(d) Except as provided in paragraph (e) of this subsection, when an order contains brand name specifications, the ordering activity shall post the following information along with the Request for Quotation (RFQ) to e-Buy (*http://www.ebuy.gsa.gov*):

(1) For proposed orders exceeding $25,000, but not exceeding the simplified acquisition threshold, the documentation required by paragraph (f) of this subsection.

(2) For proposed orders exceeding the simplified acquisition threshold, the justification required by paragraph (g) of this subsection.

(e) The posting requirement of paragraph (d) of this subsection does not apply when—

(1) Disclosure would compromise the national security (*e.g.*, would result in disclosure of classified information) or create other security risks. The fact that access to classified matter may be necessary to submit a proposal or perform the contract does not, in itself, justify use of this exception;

(2) The nature of the file (*e.g.*, size, format) does not make it cost-effective or practicable for contracting officers to provide access through e-Buy; or

(3) The agency's senior procurement executive makes a written determination that access through e-Buy is not in the Government's interest.

* * * * *

(g) * * *

(2) * * *

(viii) A statement of the actions, if any, the agency may take to remove or overcome any barriers that led to the restricted consideration before any subsequent acquisition for the supplies or services is made.

* * * * *

■ 7. Amend section 8.406–1 by revising the first sentence of the introductory text to read as follows:

8.406–1 Order placement.

Ordering activities may place orders orally (except for services requiring a statement of work (SOW) or orders containing brand name specifications that exceed $25,000) or use Optional Form 347, an agency-prescribed form, or an established electronic communications format to order supplies or services from schedule contracts. * * *

* * * * *

PART 11—DESCRIBING AGENCY NEEDS

■ 8. Amend section 11.105 by—

■ a. Redesignating paragraphs (a), (b), and (c) as (a)(1), (a)(2)(i), and (a)(2)(ii) respectively; and adding new paragraphs (a)(3) and (b);

■ b. Amending newly redesignated paragraph (a)(2)(i) by removing ''and'' from the end of the paragraph and adding ''or'' in its place; and

■ c. Revising newly redesignated paragraph (a)(2)(ii).

The revised and added text reads as follows:

11.105 Items peculiar to one manufacturer.

* * * * *

(a)(1) * * *

(2)(i) * * *

(ii) The basis for not providing for maximum practicable competition is documented in the file (see 13.106–1(b)) or justified (see 13.501) when the acquisition is awarded using simplified acquisition procedures.

(3) The documentation or justification is posted for acquisitions over $25,000. (See 5.102(a)(6).)

(b) For multiple award schedule orders, see 8.405–6.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 9. Amend section 13.105 by adding paragraph (c) to read as follows:

13.105 Synopsis and posting requirements.

* * * * *

(c) See 5.102(a)(6) for the requirement to post a brand name justification or documentation required by 13.106–1(b) or 13.501.

■ 10. Amend section 13.106–1 by—

■ a. Amending paragraph (b)(1) by adding ''brand name'' after ''agreements,'';

■ b. Amending paragraph (b)(2) by adding ''(including brand name)'' after ''For sole source''; and

■ c. Adding a new paragraph (b)(3) to read as follows—

13.106–1 Soliciting competition.

* * * * *

(b) * * *

(3) See 5.102(a)(6) for the requirement to post the brand name justification or documentation.

* * * * *

13.106–3 [Amended]

■ 11. Amend section 13.106–3 in paragraph (b)(3)(i) by adding ''(see 13.106–1 for brand name purchases)'' after ''competition''.

13.501 [Amended]

■ 12. Amend section 13.501 by—

■ a. Amending the paragraph heading in paragraph (a) by adding ''(including brand name)'' after ''Sole source'';

■ b. Amending paragraph (a)(1)(i) by adding ''(including brand name)'' after ''2.101,''; and

■ c. Amending paragraphs (a)(1)(ii) and (a)(2) by adding ''(including brand name)'' after ''sole source''.

[FR Doc. 06–8200 Filed 9–27–06; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 7, 11, 31, and 39

[FAC 2005–13; FAR Case 2004–018; Item II; Docket 2006–0020, Sequence 16]

RIN 9000–AK29

Federal Acquisition Regulation; FAR Case 2004–018, Information Technology Security

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 to adopt as final without change, the interim rule amending the Federal Acquisition Regulation (FAR) to implement the Information Technology (IT) Security provisions of the Federal Information Security Management Act of 2002 (FISMA) (Title III of Public Law 107–347, the E-Government Act of 2002 (E-Gov Act)).

DATES: *Effective Date*: September 28, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Cecelia Davis, Procurement Analyst, at (202) 219–0202. Please cite FAC 2005–13, FAR case 2004–018. 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 an interim rule in the **Federal Register** at 70 FR 57449, September 30, 2005 to implement the Information Technology (IT) Security provisions of the Federal Information Security Management Act of 2002 (FISMA) (Title III of Public Law 107–347, the E-Government Act of 2002 (E-Gov Act)). There was a correction published in the **Federal Register** at 70 FR 69100, November 14, 2005, deleting the definition at FAR 2.101 of

''Sensitive But Unclassified (SBU) information.'' The Councils received five public comments in response to the interim rule. A discussion of the comments is provided below:

One commenter stated ''no comment'' in response to the data call. The remaining comments are shown below with the response.

Comment: Two commenters disagreed with the term ''Sensitive But Unclassified (SBU) Information''. The commenters stated that SBU is defined but not found in the text of the interim rule. The commenters recommended deleting the term SBU or adding the language to support the definition.

Response: A technical amendment was published on November 14, 2005 to delete the SBU terminology from the definition. The councils have, therefore, excluded the term from the final rule.

Comment: One commenter requested including revisions to FAR 52.239–1(b) to the interim rule to include a specific reference to ''security programs under FISMA''.

Response: Paragraph (b) of the FAR clause at 52.239–1 includes a broad reference to programs, including security, which includes FISMA. Therefore, the councils do not concur with adding a specific reference for programs under FISMA.

Comment: One commenter stated the new FAR regulation is stimulating interest among the suppliers looking to maximize their security offerings and data center offerings. A major issue is the lack of recognition of a simple process that can be adopted by all agencies to allow suppliers to leverage their facility and personnel clearances across multiple Federal agencies. Another major issue is that the FAR regulation inhibits those still struggling to obtain or be sponsored for clearances. The commenter stated that the winners are those who have clearance today and this may stifle acquisition competition.

Response: Adding requirements to sponsor companies for clearances is outside the scope of this rule. The commenter should express the concern to agencies responsible for adjudicating clearances.

Comment: One commenter stated that it is essential that in implementing information security requirements for contractors, each agency strive for an approach that leverages its contractors' existing policies and practices and is also consistent with the approach of other Federal agencies. The commenter stated that agency policy makers should be mindful of recent steps taken in private industry, and should seek to leverage the additional security measures many companies have already adopted by allowing those measures to be a foundation for ensuring the protection of non-public agency information that a contractor may possess or control. The commenter recommended that FAR 39.101(d) be revised to read as follows:

''(d) In acquiring information technology, agencies shall include the appropriate information technology security policies and requirements. The security policies and requirements included by agencies shall (i) be consistent with applicable guidelines provided by the Commerce Department's National Institute of Standards and Technology, and (ii) to the maximum practicable extent, accommodate contractors' existing policies and practices for preventing the unauthorized access or disclosure of non-public information.''

Response: FISMA requires agencies to follow National Institute of Standards and Technology (NIST) guidance, but it does not state agencies must collaborate to establish procedures. In Fiscal Year 2005, OMB worked with agencies to determine whether there is unnecessary duplication of resources used to achieve common Governmentwide security requirements. The leveraging benefits were described in the FISMA 2004 Report to Congress by OMB dated March 1, 2005, which states that consolidation of commonly used information technology security process and technologies may reduce costs and increase security consistency and effectiveness across Government. The final rule requires agency planners to comply with the requirements in the Federal Information Security Management Act (44 U.S.C. 3544) in FAR 7.103(u), which includes evaluating private sector information security policies and practices, and this requirement does not need to be added to FAR 39.101. Furthermore, agencies are required to comply with the Federal Information Processing Standards Publications (FIPS PUBS), managed by NIST for IT standards and guidance in FAR 11.102. The Councils agreed to convert the interim rule to a final rule without change. 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, 5 U.S.C. 601, *et seq.*, applies to this final rule. The Councils prepared a Final Regulatory Flexibility Analysis (FRFA), and it is summarized as follows:

This rule amends the Federal Acquisition Regulation to implement the information technology security provisions of the Federal Information Security Management Act of 2002 (FISMA), (Title III of Public Law 107–347, the E-Government Act of 2002 (E-Gov Act)). FISMA requires agencies to identify and provide information security protections commensurate with security risks to federal information collected or maintained for agency and information systems used or operated on behalf of an agency by a contractor.

The Councils considered all of the comments in finalizing the rule. An Initial Regulatory Flexibility Analysis (IRFA) was performed. The Councils did not receive any public comments on this issue from small business concerns or other interested parties in response to the IRFA. As stated in the IRFA, the FAR rule will itself have no direct impact on small business concerns. FISMA requires that agencies establish IT security policies that are commensurate with agency risk and potential for harm and that meet certain minimum requirements. The real implementation of this will occur at the agency level. The impact on small entities will, therefore, be variable depending on the agency implementation. The bulk of the policy requirements for information security are expected to be issued as either change to agency supplements to the FAR or as internal IT policies promulgated by the agency Chief Information Officer (CIO), or equivalent, to assure compliance with agency security policies. These agency supplements and IT policies may affect small business concerns in terms of their ability to compete and win federal IT contracts. The extent of the effect and impact on small business concerns is unknown and will vary from agency to agency due to the wide variances among agency missions and functions.

An interim rule was published in the **Federal Register** on September 30, 2005 (70 FR 57449), and a technical amendment was published in the **Federal Register** on November 14, 2005 (70 FR 69100). Five public comments were received in response to the interim rule. The public disagreed with the use of the term ''Sensitive But Unclassified (SBU) Information''. The technical amendment published on November 14, 2005, deleted the term from the final rule.

This rule imposes no additional reporting, recordkeeping, or other compliance requirements for firms under this rule.

There are no known significant alternatives that will accomplish the objectives of the rule. No alternatives were proposed during the public comment period.

Interested parties may obtain a copy of the FRFA from the FAR Secretariat. The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

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 1, 2, 7, 11, 31, and 39

Government procurement.

Dated: September 19, 2006.

Ralph De Stefano,

Director, Contract Policy Division.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 1, 2, 7, 11, 31, and 39, which was published at 70 FR 57449, September 30, 2005, and a correction published at 70 FR 69100, November 14, 2005, is adopted as a final rule without change.

[FR Doc. 06–8201 Filed 9–27–06; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 12, 14, and 15

[FAC 2005–13; FAR Case 2005–025; Item III; Docket 2006–0020, Sequence 4]

RIN 9000–AK56

Federal Acquisition Regulation; FAR Case 2005–025, Online Representations and Certifications Application (ORCA) Archiving Capability

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 record retention policy where the Online Representations and Certifications Application (ORCA) is used to submit an offeror's representations and certification.

DATES: *Effective Date*: September 28, 2006.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before November 27, 2006 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–13, FAR case 2005–025, by any of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov.* Search for this document at the ''Federal Acquisition Regulation'' agency and review the ''Document Title'' column; click on the Document ID number. Click on ''Add Comments''.

You may also search for any document using the ''Advanced search/document search'' tab, selecting from the agency field ''Federal Acquisition Regulation'', and typing the FAR case number in the keyword field.

• 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 citeFAC 2005–13, FAR case 2005–025, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775. The TTY Federal Relay Number for further information is 1–800–877–8973. Please cite FAC 2005–13, FAR case 2005–025. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

Under FAR Subpart 4.12 prospective contractors are required to submit Annual Representations and Certifications via the Online Representations and Certifications Application (ORCA), a part of the Business Partner Network. Using ORCA eliminates the administrative burden for contractors of submitting the same information to various contracting offices, and establishes a common source for this information to procurement offices throughout the Government.

FAR 4.803(a)(11) requires contracting officers to include contractor representations and certifications in the contract file. Given ORCA's capability to archive a contractor's representations and certifications by date, contracting officers no longer need to file a paper copy of a contractor's representations and certifications in the contracting office contract files, but should incorporate archived ORCA records by reference, along with any changes submitted in the FAR provisions at 52.204–8 or 52.212–3, in the contract file to satisfy the contract file documentation requirements.

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 interim rule is not expected to 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 management of the contract file is not accomplished by the vendor community, only by government contracting entities. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 4, 12, 14, and 15 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 2005–13, FAR case 2005–025), 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.*

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 (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the rule addresses policy regarding the filing of proper documentation in the contract file by the contracting officer, which is internal to the Government, and not accomplished by the vendor community. 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 4, 12, 14, and 15

Government procurement.