

**FAC 2005-31 is summarized below and includes whether any DOE supplemental guidance will be issued.**

**Item I – Small Business Size Re-representation**

(FAR Case 2006-032) (Final) 48 CFR Parts 1, 4, 17, 19 and 52

Effective date: April 20, 2009.

This final rule amends the FAR to adopt as final, with changes, an interim FAR rule published in the Federal Register at 72 FR 36852, July 5, 2007, amending the FAR to implement the Small Business Administration's (SBA) final rule published on November 15, 2006 (71 FR 66434), entitled Small Business Size Regulations; Size for Purposes of Governmentwide Acquisition Contracts, Multiple Award Schedule Contracts and Other Long-Term Contracts; 8(a) Business Development/Small Disadvantaged Business; Business Status Determinations. The purpose of the SBA rule and this FAR rule is to improve the accuracy of small business size status reporting, at the prime contract level, over the life of certain contracts (long-term contracts, novations, acquisitions, and mergers). Contractors are required to re-represent their size status prior to the end of the fifth year of a contract that is more than five years in duration (long-term contract); prior to exercising any option thereafter; following execution of a novation agreement on any contract; or following a merger or acquisition, regardless of whether there is a novation agreement. A change in the size status does not change the terms and conditions of the contract, but the agency may no longer include the value of options exercised or orders issued against the contract in its small business prime contracting goal achievements. *No additional DOE supplemental guidance will be issued.*

*Applicability date:* This rule applies to solicitations issued and contracts awarded on or after April 20, 2009. All long-term contracts as defined in this rule, awarded to small business concerns prior to June 30, 2007, that have not yet been modified to include FAR 52.219-28, must be modified to include FAR 52.219-28 within 90 days after the effective date of this final rule.

**Item II – Clarification of Submission of Cost or Pricing Data on Non-Commercial Modifications of Commercial Items**

(FAR Case 2008-012) (Interim) 48 CFR Part 15

Effective date: March 19, 2009 Public comments due: May 18, 2009

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing an interim final rule amending the FAR to harmonize the thresholds for cost or pricing data on non-commercial modifications of commercial items to reflect the Truth In Negotiation Act (TINA) threshold for cost and pricing data. The Councils are hereby implementing a requirement of the National Defense Authorization Act (NDAA) for FY 2008. Specifically, Section 814 of the Act requires the harmonization of the threshold for cost or pricing data on non-commercial modifications of commercial items with the TINA threshold for cost and pricing data. By linking the threshold for cost or pricing data on non-commercial modifications of commercial items with the TINA threshold at FAR 15.403-4, whenever the TINA threshold is adjusted the

threshold for cost or pricing data on non-commercial modifications of commercial items will be automatically adjusted as well. *No additional DOE supplemental guidance will be issued.*

**Item III -- Amendments to Incorporate New Wage Determinations**

(FAR Case 2008-014) (Final) 48 CFR Part 22

Effective date: April 20, 2009

The final rule amends the FAR to correct an inconsistency between FAR 15.206(c) and 22.404-5(c)(3), by revising the language at 22.404-5(c). This change requires the contracting officer to amend solicitations to incorporate new Davis Bacon wage determinations (WD) and furnish the wage rate information only to all offerors that have not been eliminated from the competition, if the closing date for receipt of offers has already passed. The revision is necessary to ensure consistency with FAR 15.206(c), and eliminate a possible scenario where incorporation of an updated WD into the solicitation process, could cause an unnecessary and counterproductive reevaluation of proposals already eliminated from competition. This change is consistent with the intent of the Department of Labor regulations, ensuring that the most current WD is placed in the contract at the time of award for compliance at the start of contract performance. *No additional DOE supplemental guidance will be issued.*

**Item IV -- Least Developed Countries that are Designated Countries**

(FAR Case 2008-021) (Final) 48 CFR Parts 25 and 52

Effective date: March 19 17, 2009

This final rule amends the FAR to revise the definition of designated country, adding Liberia and removing Cape Verde. Least Developed Countries form a subset of designated countries. The list of Least Developed Countries is derived from a United Nations list of Least Developed Countries. The United States Trade Representative has updated the list of Least Developed Countries that are treated as designated countries. In acquisitions that are covered by the World Trade Organization Government Procurement Agreement, contracting officers must acquire only U.S. made or designated country end products, or U.S. or designated-country services, unless offers of such end products or services are not received or are insufficient to fulfill the requirement (FAR 25.403(c)). *Acquisition letter 2008-06, Domestic and Foreign Procurement Preference Requirements, is being reviewed for any potential updates.*

**Item V -- Federal Food Donation Act of 2008 (Pub. L. 110-247)**

(FAR Case 2008-017) (Interim) 48 CFR Parts 26, 31, and 52

Effective date: March 19, 2009 Public comments due: May 18, 2009

This interim rule amends the FAR Parts 26, 31, and 52 to encourage executive agencies and their contractors to donate apparently wholesome excess food to nonprofit organizations that provide assistance to food-insecure people in the United States. This change implements the Federal Food Donation Act of 2008 (Pub. L. 110-247) which encourages executive agencies and their contractors, in contracts for the provision,

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service, or sale of food to encourage the contractors, to the maximum extent practicable and safe, to donate apparently wholesome excess food to nonprofit organizations that provide assistance to food-insecure people in the United States. The rule is effective for all solicitations and contracts greater than \$25,000 for the provision, service, or sale of food in the United States issued on or after the effective date of the rule. *No additional DOE supplemental guidance will be issued.*

**Item VI—Technical Amendment**

Final 48 CFR Parts 3, 47, and 52

Effective date: March 19, 2009

A editorial changes are made to FAR 3.503-2, 47.103-1 and 52.225-11. *No additional DOE supplemental guidance will be issued.*

Attachment 2 is the FAC 2005-31.