

Response: The Councils clarify that the Brooks Act was recently re-codified by Congress and is now identified under 40 U.S.C. 1101 *et seq.* and the definition of architect-engineer services is defined under 40 U.S.C. 1102.

2. *Support interim rule but it does not go far enough. Recommend changes in the definition.*

Comment: One commenter requested that in each place where the term "architect-engineer" is used in the rule, it be replaced with the term "architectural and engineering (including surveying and mapping) services." Another commenter requested that all mapping and surveying be subjected to qualification based selection in conformance with the Brooks Act.

Response: The Councils considered these recommendations to be beyond the scope of the rule. In addition, the Councils have already addressed the issue of the procurement of mapping services in FAR case 2004-023, published in the **Federal Register** at 70 FR 20329, April 19, 2005.

3. *Address how GSA plans to prevent violation when Agencies use the GSA Multiple Award Schedule (MAS) program.*

Comment: Four commenters indicated that they have concerns with the proper use of the MAS program and asked that GSA indicate how it plans to eliminate the violations.

Response: GSA has indicated to the Councils that it supports the use of the qualifications based selection (QBS) process for the procurement of A/E services for public projects as mandated by the Brooks Architect-Engineer Act of 1972 (Public Law 92-582, 40 U.S.C. 1102 *et seq.*), and it does not condone any violation of the Brooks Act. To ensure that the ordering agencies are fully aware of the statutory requirement, GSA has indicated that it has taken various steps to state that the GSA MAS Program may *not* be used to acquire services that are subject to the procedures of FAR Subpart 36.6. These steps include adding information to the online and classroom training, refining the scope of MAS contracts, adding a notice to GSA portal and MAS brochures, adding new FAQ's on the website, and conducting a customer compliance survey. GSA also plans on conducting reviews of task orders for scope compliance and A/E services will be part of the reviews.

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 this rule only clarifies an already existing requirement that architectural and engineering services be procured using the procedures at FAR Subpart 36.6.

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.*

List of Subjects in 48 CFR Parts 2, 8, 16, and 36

Government procurement.

Dated: September 22, 2005.

Julia B. Wise,

Director, Contract Policy Division.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 2, 8, 16, and 36, which was published at 70 FR 11737, March 9, 2005, is adopted as a final rule without change.

[FR Doc. 05-19469 Filed 9-29-05; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 6, 7, 8, 12, 13, 22, 28, 36, 37, 39, 41, 47, and 52

[FAC 2005-06; FAR Case 2005-010; Item III]

RIN 9000-AK27

Federal Acquisition Regulation; Title 40 of United States Code Reference Corrections

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 reflect the most recent codification of Title 40 of the United States Code.

DATES: *Effective Date:* September 30, 2005.

FOR FURTHER INFORMATION CONTACT The FAR Secretariat at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Gerald Zaffos, Procurement Analyst, at (202) 208-6091. Please cite FAC 2005-06, FAR case 2005-010.

SUPPLEMENTARY INFORMATION:

A. Background

Congress recently codified Title 40 of the United States Code. As a result, all sections of Title 40 were renumbered. This rule corrects the references to Title 40 in the FAR.

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 Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Parts 2, 4, 6, 7, 8, 12, 13, 22, 28, 36, 37, 39, 41, 47, 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 2005-06, FAR case 2005-010), 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.*

List of Subjects in 48 CFR Parts 2, 4, 6, 7, 8, 12, 13, 22, 28, 36, 37, 39, 41, 47, and 52

Government procurement.

Dated: September 22, 2005.

Julia B. Wise,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 4, 6, 7, 8, 12, 13, 22, 28, 36, 37, 39, 41, 47, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 4, 6, 7, 8, 12, 13, 22, 28, 36, 37, 39, 41, 47, 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) by revising paragraph (1) and the first sentence of paragraph (2) of the definition “Governmentwide acquisition contract (GWAC)”, and the second sentence of the definition “Multi-agency contract (MAC)” to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

Governmentwide acquisition contract (GWAC) * * *

(1) By an executive agent designated by the Office of Management and Budget pursuant to 40 U.S.C. 11302(e); or

(2) Under a delegation of procurement authority issued by the General Services Administration (GSA) prior to August 7, 1996, under authority granted GSA by former section 40 U.S.C. 759, repealed by Pub. L. 104–106. * * *

* * * * *

Multi-agency contract (MAC) * * *
Multi-agency contracts include contracts for information technology established pursuant to 40 U.S.C. 11314(a)(2).

* * * * *

PART 4—ADMINISTRATIVE MATTERS

■ 3. Amend section 4.702 by revising the second sentence in paragraph (b) to read as follows:

4.702 Applicability.

* * * * *

(b) * * * Apart from this exception, this subpart applies to record retention periods under contracts that are subject to Chapter 137, Title 10, U.S.C., or 40 U.S.C. 101, *et seq.*

PART 6—COMPETITION REQUIREMENTS

6.102 [Amended]

■ 4. Amend section 6.102 in paragraph (d)(1) by removing “Pub. L. 92–582 (40

U.S.C. 541 *et seq.*)” and adding “40 U.S.C. 1102 *et seq.*” in its place.

PART 7—ACQUISITION PLANNING

7.103 [Amended]

■ 5. Amend section 7.103 in paragraph (t) by removing “40 U.S.C. 1422” and adding “40 U.S.C. 11312” in its place.

7.105 [Amended]

■ 6. Amend section 7.105 in paragraph (b)(4)(ii)(A) by removing “40 U.S.C. 1422” and adding “40 U.S.C. 11312” in its place.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.001 [Amended]

■ 7. Amend section 8.001 by removing “40 U.S.C. 1422” and adding “40 U.S.C. 11312” in its place.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.503 [Amended]

■ 8. Amend section 12.503 in paragraph (b)(1) by removing “40 U.S.C. 327” and adding “40 U.S.C. 3701” in its place.

12.504 [Amended]

■ 9. Amend section 12.504 in paragraph (b) by removing “40 U.S.C. 327, *et seq.*,” and adding “40 U.S.C. 3701 *et seq.*,” in its place.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.005 [Amended]

■ 10. Amend section 13.005 by—
a. Removing from paragraph (a)(2) “40 U.S.C. 270a” and adding “40 U.S.C. 3131” in its place; and
b. Removing from paragraph (a)(3) “40 U.S.C. 327–333” and adding “40 U.S.C. 3701 *et seq.*” in its place.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.300 [Amended]

■ 11. Amend section 22.300 by removing “(40 U.S.C. 327–333)” and adding “(40 U.S.C. 3701 *et seq.*)” in its place.

22.304 [Amended]

■ 12. Amend section 22.304 in paragraph (a) by removing “40 U.S.C. 331” and adding “40 U.S.C. 3706” in its place.

22.403–1 [Amended]

■ 13. Amend section 22.403–1 by removing “(40 U.S.C. 276a–276a–7)” and adding “(40 U.S.C. 3141 *et seq.*)” in its place.

22.403–2 [Amended]

■ 14. Amend section 22.403–2 by removing from the first sentence “40 U.S.C. 276c” and adding “40 U.S.C. 3145” in its place.

22.403–3 [Amended]

■ 15. Amend section 22.403–3 by removing “(40 U.S.C. 327–333)” and adding “(40 U.S.C. 3701 *et seq.*)” in its place.

PART 28—BONDS AND INSURANCE

28.102–1 [Amended]

■ 16. Amend section 28.102–1 by—
a. Removing from the introductory text of paragraph (a) “(40 U.S.C. 270a–270f)” and adding “(40 U.S.C. 3131 *et seq.*)” in its place; and
b. Removing from the introductory text of paragraph (b)(1) “Section 4104(b)(2) of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355),” and adding “40 U.S.C. 3132,” in its place.

28.106–6 [Amended]

■ 17. Amend section 28.106–6 at the end of paragraph (c) by removing “(see 40 U.S.C. 270(c))” and adding “(see 40 U.S.C. 3133)” in its place.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.104 [Amended]

■ 18. Amend section 36.104 by removing from the first sentence “(40 U.S.C. 541, *et seq.*)” and adding “(40 U.S.C. 1101 *et seq.*)” in its place.
■ 19. Amend section 36.601–1 by revising the parenthetical sentence at the end of the paragraph to read as follows:

36.601–1 Public announcement.

* * * (See 40 U.S.C. 1101 *et seq.*)

PART 37—SERVICE CONTRACTING

37.102 [Amended]

■ 20. Amend section 37.102 in paragraph (a)(1)(i) by removing “40 U.S.C. 541–544” and adding “40 U.S.C. 1101 *et seq.*” in its place.

37.202 [Amended]

■ 21. Amend section 37.202 in paragraph (b) by removing “(Section 901 of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 541),” and adding “(40 U.S.C. 1102).” in its place.

37.301 [Amended]

■ 22. Amend section 37.301 in the first sentence by removing “(40 U.S.C. 276a–276a–7)” and adding “(40 U.S.C. 3141 *et seq.*)” in its place.

37.302 [Amended]

■ 23. Amend section 37.302 in the introductory text by removing “(40 U.S.C. 270a–270f)” and adding “(40 U.S.C. 3131 *et seq.*)” in its place.

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY**39.001 [Amended]**

■ 24. Amend section 39.001 in the second sentence by removing “40 U.S.C. 1412” and adding “40 U.S.C. 11302” in its place.

PART 41—ACQUISITION OF UTILITY SERVICES**41.103 [Amended]**

- 25. Amend section 41.103 by—
- Removing from paragraph (a)(1) in the first sentence “section 201 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481),” and from the third sentence “section 201 of the Act” and adding “40 U.S.C. 501” in both places; and
 - Removing from paragraph (a)(2) “40 U.S.C. 474(d)(3)” and adding “40 U.S.C. 113(e)(3)” in its place.

PART 47—TRANSPORTATION**47.102 [Amended]**

■ 26. Amend section 47.102 in paragraph (a)(2) by removing “(40 U.S.C. 726)” and adding “(40 U.S.C. 17307)” in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**52.212–4 [Amended]**

- 27. Amend section 52.212–4 by—
- Revising the date of the clause to read “(SEP 2005)”;
 - Removing from paragraph (r) of the clause “40 U.S.C. 327” and adding “40 U.S.C. 3701” in its place.

52.228–15 [Amended]

- 28. Amend section 52.228–15 by—
- Revising the date of the clause to read “(SEP 2005)”;
 - Removing from the heading of paragraph (e) of the clause “(40 U.S.C. 270b(c))”; and adding “(40 U.S.C. 3133(c))” in its place.

52.232–27 [Amended]

- 29. Amend section 52.232–27 by—
- Revising the date of the clause to read “(SEP 2005)”;
 - Removing from the introductory text of paragraph (f)(1) of the clause “section 2 of the Act of August 24, 1935 (40 U.S.C. 270b, Miller Act),” and

adding “the Miller Act (40 U.S.C. 3133),” in its place.
[FR Doc. 05–19470 Filed 9–29–05; 8:45 am]
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DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 3 and 52**

[FAC 2005–06; FAR Case 1989–093; Item IV]

RIN 9000–AD76

Federal Acquisition Regulation; Implementation of the Anti-Lobbying Statute

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

ACTION: Final rule.

SUMMARY: The Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA) have agreed to convert the interim rule published in the **Federal Register** at 55 FR 3190, January 30, 1990, to a final rule with several minor changes. The interim rule amended the Federal Acquisition Regulation (FAR) to implement section 319 of the Department of the Interior and Related Agencies Appropriations Act, Public Law 101–121, which added a new section 1352 to title 31 U.S.C. entitled “Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions.” Section 319 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. Section 319 also requires that each person who requests or receives a Federal contract, grant, or cooperative agreement in excess of \$100,000, or a loan, or Federal commitment to insure or guarantee a loan, in excess of \$150,000 must disclose lobbying with other than appropriated funds.

DATES: *Effective Date:* September 30, 2005.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification

of content, contact Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775. Please cite FAC 2005–06, FAR case 1989–093.

SUPPLEMENTARY INFORMATION:**A. Background**

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 55 FR 3190, January 30, 1990. The interim rule amended the Federal Acquisition Regulation to implement Section 319 of the Department of the Interior and Related Agencies Appropriations Act, Public Law 101–121, which added a new section 1352 to title 31 U.S.C. entitled “Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions.” Section 319 prohibits the recipients of Federal contracts, grants, loans and cooperative agreements from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, loan or cooperative agreement. It also requires that each person who requests or receives a Federal contract, grant, or cooperative agreement, in excess of \$100,000, or a loan, or Federal commitment to insure or guarantee a loan, in excess of \$150,000, must disclose lobbying with other than appropriated funds.

Section 1352 required the Office of Management and Budget (OMB) to issue guidance for agency implementation of, and compliance with, its requirements, which OMB published on December 20, 1989 (54 FR 52306). After the interim FAR rule was published in the **Federal Register** at 55 FR 3190, January 30, 1990, OMB published a clarification notice to their earlier guidance on June 15, 1990 (55 FR 24540).

After consideration of the public comments that were received, DoD, GSA, and NASA have agreed to convert the interim rule to a final rule with minor changes as discussed in Section B.

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. Public Comments

Ninety-four respondents submitted comments. Twenty of the respondents agreed or disagreed with the interim rule without offering suggested changes. The remaining respondents recommended revisions to clarify definitions and revise terminology; clarify or add to the list of exceptions to