

operations” revising the introductory text of paragraph (2) to read as follows:

#### 25.702–1 Definitions.

\* \* \* \* \*

*Restricted business operations*— \* \* \*

(2) Does not include business operations that the person (as that term is defined in Section 2 of the Sudan Accountability and Divestment Act of 2007) conducting the business can demonstrate—

\* \* \* \* \*

### PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

#### ■ 3. Amend section 52.212–3 by—

##### ■ a. Revising the date of the provision;

■ b. Revising in paragraph (a), in the definition “Restricted business operations” the second sentence of the introductory text; and

■ c. Removing from paragraph (m) “that it” and adding “that the offeror” in its place.

■ The revised text reads as follows:

#### 52.212–3 Offeror Representations and Certifications—Commercial Items.

\* \* \* \* \*

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS (Aug 2009)

\* \* \* \* \*

(a) *Definitions*. \* \* \*

*Restricted business operations* \* \* \*

Restricted business operations do not include business operations that the person (as that term is defined in Section 2 of the Sudan Accountability and Divestment Act of 2007) conducting the business can demonstrate—

\* \* \* \* \*

#### ■ 4. Amend section 52.225–20 by—

##### ■ a. Revising the date of the provision;

■ b. Removing from paragraph (a) the definition “Person”, and revising the second sentence in the introductory text of the definition “Restricted business operations”; and

■ c. Removing from paragraph (b) “that it” and adding “that the offeror” in its place.

■ The revised text reads as follows:

#### 52.225–20 Prohibition on Conducting Restricted Business Operations in Sudan—Certification.

\* \* \* \* \*

PROHIBITION ON CONDUCTING RESTRICTED BUSINESS OPERATIONS IN SUDAN—CERTIFICATION (Aug 2009)

(a) *Definitions*. \* \* \*

*Restricted business operations* \* \* \*

Restricted business operations do not include business operations that the person (as that term is defined in Section 2 of the Sudan Accountability

and Divestment Act of 2007) conducting the business can demonstrate—

\* \* \* \* \*

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### DEPARTMENT OF DEFENSE

#### GENERAL SERVICES ADMINISTRATION

#### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 28 and 52

[FAC 2005–36; FAR Case 2006–013; Item V; Docket 2006–0033; Sequence 1]

RIN 9000–AK71

#### Federal Acquisition Regulation; FAR Case 2006–013, List of Approved Attorneys, Abstractors, and Title Companies

**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) to update the procedures for the acceptance of a bond with a security interest in real property.

**DATES:** *Effective Date:* September 10, 2009.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr. Edward N. Chambers, Procurement Analyst, at (202) 501–3221. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–36, FAR case 2006–013.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

FAR Subpart 28.2 requires agencies to obtain adequate security for bonds when bonds are used with a contract. A corporate or individual surety is an acceptable form of security for a bond. FAR Subpart 28.2 provides that when an individual surety secures a bond with an interest in real estate, the surety must provide evidence of title (*i.e.*, ownership) in the form of a certificate of title prepared by a qualified title attorney or abstractor, or a title insurance policy issued by title insurance company that has been approved by the Department of Justice

(DOJ). Since DOJ no longer maintains a list of approved title insurance companies, agency contracting officers must now take other steps to ensure the adequacy of the title evidence or ensure the surety obtains a title insurance policy for the full amount of the Government’s lien interest from a qualified title insurance company.

This FAR rule revises the types of acceptable title evidence by individual sureties to include mortgagee title insurance or other evidence of title consistent with Section 2 of the DOJ Title Standards 2001, maintained on a DOJ website. FAR clause 52.228–11, Pledges of Assets, is also updated with this new reference.

The rule also provides that contracting officers should request the assistance of agency legal counsel in determining if title evidence from individual sureties is consistent with the Justice Department Standards.

#### PUBLIC COMMENTS

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 72 FR 12584 on March 16, 2007. The Councils received a single comment on the proposed rule. The Councils have partially adopted this comment and revised the final rule accordingly.

*Comment:* For those cases where real property is pledged to secure a bond, the proposed rule provided that “depending on the value of the property, contracting officers should consider requesting assistance from agency designated legal counsel to determine if the evidence of title is adequate.” The commenter believes this legal consultation should be mandatory.

*Response:* Partially adopted. The final rule drops the qualifier “depending on the value of the property” on seeking legal counsel when real property is pledged to secure a bond. However, the term “should” has been retained to provide contracting officers with the discretion to use their business judgment.

In considering the public comment, the Government revisited the proposed rule in total. In consultation with the Department of Justice, it was decided that when real property is pledged to secure a bond, instead of only allowing evidence of title that is consistent with DOJ standards as set forth in the proposed rule, that sureties could provide a mortgagee title insurance policy in an insurance amount equal to the amount of the lien. The Department of Justice observed that mortgagee title insurance is the most common form of title evidence in the commercial marketplace.

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 the incidence of the use of bonds secured by interest in real property is very low.

## 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. Chapter 35, *et seq.*

## List of Subjects in 48 CFR Parts 28 and 52

Government procurement.

Dated: August 4, 2009.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 28 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 28 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 28—BONDS AND INSURANCE

■ 2. Amend section 28.203–3 by revising paragraph (a)(1) and removing from paragraph (d) “shall be” and adding “shall be signed by all owners of the property and” in its place.

■ The revised text reads as follows.

### 28.203–3 Acceptance of real property.

(a) \* \* \*

(1) A mortgagee title insurance policy, in an insurance amount equal to the amount of the lien, or other evidence of title that is consistent with the requirements of Section 2 of the United States Department of Justice Title Standards at [http://www.usdoj.gov/enrd/2001\\_Title\\_Standards.html](http://www.usdoj.gov/enrd/2001_Title_Standards.html). This title evidence must show fee simple title vested in the surety along with any concurrent owners; whether any real estate taxes are due and payable; and any recorded encumbrances against the

property, including the lien filed in favor of the Government under paragraph (d) of this subsection. Agency contracting officers should request the assistance of their designated agency legal counsel in determining if the title evidence is consistent with the Department of Justice standards;

\* \* \* \* \*

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.228–11 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraph (b)(1) “and/or;” and adding “; and/or” in its place; and

■ c. Revising paragraph (b)(2)(i).

■ The revised text reads as follows:

### 52.228–11 Pledges of Assets.

\* \* \* \* \*

PLEDGES OF ASSETS (Sept 2009)

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(i) A mortgagee title insurance policy, in an insurance amount equal to the amount of the lien, or other evidence of title that is consistent with the requirements of Section 2 of the United States Department of Justice Title Standards at [http://www.usdoj.gov/enrd/2001\\_Title\\_Standards.html](http://www.usdoj.gov/enrd/2001_Title_Standards.html). This title evidence must show fee simple title vested in the surety along with any concurrent owners; whether any real estate taxes are due and payable; and any recorded encumbrances against the property, including the lien filed in favor of the Government as required by FAR 28.203–3(d);

\* \* \* \* \*

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Parts 30 and 52

[FAC 2005–36; FAR Case 2007–002; Item VI; Docket 2008–0001, Sequence 22]

RIN 9000–AL09

### Federal Acquisition Regulation; FAR Case 2007–002, Cost Accounting Standards (CAS) Administration and Associated Federal Acquisition Regulation Clauses

**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) to revise the contract clauses related to the administration of the Cost Accounting Standards (CAS) to maintain consistency between the FAR and CAS.

**DATES:** *Effective Date:* August 11, 2009.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr. Edward N. Chambers, Procurement Analyst, at (202) 501–3221. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAR Case 2007–002.

### SUPPLEMENTARY INFORMATION:

#### A. Background

The CAS Board published a final rule in the **Federal Register** at 72 FR 32809 on June 14, 2007, revising the contract clauses for CAS administration. The final rule effected the following changes:

- Amended the CAS applicability threshold to be the same as the threshold for compliance with the Truth in Negotiations Act (TINA) as required by section 822 of the 2006 National Defense Authorization Act (Pub. L. 109–163). The TINA threshold is currently \$650,000.

- Changed the effective dates of 48 CFR 9903.201–3 and 48 CFR 9903.201–4(a), (c), and (e) from April 2000 and June 2000, respectively, to June 2007.

The CAS Board published a final rule in the **Federal Register** at 65 FR 37470 on June 14, 2000, revising the contract clauses for CAS administration. The final rule specified that the interest rate for overpayments by the Government under 48 CFR 9903.201–4(a), (c), and (e) shall be 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)).

In order to maintain consistency between CAS and FAR, the Councils issued an interim rule revising 30.201–4 and 50.230–1 through 50.230–5.

This final rule adopts, without change, the interim rule published in the **Federal Register** at 73 FR 54011 on September 17, 2008. No public comments were received in response to the interim rule.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive