

Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

*9. Availability of Documents.*

Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS. These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, which is located in Room CY–A257 at FCC Headquarters, 445 12th Street SW., Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m.

Federal Communications Commission.

**Kimberly A. Scardino,**

*Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.*

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**BILLING CODE 6712–01–P**

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Parts 4, 12, 22, and 52

**[FAR Case 2012–024; Docket 2012–0024; Sequence 1]**

**RIN 9000–AM49**

### Federal Acquisition Regulation; Commercial and Government Entity Code

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

**ACTION:** Proposed rule.

**SUMMARY:** DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to require the use of Commercial and Government Entity (CAGE) codes, including North Atlantic Treaty Organization (NATO) CAGE (NCAGE) codes for foreign entities, for awards valued at greater than the micro-purchase threshold. The CAGE code is a five-character identification number used extensively within the Federal Government. The proposed rule will also require offerors, if owned or controlled by another business entity, to identify that entity during System for Award Management (SAM) registration.

**DATES:** Interested parties should submit written comments to the Regulatory

Secretariat at one of the addressees shown below on or before June 17, 2013 to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments in response to FAR Case 2012–024 by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for “FAR Case 2012–024”. Select the link “Submit a Comment” that corresponds with FAR Case 2012–024. Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “FAR Case 2012–024” on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street NE., 7th Floor, Washington, DC 20417.

**Instructions:** Please submit comments only and cite FAR Case 2012–024, 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:** Mr. Edward Loeb, Procurement Analyst, at 202–501–0650 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAR Case 2012–024.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD, GSA, and NASA are proposing to revise the FAR with a new provision to require that offerors provide their CAGE codes to contracting officers and that, if owned or controlled by another entity, offerors will provide, in a new provision with their representations and certifications, the CAGE code and name of such entity or entities. For those offerors located in the United States or its outlying areas that register in SAM, a CAGE code is assigned as part of the registration process. Note: The text of this proposed rule uses the new FAR reference, SAM for CCR and ORCA, as there is a pending FAR rule (FAR Case 2012–033, System for Award Management Name Change, Phase 1 Implementation) which will make a global update to all of the existing references to CCR and ORCA throughout the FAR to the SAM designation.

If registration is not required, a CAGE code will be requested and obtained from the Defense Logistics Agency, Logistics Information Service. A CAGE

code is not required when a condition described at FAR 4.605(c)(2) applies and the acquisition is funded by an agency other than DoD or NASA. Offerors located outside the United States will obtain an NCAGE from their NATO Codification Bureau or, if not a NATO member or sponsored nation, from the NATO Maintenance and Supply Agency (NAMSA).

The Federal procurement community continues to strive toward greater measures of transparency and reliability of data, which facilitates achievement of rigorous accountability of procurement dollars and processes and compliance with regulatory and statutory acquisition requirements, e.g., the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282, 31 U.S.C. 6101 note). Increased transparency and accuracy of procurement data work to broaden the Government’s ability to implement fraud detection technologies restricting opportunities for and mitigating occurrences of fraud, waste, and abuse of taxpayer dollars.

To further the desired increases in traceability and transparency, this rule proposes use of the unique identification that a CAGE code provides coupled with vendor representation of ownership and owner CAGE code. The CAGE code is a five-character identification number used extensively within the Federal Government and will provide for standardization across the Federal Government. This proposed rule will—

- Support successful implementation of business tools that seek insight into Federal spending patterns across corporations;
- Facilitate legal traceability in the tracking of performance issues across corporations;
- Provide insight on contractor personnel outside the United States; and
- Support supply chain traceability and integrity efforts.

#### II. Discussion and Analysis

##### A. Proposed Changes to FAR Part 4

At FAR 4.1202 a new provision for ownership or control of offeror is added to the list of representations and certifications under FAR 52.204–8, Annual Representations and Certifications.

##### B. Proposed Addition of FAR Subpart 4.17—Commercial and Government Entity Code

A new subpart is proposed to include scope, policy, and definitions for the subpart. Offerors are required to provide

their CAGE code to the contracting officer and to represent if they are owned or controlled by another business entity, unless a condition listed at FAR 4.605(c)(2) applies and the acquisition is funded by an agency other than DoD or NASA. The subpart also gives instruction to contracting officers to verify the CAGE codes provided.

A definition of “Commercial and Government Entity” code is provided. The definition encompasses both CAGE code, for entities located in the United States and its outlying areas, and NCAGE code if the code is assigned by a NATO Codification Bureau or NAMSA.

The rule proposes definitions of ownership and intends their use only in order to determine how entities relate to one another in terms of hierarchical relationship(s). The rule does not intend to impact or supersede the definitions of “contractor” or “ownership” as described in other parts of the FAR (e.g., FAR part 19 for determination of small business size status) or other regulations including the Small Business Administration’s affiliation rules in the Code of Federal Regulations (CFR), Title 13. DoD, GSA, and NASA expect and encourage public comments in order to determine if these definitions, as proposed, are understandable and straightforward. Definitions proposed are as follows:

“Highest-level owner” means the business entity that owns or controls one or more business entities that own or control the offeror.

“Immediate owner” means the business entity that has the most direct and proximate ownership or control of the offeror.

“Owner” means the entity, other than the offeror, that is affiliated with the offeror through control of the offeror as described in this definition or, in the case of a small business, as provided in FAR part 19 and 13 CFR part 121. Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or a third party controls or has the power to control both. The two types of owners are immediate owners and highest-level owners, respectively, and these owners may be the same for some entities. Indicators of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, and the common use of employees.

#### *C. Proposed Changes to FAR Subpart 12.3*

Changes to the list of other required provisions and clauses at FAR 12.301(d) are proposed to make CAGE code reporting and maintenance applicable to commercial items by including a new provision, FAR 52.204–XX, Commercial and Government Entity Code Reporting, and a new clause, FAR 52.204–ZZ, Commercial and Government Entity Code Maintenance.

#### *D. Proposed Changes to FAR Subpart 22.10*

Updates are provided to correct paragraph numbers referencing the provision 52.204–8.

#### *E. Proposed Additions to FAR Part 52, Solicitation, Provisions and Contract Clauses*

Two new provisions are proposed, two existing provisions are amended, and one new clause is proposed:

Provision FAR 52.204–XX, Commercial and Government Entity Code Reporting, requires offerors to provide their CAGE codes and contains information on obtaining CAGE codes.

Provision FAR 52.204–YY, Ownership or Control of Offeror, calls for offerors to identify if they are owned or controlled by another entity and to provide the legal name and CAGE code of such entity, if identified.

The proposed rule will amend FAR 52.204–8, Annual Representations and Certifications, by including the new provision FAR 52.204–YY, Ownership or Control of Offeror, and FAR 52.212–3, Offeror Representations and Certifications—Commercial Items, by including definitions and ownership or control representations.

Clause FAR 52.204–ZZ, Commercial and Government Entity Code Maintenance, provides instructions to contractors to maintain accurate CAGE information in the CAGE file and to inform their contracting officer if their CAGE code changes.

### **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**

DoD, GSA, and NASA do not expect this rule 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.* However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and it is summarized as follows:

This rule would affect offerors that currently do not have a CAGE code and/or are owned by another entity. This proposed rule would require those offerors without a CAGE code and that do not register through SAM, to request and obtain a CAGE code. In FY2011, awards were made to 2,154 unique vendors that were not required to register through SAM. Of these, 741 were small business vendors. In addition, the proposed rule requires offerors to represent that, if owned or controlled by another entity, they have entered the CAGE code and the legal name of that entity. The Federal Government estimates that it received offers from 413,808 unique vendors in FY2011. Approximately 275,872 of these offers were by unique small businesses and it is estimated that this number of small businesses will be required to respond to the proposed ownership provision.

The Regulatory Secretariat has submitted a copy of the 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 subparts affected by this rule consistent with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (FAR Case 2012–024), in correspondence.

### **V. Paperwork Reduction Act**

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies. The proposed rule contains information collection requirements. Accordingly, the Regulatory Secretariat has submitted a request for approval of a new information collection requirement concerning Commercial and Government Entity Code (FAR Case 2012–024) to the Office of Management and Budget.

### A. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average .25 hours per response to request a CAGE code, .5 hours per response to request an NCAGE code, and .5 hours per response for ownership reporting. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The estimates were developed using FY2011 Federal procurement data.

The annual reporting burden to obtain CAGE codes is estimated as follows:

*Respondents required to obtain a CAGE code:* 1,134.

*Number of responses per respondent:*

1.  
*Total annual responses:* 1,134.

*Preparation hours per response:* .25.

*Subtotal response hours:* 284.

*Respondents required to obtain an NCAGE code:* 1,020.

*Number of responses per respondent:*

1.  
*Total annual responses:* 1,020.

*Preparation hours per response:* .5.

*Subtotal response hours:* 510.

*Total CAGE response burden hours:* 794 hours.

The annual reporting burden is estimated as follows to respond to ownership provision 52.204–YY requirements:

*Respondents:* 413,808.

*Responses per respondent:* 1.

*Total annual responses:* 413,808.

*Preparation hours per response:* .5.

*Total response burden hours:* 206,904.

The combined total of the CAGE hours and the ownership provision hours are 207,698 response burden hours.

### B. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than June 17, 2013 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Hada Flowers, 1275 First Street NE., 7th Floor, Washington, DC 20417.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the

information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requesters may obtain a copy of the supporting statement from the General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street NE., 7th floor, Washington, DC 20417. Please cite OMB Control Number 9000–0185, Commercial and Government Entity Code in all correspondence.

### List of Subjects in 48 CFR Parts 4, 12, 22, and 52

Government procurement.

Dated: April 15, 2013.

**Laura Auletta,**

*Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.*

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 4, 12, 22, and 52 as set forth below:

- 1. The authority citation for 48 CFR parts 4, 12, 22, and 52 continues to read as follows:

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

## PART 4—ADMINISTRATIVE MATTERS

- 2. Amend section 4.1202 by—
- a. Removing from the introductory paragraph “Central Contractor Registration” and adding “System for Award Management” in its place;
- b. Redesignating paragraphs (e) through (bb) as paragraphs (f) through (cc), respectively; and
- c. Adding a new paragraph (e).

The added text reads as follows:

### 4.1202 Solicitation provision and contract clause.

\* \* \* \* \*

(e) 52.204–YY, Ownership or Control of Offeror.

\* \* \* \* \*

- 3. Add Subpart 4.17 to read as follows:

### Subpart 4.17—Commercial and Government Entity Code

Sec.

4.1700 Scope of subpart.

4.1701 Definitions.

4.1702 Policy.

4.1703 Verifying CAGE codes prior to award.

4.1704 Solicitation provisions and contract clause.

### Subpart 4.17—Commercial and Government Entity Code

#### 4.1700 Scope of subpart.

This subpart prescribes policies and procedures for identification of commercial and government entities when it is necessary to—

(a) Exchange data with another contracting activity, including contract administration activities and contract payment activities;

(b) Exchange data with another system that requires the unique identification of a contractor entity; or

(c) Identify when offerors are owned or controlled by another entity.

#### 4.1701 Definitions.

As used in this part—

*Commercial and Government Entity (CAGE) code* means—

(1) An identifier assigned to entities located in the United States and its outlying areas by the Defense Logistics Agency (DLA) Logistics Information Service to identify a commercial or government entity; or

(2) An identifier assigned by a member of the North Atlantic Treaty Organization (NATO) or by NATO’s Maintenance and Supply Agency to entities located outside the United States and its outlying areas that DLA Logistics Information Service records and maintains in the CAGE master file. This type of code is known as an NCAGE code.

*Highest-level owner* means the business entity which owns or controls one or more business entities that own or control the offeror.

*Immediate owner* means the business entity which has the most direct and proximate ownership or control of the offeror.

*Owner* means the entity, other than the offeror, that is affiliated with the offeror through control of the offeror as described in this definition or, in the case of a small business, as provided in FAR part 19 and 13 CFR part 121. Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or a third party controls or has the power to control both. The two types of owners are immediate owners and highest-level owners, respectively, and these owners may be the same for some entities. Indicators of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, and the common use of employees.

**4.1702 Policy.**

(a) *Commercial and government entity code.* (1) Offerors shall provide the contracting officer the commercial and government entity (CAGE) code assigned to that offeror's location prior to the award of a contract action above the micro-purchase threshold, except when—

(i) A condition listed at 4.605(c)(2) applies; and

(ii) The acquisition is funded by an agency other than DoD or NASA.

(2) The contracting officer shall include the contractor's CAGE code in the contract and in any electronic transmissions of the contract data to other systems, when it is provided in accordance with paragraph (a)(1) of this section.

**(b) Ownership or control of offeror.**

Offerors, if owned or controlled by another business entity, shall provide the contracting officer with the CAGE code and legal name of that business entity prior to the award of a contract action above the micro-purchase threshold, except when—

(1) A condition listed at 4.605(c)(2) applies; and

(2) The acquisition is funded by an agency other than DoD or NASA.

**4.1703 Verifying CAGE codes prior to award.**

(a) Contracting officers shall verify the offeror's CAGE code by reviewing the entity's registration in the System for Award Management (SAM). Active registrations in SAM have had the associated CAGE codes verified.

(b) For entities not required to be registered in SAM, the contracting officer shall validate the CAGE code using the CAGE code search feature at [http://www.dlis.dla.mil/cage\\_welcome.asp](http://www.dlis.dla.mil/cage_welcome.asp).

**4.1704 Solicitation provisions and contract clause.**

(a) Use the provision at 52.204–XX, Commercial and Government Entity Code Reporting, in all solicitations, except when—

(1) A condition listed at 4.605(c)(2) applies; and

(2) The acquisition is funded by an agency other than DoD or NASA.

(b) Use the provision at 52.204–YY, Ownership or Control of Offeror, in all solicitations, except when—

(1) A condition listed at 4.605(c)(2) applies; and

(2) The acquisition is funded by an agency other than DoD or NASA.

(c) Use the clause at 52.204–ZZ, Commercial and Government Entity Code Maintenance, in all contracts resulting from solicitations containing the provision at 52.204–XX.

**PART 12—ACQUISITION OF COMMERCIAL ITEMS**

■ 4. Amend section 12.301 by revising paragraph (d) to reads as follows:

**12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.**

\* \* \* \* \*

(d) *Other required provisions and clauses.* Notwithstanding prescriptions contained elsewhere in the FAR, when acquiring commercial items, contracting officers shall be required to use only those provisions and clauses prescribed in this part. The provisions and clauses prescribed in this part shall be revised, as necessary, to reflect the applicability of statutes and executive orders to the acquisition of commercial items.

(1) Insert the provision at 52.204–XX, Commercial and Government Entity Code Reporting, as prescribed at 4.1704(a).

(2) Insert the clause at 52.204–ZZ, Commercial and Government Entity Code Maintenance, as prescribed at 4.1704(c).

(3) Insert the clause at 52.225–19, Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission outside the United States, as prescribed in 25.301–4.

(4) Insert the provision at 52.209–7, Information Regarding Responsibility Matters, as prescribed in 9.104–7(b).

\* \* \* \* \*

**PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT****22.1006 [Amended]**

■ 5. Amend section 22.1006 by—

■ a. Removing from paragraph (a)(2)(i)(C) “52.204–8(c)(2)(iii) or (iv)” and adding “52.204–8(c)(2)(iv) or (v)” in its place;

■ b. Removing from paragraph (e)(2)(i) “52.204–8(c)(2)(iii)” and adding “52.204–8(c)(2)(iv)” in its place; and

■ c. Removing from paragraph (e)(4)(i) “52.204–8(c)(2)(iv)” and adding “52.204–8(c)(2)(v)” in its place.

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 6. Amend section 52.204–8 by—

■ a. Revising the date of the provision;

■ b. Redesignating paragraphs (c)(2)(i) through (c)(2)(vii) as paragraphs (c)(2)(ii) through (c)(2)(viii), respectively; and

■ c. Adding a new paragraph (c)(2)(i).

The revised and added text reads as follows:

**52.204–8 Annual Representations and Certifications.**

\* \* \* \* \*

**Annual Representations and Certifications (Date)**

\* \* \* \* \*

(c)(2) \* \* \*  
 (i) 52.204–YY, Ownership or Control of Offeror. This provision applies to all solicitations above the micro-purchase threshold, except when a condition listed at 4.605(c)(2) applies.

\* \* \* \* \*

■ 7. Add section 52.204–XX to read as follows:

**52.204–XX Commercial and Government Entity Code Reporting.**

As prescribed in 4.1704(a), use the following provision:

**Commercial and Government Entity Code Reporting (DATE)**

(a) *Definition.* As used in this provision—  
*Commercial and Government Entity (CAGE) code* means—

(1) An identifier assigned to entities located in the United States and its outlying areas by the Defense Logistics Agency (DLA) Logistics Information Service to identify a commercial or government entity, or

(2) An identifier assigned by a member of the North Atlantic Treaty Organization (NATO) or by NATO's Maintenance and Supply Agency (NAMSA) to entities located outside the United States and its outlying areas that DLA Logistics Information Service records and maintains in the CAGE master file. This type of code is known as an NCAGE code.

(b) The offeror shall enter its CAGE code in its offer with its name and address or otherwise include it prominently in its proposal. The CAGE code entered must be for that name and address. Enter “CAGE” before the number. The CAGE code is required prior to award.

(c) CAGE codes may be obtained via—

(1) Registration in the System for Award Management (SAM) at [www.sam.gov](http://www.sam.gov). If an offeror is located in the United States or its outlying areas and does not already have a CAGE code assigned, the DLA Logistics Information Service will assign a CAGE code as a part of the SAM registration process. SAM registrants located outside the United States and its outlying areas must obtain a NCAGE code prior to registration in SAM (see paragraph (c)(3) of this provision).

(2) *The DLA Logistics Information Service.* If registration in SAM is not required for the subject procurement, and the offeror does not otherwise register in SAM, an offeror located in the United States or its outlying areas may request that a CAGE code be assigned by submitting a request at to be determined.

(3) *The appropriate country codification bureau.* Entities located outside the United States and its outlying areas may obtain a NCAGE code by contacting the Codification Bureau in the foreign entity's country if that country is a member of NATO or a sponsored nation. NCAGE codes may be obtained from the NAMSA if the foreign entity's country is

not a member of NATO or a sponsored nation. Points of contact for codification bureaus and NAMSA, as well as additional information on obtaining NCAGE codes, are available at [http://www.dlis.dla.mil/Forms/Form\\_AC135.asp](http://www.dlis.dla.mil/Forms/Form_AC135.asp).

(d) Additional guidance for establishing and maintaining CAGE codes is available at [http://www.dlis.dla.mil/cage\\_welcome.asp](http://www.dlis.dla.mil/cage_welcome.asp).

(e) Do not delay submission of the offer pending receipt of a CAGE code.

(End of Provision)

■ 8. Add section 52.204–YY to read as follows:

#### **52.204–YY Ownership or Control of Offeror.**

As prescribed in 4.1704(b), use the following provision:

##### **Ownership of Control of Offeror (DATE)**

(a) *Definitions.* As used in this provision—  
*Commercial and Government Entity (CAGE) code* means—

(1) An identifier assigned to entities located in the United States and its outlying areas by the Defense Logistics Agency (DLA) Logistics Information Service to identify a commercial or government entity, or

(2) An identifier assigned by a member of the North Atlantic Treaty Organization (NATO) or by NATO's Maintenance and Supply Agency (NAMSA) to entities located outside the United States and its outlying areas that DLA Logistics Information Service records and maintains in the CAGE master file. This type of code is known as an NCAGE code.

*Highest-level owner* means the business entity that owns or controls one or more business entities that own or control the offeror.

*Immediate owner* means the business entity which has the most direct and proximate ownership or control of the offeror.

*Owner* means the entity, other than the offeror, that is affiliated with the offeror through control of the offeror as described in this definition or, in the case of a small business, as provided in FAR part 19 and 13 CFR part 121. Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or a third party controls or has the power to control both. The two types of owners are immediate owners and highest-level owners, respectively, and these owners may be the same for some entities. Indicators of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, and the common use of employees.

(b) The offeror represents that it [ ] is or [ ] is not owned or controlled as described in “Owner” definition in paragraph (a) of this provision.

(c) If the offeror has indicated “is” in paragraph (b) of this provision, enter the following information:

Immediate owner CAGE code: \_\_\_\_\_.

Immediate owner legal name: \_\_\_\_\_.

(Do not use a “doing business as” name)

Immediate owner is the same as highest-level owner: [ ] Yes or [ ] No.

(d) If the offeror has indicated “no” in paragraph (c) of this provision, indicating that the immediate owner is not the highest-level owner, then enter the following information:

Highest-level owner CAGE code: \_\_\_\_\_.

Highest-level owner legal name: \_\_\_\_\_.

(Do not use a “doing business as” name)

(End of provision)

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

#### **52.204–ZZ Commercial and Government Entity Code Maintenance.**

As prescribed in 4.1704(c), use the following clause:

##### **Commercial and Government Entity Code Maintenance (DATE)**

(a) *Definitions.* As used in this clause—  
*Commercial and Government Entity (CAGE) code* means—

(1) An identifier assigned to entities located in the United States and its outlying areas by the Defense Logistics Agency (DLA) Logistics Information Service to identify a commercial or government entity, or

(2) An identifier assigned by a member of the North Atlantic Treaty Organization (NATO) or by NATO's Maintenance and Supply Agency (NAMSA) to entities located outside the United States and its outlying areas that DLA Logistics Information Service records and maintains in the CAGE master file. This type of code is known as an NCAGE code.

(b) Contractors shall ensure that the CAGE code is maintained throughout the life of the contract. For Contractors registered in the System for Award Management (SAM), the DLA Logistics Information Service shall only modify data received from SAM in the CAGE master file if the contractor initiates those changes via update of its SAM registration. Contractors undergoing a novation or change-of-name agreement shall notify the Contracting officer in accordance with subpart 42.12. The Contractor shall communicate any change to the CAGE number to the contracting officer within 30 days after the change, so that a modification can be issued to update the CAGE data on the contract.

(c) Contractors located in the United States or its outlying areas that are not registered in SAM shall submit written change requests to the DLA Logistics Information Service. Requests for changes shall be provided on a DD Form 2051, Request for Assignment of a Commercial and Government Entity (CAGE) Code, to the address shown on the back of the DD Form 2051. Change requests to the CAGE master file are accepted from the entity identified by the code.

(d) Contractors located outside the United States or its outlying areas that are not registered in SAM shall contact the appropriate National Codification Bureau or NAMSA to request CAGE changes. Points of contact for National Codification Bureaus and NAMSA, as well as additional information on obtaining NCAGE codes, are

available at [http://www.dlis.dla.mil/Forms/Form\\_AC135.asp](http://www.dlis.dla.mil/Forms/Form_AC135.asp).

(e) Additional guidance for maintaining CAGE codes is available at to be determined.

(End of Clause)

- 10. Amend section 52.212–3 by—
  - a. Revising the date of the provision;
  - b. Removing from the introductory text of the provision “ORCA” and “through (o)” and adding “the System for Award Management (SAM)” and “through (p)” in its place, respectively;
  - c. Amending paragraph (a) by adding, in alphabetical order, the definitions “Highest-level owner”, “Immediate owner”, and “Owner”;
  - d. Removing from paragraph (b)(1) “Online Representations and Certifications Application (ORCA)” and adding “SAM” in its place;
  - e. Revising paragraph (b)(2);
  - f. Removing from paragraph (c)(10)(i)(A) “CCR” and adding “SAM” in its place; and
  - g. Removing from paragraph (l) “a central contractor registration” and adding “the SAM” in its place.
  - h. Adding paragraph (p).

The revised and added text reads as follows:

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

\* \* \* \* \*

##### **Offeror Representations and Certifications—Commercial Items (DATE)**

(a) \* \* \*

*Highest-level owner* means the business entity which owns or controls one or more business entities that own or control the offeror.

\* \* \* \* \*

*Immediate owner* means the business entity which has the most direct and proximate ownership or control of the offeror.

\* \* \* \* \*

*Owner* means the entity, other than the offeror, that is affiliated with the offeror through control of the offeror as described in this definition or, in the case of a small business, as provided in FAR part 19 and 13 CFR part 121. Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or a third party controls or has the power to control both. The two types of owners are immediate owners and highest-level owners, respectively, and these owners may be the same for some entities. Indicators of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, and the common use of employees.

\* \* \* \* \*

(b)(1) \* \* \*

(2) The offeror has completed the annual representations and certifications

electronically via the SAM Web site accessed through <https://www.acquisition.gov>. After reviewing the SAM database information, the offeror verifies by submission of this offer that the representations and certifications currently posted electronically at FAR 52.212–3, Offeror Representations and Certifications—Commercial Items, have been entered or updated in the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR 4.1201), except for paragraphs \_\_\_\_.

[Offeror to identify the applicable paragraphs at (c) through (p) of this provision that the offeror has completed for the purposes of this solicitation only, if any.]

These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted electronically on SAM.]

\* \* \* \* \*

(p) *Ownership or Control of Offeror.* (Applies in all solicitations, except when a condition listed at 4.605(c)(2) applies and the acquisition is funded by an agency other than DoD or NASA.)

(1) The offeror represents that it [ ] is or [ ] is not owned or controlled as described in “Owner” definition in paragraph (a) of this provision.

(2) If the offeror has indicated “is” in paragraph (p)(1) of this section, enter the following information:

Immediate owner CAGE code: \_\_\_\_.

Immediate owner legal name: \_\_\_\_.

(Do not use a “doing business as” name)

Immediate owner is the same as highest-level owner: [ ] Yes or [ ] No.

(3) If the offeror has indicated “no” in paragraph (p)(2) of this section, indicating that the immediate owner is not the highest-level owner, then enter the following information:

Highest-level owner CAGE code: \_\_\_\_.

Highest-level owner legal name: \_\_\_\_.

(Do not use a “doing business as” name)

\* \* \* \* \*

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Parts 1834, 1841, 1846, 1851 and 1852

RIN 2700-AE01

### NASA FAR Supplement Regulatory Review No. 1

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Proposed rule.

**SUMMARY:** NASA is updating the NASA FAR Supplement (NFS) with the goal of eliminating unnecessary regulation, streamlining overly burdensome regulation, clarifying language, and simplifying processes where possible. This proposed rule is the first in a series and includes updates and revisions to five NFS parts. On January 18, 2011, President Obama signed Executive Order 13563, Improving Regulations and Regulatory Review, directing agencies to develop a plan for a retrospective analysis of existing regulations. The revisions to this rule are part of NASA’s retrospective plan under EO 13563 completed in August 2011.

**DATES:** Interested parties should submit comments to NASA at the address below on or before June 17, 2013 to be considered in formulation of the final rule.

**ADDRESSES:** Interested parties may submit comments, identified by RIN number 2700-AE01 via the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments may also be submitted to Leigh Pomponio via email at [leigh.pomponio@NASA.gov](mailto:leigh.pomponio@NASA.gov). NASA’s full plan can be accessed at: [http://www.nasa.gov/pdf/581545main\\_Final%20Plan%20for%20Retrospective%20Analysis%20of%20Existing%20Regulations.pdf](http://www.nasa.gov/pdf/581545main_Final%20Plan%20for%20Retrospective%20Analysis%20of%20Existing%20Regulations.pdf).

**FOR FURTHER INFORMATION CONTACT:** Leigh Pomponio, NASA, Office of Procurement, email: [leigh.pomponio@NASA.gov](mailto:leigh.pomponio@NASA.gov).

### SUPPLEMENTARY INFORMATION:

#### A. Background

The NASA FAR Supplement (NFS) is codified at 48 CFR 1800. Periodically, NASA performs a comprehensive review and analysis of the regulation, makes updates and corrections, and reissues the NASA FAR Supplement. The last reissue was in 2004. The goal of the review and analysis is to reduce regulatory burden where justified and appropriate and make the NFS content and processes more efficient and effective, faster and simpler, in support of NASA’s mission. Consistent with Executive Order 13563, Improving Regulations and Regulatory Review, NASA is currently reviewing and revising the NFS with an emphasis on streamlining and reducing burden. Due to the volume of the regulation, the revisions to the regulation will be made in increments. This proposed rule is the first of three expected rules which together will constitute the NFS update

and reissue. This rule includes revisions to parts 1834, 1841, 1846, 1851, and 1852 of the NFS. Further, this rule provides notice that no regulatory changes will be made to parts 1814, 1815 (exclusive of subpart 1815.4), 1818, 1822, 1824, and 1843.

NASA analyzed the existing regulation to determine whether any portions should be modified, streamlined, expanded, or repealed. Special emphasis was placed on identifying and eliminating or simplifying overly burdensome processes that could be streamlined without jeopardizing Agency mission effectiveness. Additionally, NASA sought to identify current regulatory coverage that is not regulatory in nature, and to remove or relocate such coverage to internal guidance. In addition to substantive changes, this rule includes administrative changes necessary to make minor corrections and updates. Specifically, the changes in this rule are summarized as follows:

**Part 1815:** No regulatory changes to Part 15 but note that two corresponding clauses are revised. The pre-proposal clause at 1852.215-77 is revised to add additional information on security information required for attendance at conferences at NASA field locations. The clause entitled Proposal Page Limitations at 1852.215-81 is revised to clarify the maximum acceptable proposal page counts.

#### Part 1834:

1. Administrative changes are made to policy on Earned Value Management System which correct nomenclature and Web site references.

2. In Notice of Earned Value Management System provision at 1852.234-1, a requirement is added for offerors to provide a matrix that correlates each guideline in ANSI/EIA 748 (current version at time of solicitation) to the corresponding process in the offeror’s written management procedures; the rule also updates Web site and references in the provision.

3. In Earned Value Management System clause at 1852.234-2, administrative changes are made to correct nomenclature and add a Web site reference.

**Part 1841:** Subpart 1841.5—Solicitation Provision and Contract Clauses, is deleted in its entirety. Clause text at 1852.241-70, Renewal of Contract, is removed. The prescription and clause are removed because the clause at FAR 52.217-9 is sufficient to provide for a contract extension or renewal. A NASA-unique clause to address extension and renewal in a utility contract is not necessary.