

give contractors 14 calendar days from the date of delivery of past performance evaluations to submit comments, rebuttals, or additional information for inclusion in the past performance database. The evaluations will be posted to the database no later than 14 days after the evaluations are provided to the contractor. If a contractor has submitted comments to the Government and the Government has not closed the evaluation (*i.e.*, reconciled the comments), the evaluation as well as any contractor comment will be posted to the database automatically 14 days after the evaluations are provided to the contractor. In this case, the database will apply a "Contractor Comment Pending Government Review" notification to the evaluation. Once the Government completes the evaluation, the database will be updated the following day and remove this notification. Contractors will also still be allowed to submit comments after the 14-day period.

Item V—Defense Base Act (FAR Case 2012–016)

This final rule amends the FAR to clarify contractor and subcontractor responsibilities to obtain workers' compensation insurance or to qualify as a self-insurer, and other requirements, under the terms of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901, *et seq.*) as extended by the Defense Base Act (42 U.S.C. 1651, *et seq.*). This Act provides disability compensation, medical benefits, and death benefits, for certain employment outside of the United States. The rule only clarifies the current responsibilities of contractors under the Defense Base Act and Department of Labor (DOL) regulations, and does not initiate or impose any new administrative or performance requirements. This final rule has no impact on small business entities since it is merely clarifying already existing statutory and DOL regulatory requirements, and imposes no new requirements.

Dated: May 22, 2014.

William Clark,

Acting Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-Wide Policy.

Federal Acquisition Circular (FAC) 2005–74 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005–74 is effective May 30,

2014 except for item I, which is effective *November 1, 2014*, and items IV and V, which are effective *July 1, 2014*.

Dated: May 20, 2014.

Richard Ginman,

Director, Defense Procurement and Acquisition Policy.

Dated: May 22, 2014.

Jeffrey A. Koses,

Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

Dated: May 20, 2014.

Ronald A. Poussard,

Director, Contract Management Division, National Aeronautics and Space Administration.

[FR Doc. 2014–12411 Filed 5–29–14; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 4, 12, 22, and 52

[FAC 2005–74; FAR Case 2012–024; Item I; Docket No. 2012–0024, Sequence No. 1]

RIN 9000–AM49

Federal Acquisition Regulation; Commercial and Government Entity Code

AGENCIES: 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 require the use of Commercial and Government Entity (CAGE) codes, including North Atlantic Treaty Organization (NATO) CAGE (NCAGE) codes for foreign entities, for awards valued at greater than the micro-purchase threshold. The CAGE code is a five-character alpha-numeric identifier used extensively within the Federal Government. The rule will also require offerors, if owned by another entity, to identify that entity.

DATES: *Effective:* November 1, 2014.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Procurement Analyst, at 202–501–0650, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–74, FAR Case 2012–024.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 78 FR 23194 on April 18, 2013, soliciting public comments on the proposed rule and received one response.

DoD, GSA, and NASA are revising the FAR to require that offerors provide their CAGE codes to contracting officers and that, if owned by another entity, offerors will provide, in a new provision with their representations and certifications, the CAGE codes and names of such entity or entities. For those offerors located in the United States or its outlying areas that register in the System for Award Management (SAM), a CAGE code is assigned as part of the registration process. If SAM registration is not required, the offeror must request and obtain a CAGE code from the Defense Logistics Agency (DLA) Contractor and Government Entity (CAGE) Branch. A CAGE code is not required when a condition described at FAR 4.605(c)(2) applies and the acquisition is funded by an agency other than DoD or NASA. Offerors located outside the United States will obtain an NCAGE from their NATO Codification Bureau or, if not a NATO member or sponsored nation, from the NATO Support Agency (NSPA).

The Federal procurement community strives toward greater measures of transparency and reliability of data, to facilitate achievement of rigorous accountability of procurement dollars, processes, and compliance with regulatory and statutory acquisition requirements, *e.g.*, the Federal Funding and Accountability and Transparency Act of 2006 (Pub. L. 109–282, 31 U.S.C. 6101 note). Increased transparency and accuracy of procurement data broaden the Government's ability to implement fraud detection technologies restricting opportunities for mitigating occurrences of fraud, waste, and abuse of taxpayer dollars.

To further the desired increases in traceability and transparency, this rule uses the unique identification that a CAGE code provides, coupled with vendor representation of ownership and owner CAGE code. The CAGE code is a five-character alpha-numeric identifier used extensively within the Federal Government and will provide for standardization across the Federal Government. This rule will support successful implementation of business tools that provide insight into—
—Federal spending patterns across corporations;

- Traceability in tracking performance issues across corporations;
- Contractor personnel outside the United States; and
- Supply chain traceability and integrity efforts.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comment in the development of the final rule. A discussion of the comment and the changes made to the rule as a result of the comment are provided as follows:

A. Summary of Significant Changes

1. Modification of the definitions within the new provision at 52.204-17; “owner” has been deleted and the definitions of “immediate owner” and “highest-level owner” clarified so that—
 - a. Ownership is defined as having ownership or control, and the definition of immediate owner includes examples of the indicators of control; and
 - b. An immediate owner has at most one highest-level owner.
2. Direction was added to paragraph (b) of the provision to enable offerors comprised of more than one entity, *i.e.*, joint ventures, to respond appropriately.

B. Analysis of Public Comment

Comment: The respondent indicated that the purposes of the changes in the proposed rule are not clear and make commenting on the rule difficult. For example, how does this rule support greater traceability or integrity of the supply chain? What is the Government’s objective? Will contractors be required to have CAGE codes for every site at which work is performed? Does the proposed rule intend to add a CAGE code for the shipment function?

Response: The purpose of the rule, as stated in the background section of the preamble for the final rule is to (1) support successful implementation of business tools that seek insight into Federal spending patterns across corporations; (2) facilitate traceability in the tracking of performance issues across corporations; (3) provide insight on contractor personnel outside the United States (at a corporate/full organization level); and (4) support supply chain traceability and integrity efforts. The use of the CAGE code provides a Government-managed unique identifier for these entities; and the final rule provides a mechanism for the entities themselves to identify their hierarchical structure to the Government.

The final rule requires a CAGE code assignment for the entity (with its

specific name and physical address) to whom the Government awards the contractual instrument, *i.e.*, that entity noted on the front page of the contract document; and the final rule requires obtaining the immediate and highest-level owner’s CAGE codes and legal names. The rule does not require CAGE code assignment to shipping and performance locations.

Comment: The respondent indicated that the proposed rule adds additional costs to the process not recognized in the proposed rule. This relates to usability issues with SAM. The respondent stated that the rule did not adequately support the burden estimates within the rule and noted that industry conducted a hierarchy assessment and this took well over an hour without the additional revalidations required by SAM. The respondent suggested republishing the rule for public comment after clarifying the issues raised.

Response: Obtaining a CAGE code is already a requirement for an active registration in SAM and for its predecessors the Online Representations and Certifications (ORCA) and the Central Contractor Registration (CCR) database. This final rule does not impose any new burden in that regard. Burden for registration in SAM was reassessed as part of the rulemaking in the FAR case (FAR Case 2011-021) that established that requirement. Additionally, this final rule does not require the use of SAM to obtain the CAGE code(s) for the immediate owner or highest-level owner, although registration in SAM could be accomplished for U.S. registrants since U.S. registrants are assigned a CAGE code upon registration. It is true that it may take some time for larger organizations to update all contractor SAM registrations to include the immediate and highest-level owner CAGE information (if the contractor has hundreds of SAM records and if it updates them centrally and at the same time). However, including the data on an individual registration or on a renewal basis should not result in any significant additional time.

Comment: The respondent indicated that the proposed rule is unclear on the treatment of companies owned by foreign entities and U.S. based companies with business units performing work overseas for the U.S. Government.

Response: Foreign entities would not be exempted from this requirement. The rule also applies to U.S. companies, regardless of where work is performed.

Comment: The respondent stated that the proposed rule is unclear on the treatment of foreign Governments.

Response: Foreign governments, if receiving contracts from the U.S. Government, are required to have an NCAGE code as a result of this rule. In all practicality, if they are registered in SAM as they should be, they already do have an NCAGE code. For the questions related to ownership, foreign governments would indicate that they have no higher level owner.

Comment: The respondent indicated that the proposed rule is unclear on the treatment of commercial entities. Will purely commercial companies be required to have CAGEs? How will primes deal with commercial companies that do not wish to obtain a CAGE? How will primes address hierarchy issues associated with commercial companies that have a CAGE? How will additional costs be addressed? Are primes responsible for the currency of their commercial company subcontractor reporting?

Response: The rule applies to contractors with commercial contracts based upon the Councils’ determination that applying this requirement to commercial contracts is necessary to fulfill the purpose of the rule. All entities reported as an immediate owner or highest-level owner of the offeror under the rule must have CAGE Codes. This final rule does not require subcontractors to have CAGE codes.

Comment: The respondent indicated that the rule is unclear on how Limited Liability Companies (LLCs) and joint ventures are to be treated. Also the definitions of owner, immediate owner and highest-level owner need to be clarified.

Response: The definitions have been clarified and the issue of joint ventures has been specifically addressed in the representation. Being a single legal entity, an LLC will be treated as any other offeror would. In addition, the term “business entity” was revised to use the term “entity” which, in this context, means a “legal entity”, such as those entities listed at FAR 4.102.

Comment: The respondent stated that the requirement to provide ownership and control information on a proposal/contract basis is reversed by this rule and requires a large amount of resources. The respondent questioned why this information cannot be addressed when the CAGE is established. Managing at the proposal/contract level implies that changes in ownership and control would require a contract modification rather than CAGE code updates. Ownership and control

information is managed centrally within many large government contractors.

Response: The implementation of this requirement will occur by incorporating the collection of data into the annual representations and certifications section of a prime contractor's SAM registration. This means that contractors will only be required to provide the information once and then update/renew it on an annual basis when they renew their SAM registration. As for later offers, the FAR requires the offeror to either update SAM or list the updated information on the offer (see 52.204–8(d)).

Comment: The respondent indicated that corporate linkage information is already being provided by Dun and Bradstreet in SAM by DUNS Number.

Response: There is some corporate linkage in SAM provided by the commercial entity, Dun & Bradstreet (D&B); however, the methodology by which D&B establishes ownership is proprietary and does not necessarily conform to the definitions in this case. The final rule instead establishes the use of a Government-managed unique identifier governed by established international rules (under NATO). Additionally, the rule provides the contractor the opportunity to provide what it believes is the correct information, rather than relying on information from an outside commercial source.

Comment: The respondent indicated that the proposed rule at FAR subpart 4.18 does not address which system is the master record for CAGE code information; it fails to outline the order of precedence for CAGE systems, particularly between the DLIS Master CAGE code listing and SAM.

Response: The planned implementation will be to collect the information via SAM, as a part of the contractor's registration. That information collected will be transmitted to the actual CAGE code system, managed by the Defense Logistics Agency (DLA) on behalf of the Federal Government.

Comment: The respondent indicated that Standard Form (SF) 26, 30, 33, and Optional Form (OF) 307 forms already provide a place to input the CAGE code, which is not mentioned in the proposed rule.

Response: The standard forms referenced actually only provide a field for "Code" which is not specifically identified as the CAGE code, although DoD uses it that way.

III. Principal Changes to the FAR Resulting From This Rule

A. Changes to FAR Part 4

1. FAR 4.1202. A new provision for ownership or control of offeror is added to the list of representations and certifications under FAR 4.1202.

2. Addition of FAR subpart 4.18, Commercial and Government Entity Code. A new subpart is added to include scope, policy, and definitions for the subpart. Offerors are required to provide their CAGE codes to the contracting officer, to represent if they are owned by another entity, and, if so, give the legal name and CAGE code for the entity(s), unless a condition listed at FAR 4.605(c)(2) applies and the acquisition is funded by an agency other than DoD or NASA. The subpart also gives instruction to contracting officers to verify the CAGE codes provided.

3. A definition of "Commercial and Government Entity code" is provided. The definition encompasses both the CAGE code for entities located in the United States or its outlying areas, and the NCAGE code if the code is assigned by a NATO Codification Bureau or NATO Support Agency (NSPA).

4. The rule includes definitions of "highest-level owner" and "immediate owner." The intent behind defining "ownership" is to describe how entities relate to one another in terms of their hierarchical relationships. The final rule established the definitions as follows:

- *Highest-level owner* means the entity that owns or controls an immediate owner of the offeror or that owns or controls one or more entities that own or control an immediate owner of the offeror. No entity owns or exercises control of the highest-level owner.

- *Immediate owner* means an entity other than the offeror, that has direct control of the offeror. Indicators of control include, but are not limited to, one or more of the following: Ownership or interlocking management, identity of interests among family members, shared facilities and equipment, and the common use of employees.

5. The term "business entity" was revised to the term "entity" throughout the rule. In this context, the term "entity" means a "legal entity", such as those entities listed at FAR 4.102.

B. Changes to FAR Subpart 12.3

With respect to commercial items, changes to the list of other required provisions and clauses at FAR 12.301(d) are included to reflect that CAGE code reporting and maintenance are applicable to commercial items. This is

accomplished by including the new provision, FAR 52.204–16, Commercial and Government Entity Code Reporting, and the new clause, FAR 52.204–18, Commercial and Government Entity Code Maintenance.

C. Changes to FAR Part 52

1. A new provision, FAR 52.204–16, Commercial and Government Entity Code Reporting, has been added, providing information on obtaining CAGE codes and requiring offerors to provide their CAGE codes.

2. A new provision, FAR 52.204–17, Ownership or Control of Offeror, requires the offeror to identify if it is owned by another entity(s) and, if so, to provide the legal name and CAGE code of such entity(s).

3. A new clause, FAR 52.204–18, Commercial and Government Entity Code Maintenance, provides instructions to contractors to maintain accurate CAGE information in the CAGE file and to inform their contracting officers if their CAGE codes change.

4. The rule also amends the FAR provision 52.204–8, Annual Representations and Certifications, by including the new provision 52.204–17, Ownership or Control of Offeror.

5. The rule also amends the provision at 52.212–3, Offeror Representations and Certifications—Commercial Items, by including definitions and ownership representations.

IV. 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.

V. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

A number of initiatives have surfaced in and across the Federal Government which have specific implication to the Federal

procurement community. Goals of these initiatives, which include the Federal Funding Accountability and Transparency Act (Pub. L. 108–282, 31 U.S.C. 6101 note), further the President's commitment to make the Federal Government transparent and accountable to the American people. The changes identified in this rule will further the procurement community's efforts toward greater measures of transparency and reliability of data, reducing occurrences of fraud, waste, and abuse of taxpayer dollars.

This change will require use of the Commercial and Government Entity (CAGE) code referred to as North Atlantic Treaty Organization (NATO) CAGE (NCAGE) code for foreign entities, a five-character alphanumeric identifier used extensively within the Federal Government that will provide for vendor identification standardization. Further, the change will couple vendor use of CAGE code with vendor identification of ownership and owner CAGE code. This change will lead to increases in data traceability and transparency, thereby broadening the Government's ability to, among other things, implement fraud detection technologies.

The rule will require vendors that do not already have a CAGE to obtain one. Only vendors that meet a registration exception of FAR subpart 4.11, but not an exception to subpart 4.6, will need to separately obtain a CAGE. It is estimated that 2,154 vendors will be required to obtain a CAGE code. It is estimated that 741 of these vendors are small businesses.

This rule would also affect offerors that are owned by another entity. This rule would require an offeror to represent that, if it is owned by another entity, it has entered the CAGE code and name of that entity. Approximately 413,808 unique vendors submitted offers for Federal Government awards in Fiscal Year 2011, and approximately 275,872 of these offers were from unique small businesses.

There were no public comments submitted by the Chief Counsel for Advocacy of the Small Business Administration.

There are no significant alternatives to accomplish the stated objectives of this rule.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat. The Regulatory Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

VI. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies. The rule contains information collection requirements. The Office of Management and Budget (OMB) has cleared this information collection requirement under OMB Control Number 9000–0185, titled: Commercial and Government Entity Code. In response to the notice of proposed rulemaking and the request for comment on the burden estimates, one respondent did question the burden estimates. The respondent indicated that the rule adds

additional costs to the process not recognized in the rule. This relates to usability issues with SAM. The respondent indicated that, as a pilot, industry conducted hierarchy assessment and this took well over an hour without the additional revalidations required by SAM. The respondent requested that the FAR Council republish the rule for public comment after clarifying the issues raised.

The FAR Council determined that a revision to the Paperwork Burden is not warranted. Obtaining a CAGE code is already a requirement for an active registration in SAM and for its predecessors the Online Representations and Certifications (ORCA) and the Central Contractor Registration (CCR) database. This final rule applies no new burden in that regard. Burden for registration in SAM was re-assessed as part of the rulemaking in the FAR case (FAR Case 2011–021) that established that requirement. Additionally, this final rule does not require the use of SAM to obtain the CAGE code(s) for the immediate owner or highest-level owner; although registration in SAM could be accomplished to do so for U.S. registrants (as U.S. registrants are assigned a CAGE code upon registration). It is true that it may take some time in larger organizations to update all of the contractor's SAM registrations to include the immediate and highest-level owner CAGE information (if the contractor has hundreds of SAM records and it is updating them centrally and at the same time). However, including the data on an individual registration or renewal basis should not result in any significant additional time.

List of Subjects in 48 CFR Parts 1, 4, 12, 22, and 52

Government procurement.

Dated: May 22, 2014.

William Clark,

Acting 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 1, 4, 12, 22, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 4, 12, 22, 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 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

■ 2. Amend section 1.106 in the table following the introductory text, by adding in sequence, FAR segments “52.204–16”, “52.204–17”, and “52.204–18” and the corresponding OMB Control Number “9000–0185”.

PART 4—ADMINISTRATIVE MATTERS

■ 3. Amend section 4.605 by adding a sentence to the end of paragraph (b) to read as follows:

4.605 Procedures.

(b) * * * (For a discussion of the Commercial and Government Entity (CAGE) Code, which is a different identification number, see subpart 4.18.)

■ 4. Amend section 4.1202 by redesignating paragraphs (e) through (bb) as paragraphs (f) through (cc), respectively; and adding a new paragraph (e) to read as follows:

4.1202 Solicitation provision and contract clause.

(e) 52.204–17, Ownership or Control of Offeror.

■ 5. Add subpart 4.18 to read as follows:

Subpart 4.18—Commercial and Government Entity Code

Sec.

4.1800 Scope of subpart.

4.1801 Definitions.

4.1802 Policy.

4.1803 Verifying CAGE codes prior to award.

4.1804 Solicitation provisions and contract clause.

Subpart 4.18—Commercial and Government Entity Code

4.1800 Scope of subpart.

(a) This subpart prescribes policies and procedures for identification of commercial and government entities. The Commercial and Government Entity (CAGE) code system may be used, among other things, to—

(1) Exchange data with another contracting activity, including contract administration activities and contract payment activities;

(2) Exchange data with another system that requires the unique identification of a contractor entity; or

(3) Identify when offerors are owned or controlled by another entity.

(b) For information on the Data Universal Numbering System (DUNS)

number, which is a different identification number, see 4.605 and the provisions at 52.204–6 and 52.204–7.

4.1801 Definitions.

As used in this part—

Commercial and Government Entity (CAGE) code means—

(1) An identifier assigned to entities located in the United States or its outlying areas by the Defense Logistics Agency (DLA) Contractor and Government Entity (CAGE) Branch to identify a commercial or government entity; or

(2) An identifier assigned by a member of the North Atlantic Treaty Organization (NATO) or by the NATO Support Agency (NSPA) to entities located outside the United States and its outlying areas that the DLA Contractor and Government Entity (CAGE) Branch records and maintains in the CAGE master file. This type of code is known as an NCAGE code.

Highest-level owner means the entity that owns or controls an immediate owner of the offeror, or that owns or controls one or more entities that control an immediate owner of the offeror. No entity owns or exercises control of the highest level owner.

Immediate owner means an entity, other than the offeror, that has direct control of the offeror. Indicators of control include, but are not limited to, one or more of the following: Ownership or interlocking management, identity of interests among family members, shared facilities and equipment, and the common use of employees.

4.1802 Policy.

(a) *Commercial and Government Entity code.* (1) Offerors shall provide the contracting officer the Commercial and Government Entity (CAGE) code assigned to that offeror's location prior to the award of a contract action above the micro-purchase threshold, when there is a requirement to be registered in SAM or a requirement to have a DUNS Number in the solicitation.

(2) The contracting officer shall include the contractor's CAGE code in the contract and in any electronic transmissions of the contract data to other systems when it is provided in accordance with paragraph (a)(1) of this section.

(b) *Ownership or control of offeror.* Offerors, if owned or controlled by another entity, shall provide the contracting officer with the CAGE code and legal name of that entity prior to the award of a contract action above the micro-purchase threshold, when there is a requirement to be registered in SAM

or a requirement to have a DUNS Number in the solicitation.

4.1803 Verifying CAGE codes prior to award.

(a) Contracting officers shall verify the offeror's CAGE code by reviewing the entity's registration in the System for Award Management (SAM). Active registrations in SAM have had the associated CAGE codes verified.

(b) For entities not required to be registered in SAM, the contracting officer shall validate the CAGE code using the CAGE code search feature at http://www.dlis.dla.mil/cage_welcome.asp.

4.1804 Solicitation provisions and contract clause.

(a) Insert the provision at 52.204–16, Commercial and Government Entity Code Reporting, in all solicitations that include—

(1) 52.204–6, Data Universal Numbering System Number; or

(2) 52.204–7, System for Award Management.

(b) Insert the provision at 52.204–17, Ownership or Control of Offeror, in all solicitations that include the provision at 52.204–16, Commercial and Government Entity Code Reporting.

(c) Insert the clause at 52.204–18, Commercial and Government Entity Code Maintenance, in all solicitations and contracts when the solicitation contains the provision at 52.204–16, Commercial and Government Entity Code Reporting.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 6. Amend section 12.301 by revising paragraph (d) to read as follows:

12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(d) *Other required provisions and clauses.* Notwithstanding prescriptions contained elsewhere in the FAR, when acquiring commercial items, contracting officers shall be required to use only those provisions and clauses prescribed in this part. The provisions and clauses prescribed in this part shall be revised, as necessary, to reflect the applicability of statutes and executive orders to the acquisition of commercial items.

(1) Insert the provision at 52.204–16, Commercial and Government Entity Code Reporting, when there is a requirement to be registered in SAM or a requirement to have a DUNS Number in the solicitation.

(2) Insert the clause at 52.204–18, Commercial and Government Entity

Code Maintenance, when there is a requirement to be registered in SAM or a requirement to have a DUNS Number in the solicitation.

(3) Insert the provision at 52.209–7, Information Regarding Responsibility Matters, as prescribed in 9.104–7(b).

(4) Insert the clause at 52.225–19, Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission outside the United States, as prescribed in 25.301–4.

(5) Insert the clause at 52.232–40, Providing Accelerated Payments to Small Business Subcontractors, as prescribed in 32.009–2.

* * * * *

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1006 [Amended]

■ 7. Amend section 22.1006 by—

■ a. Removing from paragraph (a)(2)(i)(C) “52.204–8(c)(2)(iii) or (iv)” and adding “52.204–8(c)(2)(iv) or (v)” in its place;

■ b. Removing from paragraph (e)(2)(i) “52.204–8(c)(2)(iii)” and adding “52.204–8(c)(2)(iv)” in its place; and

■ c. Removing from paragraph (e)(4)(i) “52.204–8(c)(2)(iv)” and adding “52.204–8(c)(2)(v)” in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. Amend section 52.204–8 by—

■ a. Revising the date of the provision;

■ b. Redesignating paragraphs (c)(2)(i) through (c)(2)(vii) as paragraphs (c)(2)(ii) through (c)(2)(viii), respectively; and

■ c. Adding a new paragraph (c)(2)(i).

The revised and added text reads as follows:

52.204–8 Annual Representations and Certifications.

* * * * *

Annual Representations and Certifications (Nov 2014)

* * * * *

(c) * * *

(2) * * *

____(i) 52.204–17, Ownership or Control of Offeror.

* * * * *

■ 9. Add section 52.204–16 to read as follows:

52.204–16 Commercial and Government Entity Code Reporting.

As prescribed in 4.1804(a), use the following provision:

Commercial and Government Entity Code Reporting (Nov 2014)

(a) *Definition.* As used in this provision—
Commercial and Government Entity (CAGE) code means—

(1) An identifier assigned to entities located in the United States or its outlying areas by the Defense Logistics Agency (DLA) Contractor and Government Entity (CAGE) Branch to identify a commercial or Government entity; or

(2) An identifier assigned by a member of the North Atlantic Treaty Organization (NATO) or by the NATO Support Agency (NSPA) to entities located outside the United States and its outlying areas that the DLA Contractor and Government Entity (CAGE) Branch records and maintains in the CAGE master file. This type of code is known as an NCAGE code.

(b) The Offeror shall enter its CAGE code in its offer with its name and address or otherwise include it prominently in its proposal. The CAGE code entered must be for that name and address. Enter “CAGE” before the number. The CAGE code is required prior to award.

(c) CAGE codes may be obtained via—

(1) Registration in the System for Award Management (SAM) at www.sam.gov. If the Offeror is located in the United States or its outlying areas and does not already have a CAGE code assigned, the DLA Contractor and Government Entity (CAGE) Branch will assign a CAGE code as a part of the SAM registration process. SAM registrants located outside the United States and its outlying areas shall obtain a NCAGE code prior to registration in SAM (see paragraph (c)(3) of this provision).

(2) *The DLA Contractor and Government Entity (CAGE) Branch.* If registration in SAM is not required for the subject procurement, and the offeror does not otherwise register in SAM, an offeror located in the United States or its outlying areas may request that a CAGE code be assigned by submitting a request at http://www.dlis.dla.mil/cage_welcome.asp.

(3) *The appropriate country codification bureau.* Entities located outside the United States and its outlying areas may obtain an NCAGE code by contacting the Codification Bureau in the foreign entity's country if that country is a member of NATO or a sponsored nation. NCAGE codes may be obtained from the NSPA if the foreign entity's country is not a member of NATO or a sponsored nation. Points of contact for codification bureaus and NSPA, as well as additional information on obtaining NCAGE codes, are available at http://www.dlis.dla.mil/Forms/Form_AC135.asp.

(d) Additional guidance for establishing and maintaining CAGE codes is available at http://www.dlis.dla.mil/cage_welcome.asp.

(e) When a CAGE Code is required for the immediate owner and/or the highest-level owner by 52.204–17 or 52.212–3(p), the Offeror shall obtain the respective CAGE Code from that entity to supply the CAGE Code to the Government.

(f) Do not delay submission of the offer pending receipt of a CAGE code.

(End of Provision)

■ 10. Add section 52.204–17 to read as follows:

52.204–17 Ownership or Control of Offeror.

As prescribed in 4.1804(b), use the following provision:

Ownership of Control of Offeror (Nov 2014)

(a) *Definitions.* As used in this provision—
Commercial and Government Entity (CAGE) code means—

(1) An identifier assigned to entities located in the United States or its outlying areas by the Defense Logistics Agency (DLA) Contractor and Government Entity (CAGE) Branch to identify a commercial or government entity; or

(2) An identifier assigned by a member of the North Atlantic Treaty Organization (NATO) or by the NATO Support Agency (NSPA) to entities located outside the United States and its outlying areas that the DLA Contractor and Government Entity (CAGE) Branch records and maintains in the CAGE master file. This type of code is known as an NCAGE code.

Highest-level owner means the entity that owns or controls an immediate owner of the offeror, or that owns or controls one or more entities that control an immediate owner of the offeror. No entity owns or exercises control of the highest level owner.

Immediate owner means an entity, other than the offeror, that has direct control of the offeror. Indicators of control include, but are not limited to, one or more of the following: Ownership or interlocking management, identity of interests among family members, shared facilities and equipment, and the common use of employees.

(b) The Offeror represents that it ☐ has or ☐ does not have an immediate owner. If the Offeror has more than one immediate owner (such as a joint venture), then the Offeror shall respond to paragraph (c) and if applicable, paragraph (d) of this provision for each participant in the joint venture.

(c) If the Offeror indicates “has” in paragraph (b) of this provision, enter the following information:

Immediate owner CAGE code: _____

Immediate owner legal name: _____

(Do not use a “doing business as” name)

Is the immediate owner owned or controlled by another entity?: ☐ Yes or ☐ No.

(d) If the Offeror indicates “yes” in paragraph (c) of this provision, indicating that the immediate owner is owned or controlled by another entity, then enter the following information:

Highest-level owner CAGE code: _____

Highest-level owner legal name: _____

(Do not use a “doing business as” name)

(End of provision)

■ 11. Add section 52.204–18 to read as follows:

52.204–18 Commercial and Government Entity Code Maintenance.

As prescribed in 4.1804(c), use the following clause:

Commercial and Government Entity Code Maintenance (Nov 2014)

(a) *Definition.* As used in this clause—
Commercial and Government Entity (CAGE) code means—

(1) An identifier assigned to entities located in the United States or its outlying areas by the Defense Logistics Agency (DLA) Contractor and Government Entity (CAGE) Branch to identify a commercial or government entity; or

(2) An identifier assigned by a member of the North Atlantic Treaty Organization (NATO) or by the NATO Support Agency (NSPA) to entities located outside the United States and its outlying areas that the DLA Contractor and Government Entity (CAGE) Branch records and maintains in the CAGE master file. This type of code is known as an NCAGE code.

(b) Contractors shall ensure that the CAGE code is maintained throughout the life of the contract. For contractors registered in the System for Award Management (SAM), the DLA Contractor and Government Entity (CAGE) Branch shall only modify data received from SAM in the CAGE master file if the contractor initiates those changes via update of its SAM registration. Contractors undergoing a novation or change-of-name agreement shall notify the contracting officer in accordance with subpart 42.12. The contractor shall communicate any change to the CAGE code to the contracting officer within 30 days after the change, so that a modification can be issued to update the CAGE code on the contract.

(c) Contractors located in the United States or its outlying areas that are not registered in SAM shall submit written change requests to the DLA Contractor and Government Entity (CAGE) Branch. Requests for changes shall be provided on a DD Form 2051, Request for Assignment of a Commercial and Government Entity (CAGE) Code, to the address shown on the back of the DD Form 2051. Change requests to the CAGE master file are accepted from the entity identified by the code.

(d) Contractors located outside the United States and its outlying areas that are not registered in SAM shall contact the appropriate National Codification Bureau or NSPA to request CAGE changes. Points of contact for National Codification Bureaus and NSPA, as well as additional information on obtaining NCAGE codes, are available at http://www.dlis.dla.mil/Forms/Form_AC135.asp.

(e) Additional guidance for maintaining CAGE codes is available at http://www.dlis.dla.mil/cage_welcome.asp.

(End of Clause)

■ 12. Amend section 52.212–3 by—

- a. Revising the date of the provision;
- b. Revising the introductory text of the provision;
- c. Amending paragraph (a) by adding, in alphabetical order, the definitions

“Highest-level owner” and “Immediate owner”;

■ d. Removing from the second paragraph of (b)(2) “(c) through (o)” and adding “(c) through (p)” in its place; and

■ e. Adding paragraph (p).

The revised and added text reads as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (Nov 2014)

The Offeror shall complete only paragraph (b) of this provision if the Offeror has completed the annual representations and certification electronically via the System for Award Management (SAM) Web site accessed through <http://www.acquisition.gov>. If the Offeror has not completed the annual representations and certifications electronically, the Offeror shall complete only paragraphs (c) through (p) of this provision.

(a) * * *

Highest-level owner means the entity that owns or controls an immediate owner of the offeror, or that owns or controls one or more entities that control an immediate owner of the offeror. No entity owns or exercises control of the highest level owner.

Immediate owner means an entity, other than the offeror, that has direct control of the offeror. Indicators of control include, but are not limited to, one or more of the following: Ownership or interlocking management, identity of interests among family members, shared facilities and equipment, and the common use of employees.

* * * * *

(p) *Ownership or Control of Offeror.* (Applies in all solicitations when there is a requirement to be registered in SAM or a requirement to have a DUNS Number in the solicitation.

(1) The Offeror represents that it ☐ has or ☐ does not have an immediate owner. If the Offeror has more than one immediate owner (such as a joint venture), then the Offeror shall respond to paragraph (2) and if applicable, paragraph (3) of this provision for each participant in the joint venture.

(2) If the Offeror indicates “has” in paragraph (p)(1) of this provision, enter the following information:

Immediate owner CAGE code:

Immediate owner legal name:

(Do not use a “doing business as” name)
Is the immediate owner owned or controlled by another entity: ☐ Yes or ☐ No.

(3) If the Offeror indicates “yes” in paragraph (p)(2) of this provision, indicating that the immediate owner is owned or controlled by another entity, then enter the following information:

Highest-level owner CAGE code:

Highest-level owner legal name:

(Do not use a “doing business as” name)

(End of provision)

* * * * *

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 42, and 52

[FAC 2005–74; FAR Case 2014–016; Item II; Docket No. 2014–0016, Sequence No. 1]

RIN 9000–AM77

Federal Acquisition Regulation; Repeal of the Recovery Act Reporting Requirements

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

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA have adopted as final, with changes, two interim rules amending the Federal Acquisition Regulation (FAR) to revise the clause on Recovery Act reporting procedures. This final rule implements a section of the Consolidated Appropriations Act, 2014, by repealing the reporting requirements of the American Recovery and Reinvestment Act of 2009.

DATES: *Effective:* May 30, 2014.

Applicability: In accordance with FAR 1.108(d)(3), Contracting Officers may, at their discretion, modify existing contracts to amend 52.204–11 in paragraph (c) to add a statement that “Starting February 1, 2014, future reporting is not required.”

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 2005–74, FAR Case 2014–016.

SUPPLEMENTARY INFORMATION:

I. Background

Section 627 of Division E of the Consolidated Appropriations Act, 2014 (Pub. L. 113–76), repealed the contractor reporting requirements that were in

section 1512(c) of Division A of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111–5). Starting February 1, 2014, future reporting is not required. A message has been posted at www.federalreporting.gov notifying Federal contractors of this change. As of March 20, 2014, the Web site is closed for future reporting.

Section 627 also amended section 1512(d) to replace the requirement that agencies make publicly available the information previously reported by contractors under section 1512(c) with the requirement that each agency that made recovery funds available to any recipient, make publicly available detailed spending data as prescribed by the Office of Management and Budget and pursuant to the Federal Funding Accountability and Transparency Act of 2006 (FFATA) (Pub. L. 109–282).

Although Federal contractors and agencies are not required after January 31, 2014, to comply with future reporting requirements of the Recovery Act, which were implemented in FAR subpart 4.15, 42.15, and the clause at 52.204–11, American Recovery and Reinvestment Act—Reporting Requirements, contractors and agencies are still required to continue their FFATA reporting on existing contracts, as implemented in FAR subpart 4.14 and clause 52.204–10, Reporting Executive Compensation and First-Tier Subcontract Awards.

To notify the acquisition community of this change the following steps were taken: (1) The Civilian Agency Acquisition Council (CAAC) issued CAAC letter 2014–02 titled “Class Deviation from the Federal Acquisition Regulation (FAR) to Repeal the American Recovery and Reinvestment Act of 2009 (the Recovery Act) Reporting Requirement” on February 20, 2014; and (2) DoD issued a deviation titled “Class Deviation-Repeal of the Recovery Act Reporting Requirements” dated March 11, 2014.

II. Discussion and Analysis

DoD, GSA, and NASA published an interim rule under FAR Case 2009–009, American Recovery and Reinvestment Act of 2009 (Recovery Act)—Reporting Requirements, in the **Federal Register** at 74 FR 14639 on March 31, 2009, and notices published at 74 FR 42877 on August 25, 2009, and at 74 FR 48971 on September 25, 2009. DoD, GSA, and NASA published in the **Federal Register** a separate interim rule under FAR Case 2010–008, Recovery Act Subcontract Reporting Procedures, at 75 FR 38684 on July 2, 2010, and a correction published at 75 FR 43090 on July 23,