

- d. Removing the word “commercial” from paragraphs (h)(1) and (h)(2) of the clause.
- The revised and added text reads as follows:

52.247–52 Clearance and Documentation Requirements—Shipments to DoD Air or Water Terminal Transshipment Points.

* * * * *

CLEARANCE AND DOCUMENTATION
REQUIREMENTS—SHIPMENTS TO DOD
AIR OR WATER TERMINAL
TRANSHIPMENT POINTS (FEB 2006)

* * * * *

- (a) * * *
 - (3) * * *
 - (iv) Explosives, ammunition, poisons or other dangerous articles classified as class 1, division 1.1, 1.2, 1.3, 1.4; class 2, division 2.3; and class 6, division 6.1; or
 - (v) Radioactive material, as defined in 49 CFR 173.403, class 7.
- * * * * *

52.247–64 [Amended]

- 49. Amend section 52.247–64 by—
- a. Revising the date of the clause to read “(FEB 2006)”;
- b. Removing from paragraph (e)(1) of the clause “of the Panama Canal Commission or”;
- c. Revising the date of Alternate II to read “(FEB 2006)”;
- d. Removing from paragraph (e)(1) of Alternate II “of the Panama Canal Commission or”.
- 50. Revise section 52.247–67 to read as follows:

52.247–67 Submission of Transportation Documents for Audit.

As prescribed in 47.103–2, insert the following clause:

SUBMISSION OF TRANSPORTATION
DOCUMENTS FOR AUDIT (FEB 2006)

(a) The Contractor shall submit to the address identified below, for prepayment audit, transportation documents on which the United States will assume freight charges that were paid—

- (1) By the Contractor under a cost-reimbursement contract; and
- (2) By a first-tier subcontractor under a cost-reimbursement subcontract thereunder.

(b) Cost-reimbursement Contractors shall only submit for audit those bills of lading with freight shipment charges exceeding \$100. Bills under \$100 shall be retained on-site by the Contractor and made available for on-site audits. This exception only applies to freight shipment bills and is not intended to apply to bills and invoices for any other transportation services.

(c) Contractors shall submit the above referenced transportation documents to—

[To be filled in by Contracting Officer]
(End of clause)

- 51. Section 52.247–68 is added to read as follows:

52.247–68 Report of Shipment (REPSHIP).

As prescribed in 47.208–2, insert the following clause:

REPORT OF SHIPMENT (REPSHIP) (FEB 2006)

- (a) *Definition. Domestic destination*, as used in this clause, means—
 - (1) A destination within the contiguous United States; or
 - (2) If shipment originates in Alaska or Hawaii, a destination in Alaska or Hawaii, respectively.
- (b) Unless otherwise directed by the Contracting Officer, the Contractor shall—

(1) Send a prepaid notice of shipment to the consignee transportation officer—

- (i) For all shipments of—
 - (A) Classified material, protected sensitive, and protected controlled material;

(B) Explosives and poisons, class 1, division 1.1, 1.2 and 1.3; class 2, division 2.3 and class 6, division 6.1;

(C) Radioactive materials requiring the use of a III bar label; or

(ii) When a truckload/carload shipment of supplies weighing 20,000 pounds or more, or a shipment of less weight that occupies the full visible capacity of a railway car or motor vehicle, is given to any carrier (common, contract, or private) for transportation to a domestic destination (other than a port for export);

(2) Transmits the notice by rapid means to be received by the consignee transportation officer at least 24 hours before the arrival of the shipment; and

(3) Send, to the receiving transportation officer, the bill of lading or letter or other document containing the following information and prominently identified as a “Report of Shipment” or “REPSHIP FOR T.O.”

REPSHIP FOR T.O. 81 JUN 01
TRANSPORTATION OFFICER
DEFENSE DEPOT, MEMPHIS, TN.
SHIPPED YOUR DEPOT 1981 JUN 1 540
CTNS MENS COTTON TROUSERS, 30,240
LB, 1782 CUBE, VIA XX-YY*

IN CAR NO. XX 123456*-BL***-
C98000031***CONTRACT
DLA *****ETA*****JUNE 5 JONES &
CO., JERSEY CITY, N.J.

*Name of rail carrier, trucker, or other carrier.

**Vehicle identification.

***Bill of lading.

****If not shipped by BL, identify lading document and state whether paid by contractor.

*****Estimated time of arrival.

(End of clause)

PART 53—FORMS

- 52. Revise section 53.247 to read as follows:

53.247 Transportation (U.S. Commercial Bill of Lading).

The commercial bill of lading is the preferred document for the transportation of property, as specified in 47.101.

[FR Doc. 05–24546 Filed 12–30–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Parts 2, 4, 7, and 52

[FAC 2005–07; FAR Case 2005–015; Item II]

RIN 9000–AK35

**Federal Acquisition Regulation;
Common Identification Standard for
Contractors**

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) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to address the contractor personal identification requirements in Homeland Security Presidential Directive (HSPD–12), “Policy for a Common Identification Standard for Federal Employees and Contractors,” and Federal Information Processing Standards Publication (FIPS PUB) Number 201, “Personal Identity Verification (PIV) of Federal Employees and Contractors.”

DATES: *Effective Date:* January 3, 2006.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before March 6, 2006 to be considered in the formulation of a final rule.

Applicability Date: This rule applies to solicitations and contracts issued or awarded on or after October 27, 2005. Contracts awarded before that date requiring contractors to have access to a Federally controlled facility or a Federal

information system must be modified by October 27, 2007, pursuant to FAR subpart 4.13 in accordance with agency implementation of FIPS PUB 201 and OMB guidance M-05-24.

ADDRESSES: Submit comments identified by FAC 2005-07, FAR case 2005-015, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Agency Web Site: <http://www.acqnet.gov/far/ProposedRules/proposed.htm>. Click on the FAR case number to submit comments.

- E-mail: farcase.2005-015@gsa.gov. Include FAC 2005-07, FAR case 2005-015 in the subject line of the message.

- Fax: 202-501-4067.

- Mail: General Services

Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005-07, FAR case 2005-015, in all correspondence related to this case. All comments received will be posted without change to <http://www.acqnet.gov/far/ProposedRules/proposed.htm>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Michael Jackson, Procurement Analyst, at (202) 208-4949. Please cite FAC 2005-07, FAR case 2005-015. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Background

Increasingly, contractors are required to have physical access to federally-controlled facilities and information systems in the performance of Government contracts. On August 27, 2004, in response to the general threat of unauthorized access to physical facilities and information systems, the President issued Homeland Security Presidential Directive (HSPD-12). The primary objectives of HSPD-12 are to establish a process to enhance security, increase Government efficiency, reduce identity fraud, and protect personal privacy by establishing a mandatory, Governmentwide standard for secure and reliable forms of identification issued by the Federal Government to its employees and contractors. In accordance with HSPD-12, the Secretary of Commerce issued on February 25, 2005, Federal Information Processing Standards Publication (FIPS

PUB) 201, Personal Identity Verification of Federal Employees and Contractors, to establish a Governmentwide standard for secure and reliable forms of identification for Federal and contractor employees. FIPS PUB 201 is available at <http://www.csrc.nist.gov/publications/fips/fips201/FIPS-201-022505.pdf>. The associated Office of Management and Budget (OMB) guidance, M-05-24, dated August 5, 2005, can be found at <http://www.whitehouse.gov/omb/memoranda/fy2005/m05-24.pdf>.

In accordance with requirements in HSPD-12, by October 27, 2005, agencies must—

(a) Adopt and accredit a registration process consistent with the identity proofing, registration and accreditation requirements in section 2.2 of FIPS PUB 201 and associated guidance issued by the National Institute for Standards and Technology. This registration process applies to all new identity credentials issued to contractors;

(b) Begin the required identity proofing requirements for all current contractors that do not have a successfully adjudicated investigation (*i.e.*, completed National Agency Check with Written Inquiries (NACI) or other Office of Personnel Management or National Security community investigation) on record. (By October 27, 2007, identity proofing should be verified and completed for all current contractors);

(c) Complete and receive notification of results of the FBI National Criminal History Check prior to credential issuance;

(d) Include language implementing the Standard in applicable solicitations and contracts that require contractors to have access to a federally-controlled facility or access to a Federal information system; and

(e) Complete the applicable privacy requirements listed in section 2.4 of FIPS PUB 201 and the OMB guidance M-05-24.

The rule amends the FAR by—

- Adding the definitions “Federal information system” and “Federally-controlled facilities” at FAR 2.101;

- Adding Subpart 4.13, Personal Identity Verification of Contractor Personnel, to implement FIPS PUB 201 and the associated OMB guidance;

- Modifying the security considerations in FAR 7.105(b)(17) to require the acquisition plan to address the agency’s personal identity verification requirements for contractors when applicable;

- Adding FAR clause 52.204-9, Personal Identity Verification of Contractor Personnel, to require the contractor to comply with the personal

identity verification process for all affected employees in accordance with agency procedures identified in the contract.

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 changes may 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 entities that hold contracts or wish to hold contracts that require their personnel to have access to Federally controlled facilities or information systems will be required to employ on Government contracts only employees who meet the standards for being credentialed and expend resources necessary to help employees fill out the forms for credentialing. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared. The analysis is summarized as follows:

INITIAL REGULATORY FLEXIBILITY ANALYSIS

FAR Case 2005-015

Common Identification Standard for Contractors

This Initial Regulatory Flexibility Analysis (IRFA) has been prepared consistent with 5 U.S.C. 603.

1. Description of the reasons why the action is being taken.

This proposed rule implements Homeland Security Presidential Directive (HSPD-12), “Policy for a Common Identification Standard for Federal Employees and Contractors.” This directive requires agencies to adopt a Governmentwide standard for secure and reliable forms of identification issued by the Federal Government to its employees and contractors. As required by the Directive, the Department of Commerce issued Federal Information Processing Standard Publication (FIPS PUB) 201. Consequently, the FAR must be revised to require solicitations and contracts include requirements that contractors who have access to federally-controlled facilities and information systems comply with the agency’s personal identity verification process. Failure to take action would expose the Government to unacceptable risk of harm to employees and assets.

2. Succinct statement of the objectives of, and legal basis for, the rule.

This rule is being promulgated to ensure that Federal agencies consistently apply the requirements of HSPD-12 to Federal contracts. Consistency in an identification standard is cost effective and will improve the security of Government employees and assets.

FIPS PUB 201 states that the Personal Identity Verification (PIV) Registrar shall initiate a National Agency Check with Inquiries (NACI) on the applicant as required by Executive Order 10450. Any unfavorable results of the investigation shall be adjudicated to determine the suitability of the applicant for obtaining a PIV credential. When all of the requirements have been completed, the PIV Registrar notifies the sponsor and the designated PIV issuer that the applicant has been approved for the issuance of a PIV credential. Conversely, if any of the required steps are unsuccessful, the PIV Registrar shall send appropriate notifications to the same authorities.

3. Description of and, where feasible, estimate of the number of small entities to which the rule will apply.

This rule will apply to any contractor whose employees will have access to Federal facilities or information systems. A precise estimate of the number of small entities that fall within the rule is not currently feasible because it would include both contractors who perform in Government-owned space as well as those who perform in Government-leased space (including employees of the lessor and its contractors.)

4. Description of projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

The rule does not directly require reporting, recordkeeping or other compliance requirements within the meaning of the Paperwork Reduction Act (PRA). The rule does require that any entity, including small businesses that will be performing a contract that requires its employees to have access to Federal facilities or information systems, submit information on their employees. Such information will include a personnel history for each employee having access to a Federal facility or information system for a period exceeding 6 months. Although the forms involved are similar to a standard application for employment that is used by many companies, it is envisioned that some employers, especially those using non-skilled or semi-skilled laborers, will need to help their employees complete the form. It is estimated that each applicant will spend approximately 30 minutes completing the form.

5. Identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the rule.

The Councils are unaware of any duplicative, overlapping or conflicting Federal rule. To the extent that there may be a duplicative, overlapping or conflicting Federal rule, the purpose of this rule is to establish a Federal standard that would eliminate such duplication, overlap or conflict.

6. Description of any significant alternatives to the rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the rule on small entities.

There are no practical alternatives that will accomplish the objectives of HSPD-12.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR Parts 2, 4, 7, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 2005-07, FAR case 2005-015), in 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. 3501, *et seq.* Further, the OMB guidance, M-05-24, advises to collect information using only forms approved by OMB under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. ch. 35), where applicable. Departments and agencies are encouraged to use Standard Form 85, Office of Personnel Management Questionnaire for Non-Sensitive Positions (OMB No. 3206-0005), or the Standard Form 85P, Office of Personnel Management Questionnaire for Positions of Public Trust (OMB No. 3206-0005), when collecting information.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services Administration (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without opportunity for public comment. This action is necessary to implement HSPD-12 which directs agencies to require the use of identification by Federal employees and contractors that meets the Standard in gaining physical access to federally-controlled facilities and access to federally-controlled information systems no later than October 27, 2005. The issuance of this interim rule will not be the first time the public has seen and had a chance to comment on FIPS PUB 201 and HSPD-12. The Department of Commerce, National Institute of Standards and Technology, issued a draft of FIPS PUB 201 on November 23, 2004, with comments due by December 23, 2004. Also, OMB issued a notice of Draft Agency Implementation Guidance

for HSPD-12 on April 8, 2005, with comments due by May 9, 2005. HSPD-12 requires the development and agency implementation of a mandatory Governmentwide standard for secure and reliable forms of identification for both Federal employees and contractors. However, pursuant to Public Law 98-577 and FAR 1.501, 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 2, 4, 7, and 52

Government procurement.

Dated: December 22, 2005.

Gerald Zaffos,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 4, 7, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 4, 7, 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 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 in paragraph (b)(2) by adding, in alphabetical order, the definitions "Federal information system" and "Federally-controlled facilities" to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

Federal information system means an information system (44 U.S.C. 3502(8)) used or operated by a Federal agency, or a contractor or other organization on behalf of the agency.

Federally-controlled facilities means—

(1)(i) Federally-owned buildings or leased space, whether for single or multi-tenant occupancy, and its grounds and approaches, all or any portion of which is under the jurisdiction, custody or control of a department or agency;

(ii) Federally-controlled commercial space shared with non-government tenants. For example, if a department or agency leased the 10th floor of a commercial building, the Directive applies to the 10th floor only; and

(iii) Government-owned, contractor-operated facilities, including laboratories engaged in national defense research and production activities.

(2) The term does not apply to educational institutions that conduct activities on behalf of departments or agencies or at which Federal employees are hosted unless specifically designated as such by the sponsoring department or agency.

* * * * *

PART 4—ADMINISTRATIVE MATTERS

■ 3. Add Subpart 4.13, consisting of sections 4.1300 and 4.1301, to read as follows:

Subpart 4.13—Personal Identity Verification of Contractor Personnel

Sec.
4.1300 Policy.
4.1301 Contract clause.

4.1300 Policy.

(a) Agencies must follow Federal Information Processing Standards Publication (FIPS PUB) Number 201, “Personal Identity Verification of Federal Employees and Contractors,” and the associated Office of Management and Budget (OMB) implementation guidance for personal identity verification for all affected contractor and subcontractor personnel when contract performance requires contractors to have physical access to a federally-controlled facility or access to a Federal information system.

(b) Agencies must include their implementation of FIPS PUB 201 and OMB guidance M–05–24, dated August 5, 2005, in solicitations and contracts that require the contractor to have physical access to a federally-controlled facility or access to a Federal information system.

(c) Agencies shall designate an official responsible for verifying contractor employee personal identity.

4.1301 Contract clause.

The contracting officer shall insert the clause at 52.204–9, Personal Identity Verification of Contractor Personnel, in solicitations and contracts when contract performance requires contractors to have physical access to a federally-controlled facility or access to a Federal information system.

PART 7—ACQUISITION PLANNING

■ 4. Amend section 7.105 by revising paragraph (b)(17) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) * * *

(17) *Security considerations.* For acquisitions dealing with classified matters, discuss how adequate security

will be established, maintained, and monitored (see Subpart 4.4). For information technology acquisitions, discuss how agency information security requirements will be met. For acquisitions requiring contractor physical access to a federally-controlled facility or access to a Federal information system, discuss how agency requirements for personal identity verification of contractors will be met (see Subpart 4.13).

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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

52.204–9 Personal Identity Verification of Contractor Personnel.

As prescribed in 4.1301, insert the following clause:

PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (JAN 2006)

(a) The Contractor shall comply with agency personal identity verification procedures identified in the contract that implement Homeland Security Presidential Directive–12 (HSPD–12), Office of Management and Budget (OMB) guidance M–05–24, and Federal Information Processing Standards Publication (FIPS PUB) Number 201.

(b) The Contractor shall insert this clause in all subcontracts when the subcontractor is required to have physical access to a federally-controlled facility or access to a Federal information system.

(End of clause)

[FR Doc. 05–24547 Filed 12–30–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 7, 11, 12, 16, 37, and 39

[FAC 2005–07; FAR Case 2003–018; Item III]

RIN 9000–AK00

Federal Acquisition Regulation; Change to Performance-based Acquisition

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 on a final rule amending the Federal Acquisition Regulation (FAR) by changing the terms “performance-based contracting (PBC)” and “performance-based service contracting (PBSC)” to “performance-based acquisition (PBA)” throughout the FAR; adding applicable PBA definitions of “Performance Work Statement (PWS)” and “Statement of Objectives (SOO)” and describing their uses; clarifying the order of precedence for requirements; eliminating redundancy where found; modifying the regulation to broaden the scope of PBA and give agencies more flexibility in applying PBA methods to contracts and orders of varying complexity; and reducing the burden of force-fitting contracts and orders into PBA, when it is not appropriate. The title of the rule has also been changed to reflect the deletion of “service.”

DATES: *Effective Date:* February 2, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Michael Jackson, Procurement Analyst, at (202) 208–4949. Please cite FAC 2005–07, FAR case 2003–018. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 69 FR 43712 on July 21, 2004, to which 15 commenters responded. In addition, three respondents submitted comments in response to FAR Case 2004–004, Incentive for Use of Performance-Based Contracting for Services, that the Councils determined are more relevant to this FAR case. The major changes to the proposed rule that resulted from the public comments and Council deliberations are:

(1) *FAR 2.101 Definitions.* REVISED the definition of PBA to clarify its meaning.

(2) *FAR 2.101 Definitions.* REVISED the definition of PWS to clarify its meaning.

(3) *FAR 2.101 Definitions.* REVISED the definition of SOO to clarify its meaning.

(4) *FAR 7.103(r) Agency-head responsibilities.* DELETED “and, therefore, fixed-price contracts” from the statement “For services, greater use of performance-based acquisition methods and, therefore, fixed-price contracts * * * should occur for follow-on acquisitions” because the Councils