

FEDERAL ACQUISITION CIRCULAR 2005-38 SUMMARY

Item	Subject	FAR case
I.....	Revocation of Executive Order 13201, Notification of Employee Rights Concerning Payment of Union Dues or Fees.	2009-017
II.....	Government wide Commercial Purchase Card Restrictions for Treasury Offset Program Debts.	2006-026
III.....	Internet Protocol Version 6 (IPv6)	2005-041
IV.....	Federal Food Donation Act of 2008 (Pub. L. 110-247).	2008-017
V.....	Postretirement Benefits (PRB), FAS 106	2006-021
VI.....	Travel Costs	2006-024
VII.....	Technical Amendments	None

Item I--Revocation of Executive Order 13201, Notification of Employee Rights Concerning Payment of Union Dues or Fees (FAR Case 2009-017)

This final rule amends the FAR to delete FAR subpart 22.16 and the corresponding FAR clause at 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees, which implemented Executive Order 13201, of February 17, 2001, of the same title. Executive Order 13201 required contractors to post a notice informing employees of their rights concerning payment of union dues or fees and detailed that employees could not be required to join unions or maintain membership in unions to retain their jobs. Executive Order 13496, of January 30, 2009, Notification of Employee Rights under Federal Labor Laws, revoked Executive Order 13201.

Item II--Government wide Commercial Purchase Card Restrictions for Treasury Offset Program Debts (FAR Case 2006-026)

This final rule amends the FAR at parts 4, 8, 13, 16, 32, and 52 by restricting the use of the Government wide commercial purchase card as a method of payment for offerors with debt subject to the Treasury Offset Program (TOP). This final rule facilitates the collection of delinquent debts owed to the Government by requiring contracting officers to determine whether the Central Contractor Registration (CCR) database indicates that the contractor has delinquent debt that is subject to collection under the TOP. If a debt flag indicator is found in the CCR database, then the Government wide commercial purchase card shall not be authorized as a method of payment. The contracting officer is required to check for the debt flag indicator at the time of contract award or order issuance or placement. The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) deleted the requirement to check CCR for the indicator before exercising an option. Purchases and orders at or below the

micro-purchase threshold are exempt from verification in the CCR database as to whether the contractor has a debt flag indicator subject to collection under the TOP.

Item III--Internet Protocol Version 6 (IPv6) (FAR Case 2005-041)

This final rule adopts the proposed rule published in the Federal Register at 71 FR 50011, August 24, 2006, as a final rule with minor changes. This final rule amends FAR parts 7, 11, 12, and 39 to require Internet Protocol Version 6 (IPv6) compliant products be included in all new information technology (IT) procurements requiring Internet Protocol (IP).

IP is one of the primary mechanisms that define how and where information moves across networks. The widely-used IP industry standard is IP Version 4 (IPv4). The Office of Management and Budget (OMB) Memorandum M-05-22, dated August 2, 2005, requires all new IT procurements, to the maximum extent practicable, to include IPv6 compliant products and standards. In addition, OMB Memorandum M-05-22 provides guidance to agencies for transitioning to IPv6.

Item IV--Federal Food Donation Act of 2008 (Pub. L. 110-247) (FAR Case 2008-017)

This rule adopts as final, with no changes, the interim rule published in the Federal Register at 74 FR 11829 on March 19, 2009. This rule implements the Federal Food Donation Act of 2008 (Pub. L. 110-247), which encourages executive agencies and their contractors, in contracts for the provision, service, or sale of food, 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 contracting officer is required to insert the clause at FAR 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations, in solicitations and contracts greater than \$25,000 for the provision, service, or sale of food in the United States. Contractors would only be impacted if they decided to donate the excess food; they would bear all the costs of donating the excess food. The Act would extend to the Government and the contractor, when donating food, the same civil or criminal liability protection provided to donors of food under the Bill Emerson Good Samaritan Food Donation Act of 1996.

Item V--Postretirement Benefits (PRB), FAS 106 (FAR Case 2006-021)

Currently FAR 31.205-6(o) allows contractors to choose among three different accounting methods for PRB costs: pay-as-you-go (cash basis), terminal funding, and accrual basis using generally accepted accounting principles by applying Statement 106 of Financial Accounting Standards (FAS 106). The FAR also requires that any accrued PRB costs be paid to an insurer or trustee. This final rule amends the FAR to permit the use of Internal Revenue Code sections 419 and 419A contribution rules as an alternative method of determining the amount of accrued PRB costs on Government cost-based contracts.

Item VI--Travel Costs (FAR Case 2006-024)

This final rule amends the FAR to change the travel cost principle (FAR 31.205-46) to ensure a consistent application of the limitation on allowable contractor airfare costs. This rule applies the standard of the lowest fare available to the contractor. This rule takes notice that contractors frequently obtain fares that are lower than those available to the general public as a result of direct negotiation. The cost principle is clarified by removing the terms "coach or equivalent" and "standard" from the description of the classes of allowable airfares, since these terms increasingly do not describe actual classes of airline service. Thus, even when a "coach" fare may be available, given the great variety of fares often available, the "coach" fare may not be the lowest fare available, in particular when a contractor has a negotiated agreement with a carrier.

Item VII--Technical Amendments

Editorial changes are made at FAR 6.302-2, 8.703, 15.305, 52.209-6, and 52.212-5.