5) "6621" and adding "6621(a)(2)" in its place each time it appears; and

■ c. Removing from paragraph (d)(2) "\$500,000" and adding "\$650,000" in its place.

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**DEPARTMENT OF DEFENSE****GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 30 and 52**

[FAC 2005-27; FAR Case 2006-004; Item XII; Docket 2008-0001; Sequence 14]

RIN 9000-AK58

**Federal Acquisition Regulation; FAR Case 2006-004, CAS Administration**

**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 adopt a proposed rule, published in the **Federal Register** at 71 FR 58338, October 3, 2006, as a final rule, with minor changes. The rule amends the Federal Acquisition Regulation (FAR) to implement revisions to the regulations related to the administration of the Cost Accounting Standards (CAS) as they

pertain to contracts with foreign concerns, including United Kingdom (U.K.) concerns.

**DATES:** *Effective Date:* October 17, 2008.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr. Edward Chambers, at (202) 501-3221. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-27, FAR case 2006-004.

**SUPPLEMENTARY INFORMATION:****A. Background**

The Councils published a proposed rule in the **Federal Register** at 71 FR 58338, October 3, 2006, to maintain consistency between CAS and FAR in matters relating to disclosure requirements and the administration of CAS for contracts awarded to foreign concerns, including U.K. concerns.

This proposed rule was issued in response to the Cost Accounting Standards Board's interim rule (70 FR 29457, May 23, 2005) (finalized without change at 72 FR 32546, June 13, 2007), revising the applicability of CAS to U.K. contracts and subcontracts.

The Councils received no comments on the proposed rule and have adopted the proposed rule as a final rule with minor changes. The minor changes to 30.201-4(c) clarify that clause 52.230-4 need not be included in contracts with foreign concerns otherwise exempt from CAS coverage, and that foreign concerns do not include foreign governments, or their agents or instrumentalities.

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 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 all small businesses are exempt from CAS.

**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.*

**List of Subjects in 48 CFR Parts 30 and 52**

Government procurement.

Dated: September 9, 2008.

**Al Matera,**

*Director, Office of Acquisition Policy.*

■ 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) to read as follows:

**30.201-4 Contract clauses.**

\* \* \* \* \*

(c) *Disclosure and Consistency of Cost Accounting Practices for Contracts Awarded to Foreign Concerns.* The contracting officer shall insert the clause at FAR 52.230-4, Disclosure and Consistency of Cost Accounting Practices for Contracts Awarded to Foreign Concerns, in negotiated contracts with foreign concerns, unless the contract is otherwise exempt from CAS (see 48 CFR 9903.201-1). Such contracts are subject to CAS 401 and 402 under 48 CFR 9903.201-1(b)(4)(FAR Appendix). Foreign concerns do not include foreign governments or their agents or instrumentalities.

\* \* \* \* \*

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

■ 3. Amend section 52.230-4 by revising the section heading, the clause heading and date, and the first, second, and fourth sentences of the clause to read as follows.

**52.230-4 Disclosure and Consistency of Cost Accounting Practices for Contracts Awarded to Foreign Concerns.**

\* \* \* \* \*

DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES FOR CONTRACTS AWARDED TO FOREIGN CONCERNS (OCT 2008).

The Contractor agrees that it will consistently follow the cost accounting practices disclosed on FORM CASB DS-1, or other disclosure form as permitted by 48 CFR 9903.202-1(e), in estimating, accumulating, and reporting costs under this contract, and comply with the requirements of CAS 401, Consistency in Estimating, Accumulating, and Reporting Costs, and CAS 402, Consistency in Allocating Costs Incurred for the Same Purpose. In the event the Contractor fails to follow such practices, or

comply consistently with CAS 401 and 402, it agrees that the contract price shall be adjusted, together with interest, if such failure results in increased cost paid by the U.S. Government. \* \* \* The Contractor agrees that the Disclosure Statement or other form permitted, pursuant to 48 CFR 9903.202-1(e) shall be available for inspection and use by authorized representatives of the United States Government.

(End of clause)

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 37 and 52

[FAC 2005-27; FAR Case 2006-027; Item XIII; Docket 2007-0001; Sequence 5]

RIN 9000-AK54

#### Federal Acquisition Regulation; FAR Case 2006-027, Accepting and Dispensing of \$1 Coin

**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 adopt as final, with change, the interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 104 of the Presidential \$1 Coin Act of 2005. Section 104 requires that entities that operate any business on any premises owned or controlled by the United States be capable of accepting and dispensing \$1 coins on January 1, 2008. Subsequent to this, Pub. L. 110-147 amended 31 U.S.C. 5112(p)(1)(A), to allow an exception from the \$1 coin dispensing capability requirement for vending machines that do not receive currency denominations greater than \$1.

**DATES:** *Effective Date:* September 17, 2008.

*Applicability Date:* This rule applies to all service contracts that involve business operations conducted in U.S. coins and currency, including vending machines, on any premises owned by the United States or under the control of any agency or instrumentality of the United States. The clause shall be placed in all such solicitations and contracts on and after the effective date

of this rule. Those applicable contracts in existence before January 1, 2008, that do not already have the clause shall be modified to include the clause; those contracts that have the August 2007 edition of the clause shall be modified if the contractor requests, to include the newer version contained in this FAC, without requiring consideration from the contractor.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Jackson, Procurement Analyst, at (202) 208-4949 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755. Please cite FAC 2005-27, FAR case 2006-027.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This final rule amends the FAR to implement the Presidential \$1 Coin Act of 2005 (Pub. L. 109-145). The Presidential \$1 Coin Act of 2005 requires the Secretary of the Treasury to mint and issue annually four new \$1 coins bearing the likenesses of Presidents of the United States in the order of their service and to continue to mint and issue "Sacagawea-design" coins for circulation. In order to promote circulation of the coins, Section 104 of the Public Law also requires that Federal agencies take action so that, by January 1, 2008, entities that operate any business, including vending machines, on any premises owned by the United States or under the control of any agency or instrumentality of the United States, are capable of accepting and dispensing \$1 coins and that the entities display notices of this capability on the business premises. Subsequent to the passage of the Presidential Coin Act, Pub. L. 110-147 amended 31 U.S.C. 5112(p)(1)(A), to allow an exception from the \$1 coin dispensing capability requirement for vending machines that do not receive currency denominations greater than \$1. This will require modification of existing covered contracts whose period of performance extends beyond the January 1, 2008 date in order to assure compliance with Section 104 of the Act, as well as compliance with Pub. L. 110-147.

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 72 FR 46361, August 17, 2007. The 60-day comment period for the interim rule ended October 16, 2007. Three respondents provided comments. The comments are discussed below.

##### Public Comments

*Comment 1:* One respondent asked why does the FAR matrix show that

52.237-11 is applicable to R&D contracts and to A&E contracts?

R&D contracts and A&E contracts are usually paid by electronic funds transfer. There is usually no cash payment involved in such contracts. Therefore, why would contractors who provide R&D or A&E services have to be capable of accepting dollar coins?

*Response:* The inclusion of R&D and A&E contracts in the FAR matrix as applicable to 52.237-11 was an inadvertent error.

*Comment 2:* One respondent stated in order to implement these widespread and extensive changes to vending machines, our members simply need more time. Contrary to the statement contained in the **Federal Register** notice, this interim rule *does* have a significant economic impact. It is not accurate to state that "receiving and dispensing the new coins as part of business operations should not add to workload or expense" (72 FR 46361, August 17, 2007). Accordingly, we strongly encourage the Councils to account for both the workload and expense by extending the compliance date to July 1, 2008.

*Response:* Section 104 of the Presidential \$1 Coin Act of 2005 (31 U.S.C. 5112(p)(1)), established the effective date for this provision to be January 1, 2008. The effect of this clause is merely to implement the provision of law. Notwithstanding, the provision of law cannot be modified under these circumstances without further consideration by Congress, who passed the provision of law. Pub. L. 110-147 amended section 5112(p)(1)(A) of title 31, U.S.C., to allow an exception from the \$1 coin dispensing capability requirement for vending machines that do not receive currency denominations greater than \$1. Thus, the exception of the law provides relief for those vending machines.

*Comment 3:* One respondent requested an amendment to the interim rule published in the **Federal Register**, August 17, 2007, amending 48 CFR 52 (Solicitation Provisions and Contract Clauses), Section 52.237-11 (Accepting and Dispensing of \$1 Coin) to exempt vending machines on Federal property that do not accept currency denominations above \$1 from the requirement to dispense dollar coins.

*Response:* The very intent of the statute is to require those businesses and instrumentalities operating on Federal property to be able to accept and dispense the \$1 coin if that business or instrumentality is conducting a business whereby coins or currency is exchanged. However, Pub. L. 110-147 amended section 5112(p)(1)(A) of title