acCORDANCE WITH FAR SUBPART 31.7 IN EFFECT ON THE DATE OF THIS CONTRACT AND THE TERMS OF THIS CONTRACT. THE CONTRACTOR MAY SUBMIT TO AN AUTHORIZED REPRESENTATIVE OF THE CONTRACTING OFFICER, IN SUCH FORM AND REASONABLE DETAIL AS THE REPRESENTATIVE MAY REQUIRE, AN INVOCATION OR VOUCHER SUPPORTED BY A STATEMENT OF THE CLAIMED ALLOWABLE COST FOR PERFORMING THIS CONTRACT.

6. Amend section 52.232–7 by—

a. Revising the date of the clause;

b. Revising the introductory text of paragraph (a)(5);

c. Removing from the last sentence of paragraph (f) “1 year” and adding “120 days” in its place; and

d. Removing “Alternate I”.

The revised text reads as follows:


Payments Under Time-and-Materials and Labor-Hour Contracts (AUG 2012)

(a) * * * *

(5) Vouchers may be submitted not more than once every two weeks, to the Contracting Officer or authorized representative. A small business concern may receive more frequent payments than every two weeks. The Contractor shall substantiate the payment by a statement of the claimed allowable cost for performing this contract.

(ii) * * * *

(b) * * * *

(i) Vouchers may be submitted not more than once every two weeks, to the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

(ii) The revised text reads as follows:

SUPPLEMENTARY INFORMATION:

I. Background


For further information contact: Ms. Deborah Lague, Procurement Analyst, at 202–694–8149 for clarification of any personal and/or business confidential information provided.

One public comment was received for FAR Case 2011–015. The public comment and response are provided as follows:

Response: The rule has been changed to incorporate and implement the later-enacted section 813 of the NDAA for FY 2012 to extend the sunset date for the protest of task and delivery orders from May 27, 2011, to September 30, 2016, for Title 41 agencies.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.
IV. Regulatory Flexibility Act

The change 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. The Initial Regulatory Flexibility Analysis (IRFA) is summarized as follows:

The objective of this rule is to implement section 825 of the NDAA for FY 2011, which extended the sunset date for Title 10 agencies and section 813 of the NDAA for FY 2012, which extended the sunset date for Title 41 agencies.

The authority to file protests against the award of task or delivery orders is relatively new, and there is little data available, as such protests may be filed with the agency or Government Accountability Office (GAO). GAO has exclusive jurisdiction of a protest of an order valued in excess of $10 million. Data on agency-level protests is not compiled outside the agency concerned; therefore estimates are based on the total number of protests filed at the GAO in FYs 2009, 2010 and 2011. The data was extracted from GAO’s report to the Congress for those fiscal years.

Protests may be filed against the award of task or delivery orders are limited to (a) the authority to protest the award of a task or delivery order. A generous estimate is the number of protests filed in the first year would be 6,700 (see below):

| Fiscal Year 2009 protests to GAO | 2,000 |
| Fiscal Year 2010 protests to GAO | 2,300 |
| Fiscal Year 2011 protests to GAO | 2,400 |
| Divided by 3 | 6,700 |
| Average annual GAO protests | 2,233 |
| Multiplied by 2 | 4,467 |

Estimated total number of protests sustained 4,467

Protests may be filed against the award of contracts as well as certain task or delivery orders. There are few prohibitions on the grounds for protests against the award of a contract. However, protests against the award of a task or delivery order are limited to (a) a protest on the grounds that the order increases the scope, period, or maximum value of the contract; or (b) a protest of an order valued in excess of $10 million. Therefore, it is reasonable to assume that less than 50 percent of the total number of protests filed is against the award of a task or delivery order. A generous estimate is approximately one-fourth, or 1,117. Likewise, only a percentage of the protests against the award of a task or delivery order are made by small businesses. Even if we assume that percentage to be one-half, then the number of protests filed by small businesses against the award of a task or delivery order is estimated to be 559.

# of task/delivery orders protests sustained 4,467

# of task/delivery orders by small businesses 559

% of protests sustained .559 x .03

The number 17 represents the number of small business task or delivery order protests sustained in a fiscal year. This number is representative of protests against awards by all Government agencies.

There is no requirement for small entities to submit any information under this provision. Therefore, no professional skills are necessary on the part of small entities for compliance, and the cost to small entities associated with this provision is $0.

The Regulatory Secretariat will be submitting a copy of the Initial Regulatory Flexibility Analysis (IRFA) to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subsparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005–60, FAR Case 2012–007) in correspondence.

V. Paperwork Reduction Act

The interim rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

VI. 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 statutory authority for Title 41 offerors to file certain bid protests lapsed May 27, 2011, but was reinstated in the National Defense Authorization Act for Fiscal Year 2012, effective December 31, 2011. Similar authority for Title 10 offerors was extended by a January 7, 2011, statute, and has already been implemented in the FAR. If this rule is not published on an interim basis, offerors could be misinformed about their legal right to file certain protests. Disputated Title 41 offerors would be unclear on whether to file bid protests of civilian agency task and delivery order awards at either the GAO or the Court of Federal Claims. This interim rule clarifies that GAO has exclusive jurisdiction of a protest of an order valued in excess of $10 million. However, pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD, GSA, and NASA will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Part 16

Government procurement.

Dated: July 16, 2012.

Laura Auletta,
Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR part 16 as follows:

PART 16—TYPES OF CONTRACT

1. The authority citation for 48 CFR part 16 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

2. Amend section 16.505 by removing from paragraph (a)(10)(i) introductory text “under Subpart 33.1” and adding “under subpart 33.1” in its place; and revising paragraph (a)(10)(ii) to read as follows:

16.505 Ordering.

(a) * * * *(10) * * * *

(ii) The authority to protest the placement of an order under (a)(10)(i)(B) of this section expires on September 30, 2016 (10 U.S.C. 2304a(d), 10 U.S.C. 2304(e), 41 U.S.C. 4103(d), and 41 U.S.C. 4106(f)).

* * * * *

[FR Doc. 2012–17730 Filed 7–25–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 29

[FR Doc. 2005–60; FAR Case 2012–019; Item IV; Docket 2012–0019; Sequence 1]

RIN 9000–AM29

Federal Acquisition Regulations; DARPA-New Mexico Tax Agreement

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