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Part II

Department of Defense General Services Administration National Aeronautics and Space Administration

**48 CFR Chapter 1 et al.
Federal Acquisition Regulations et al;
Final Rules**

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 2005-01; Introduction

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

ACTION: Summary presentation of final and interim rules, and technical amendments and corrections.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2005-01. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at <http://www.acqnet.gov/far>.

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, at (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2005-01 and specific FAR case numbers. Interested parties may also visit our Web site at <http://www.acqnet.gov/far>.

Item	Subject	FAR case	Analyst
I	Improvements in Contracting for Architect-Engineer Services (Interim)	2004-001	Jackson.
II	Increased Justification and Approval Threshold for DoD, NASA, and Coast Guard (Interim)	2004-037	Jackson.
III	Extension of Authority for Use of Simplified Acquisition Procedures for Certain Commercial Items, Test Program.	2004-034	Jackson.
IV	Addition of Landscaping and Pest Control Services to the Small Business Competitiveness Demonstration Program (Interim).	2004-036	Marshall.
V	Nonavailable Articles—Policy	2003-021	Davis.
VI	Cost Accounting Standards Administration	1999-025	R. C. Loeb.
VII	Elimination of Certain Subcontract Notification Requirements (Interim)	2003-024	Cundiff.
VIII	Use of FAR Clause 52.244-6, Subcontracts for Commercial Items	2002-021	Jackson.
IX	Technical Amendments.		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005-01 amends the FAR as specified below:

Item I—Improvements in Contracting for Architect-Engineer Services (FAR Case 2004-001) (Interim)

This interim rule is of particular interest to contracting officers who acquire architect-engineer services. It clarifies to contracting officers that architect-engineer services offered under multiple award schedule contracts or under Federal governmentwide task and delivery order contracts must—

- Be performed under the supervision of a licensed professional architect or engineer; and
- Be awarded in accordance with the quality-based selection procedures in FAR Subpart 36.6.

In addition, the rule clarifies to contracting officers that task orders issued under an indefinite delivery contract must be issued using the procedures in FAR Subpart 36.6 if the services being acquired specify, substantially or to a dominant extent, the performance of architect-engineer services. This rule implements section

1427 of the Services Acquisition Reform Act of 2003 (Pub. L. 108-136).

Item II—Increased Justification and Approval Threshold for DoD, NASA, and Coast Guard (FAR Case 2004-037) (Interim)

This interim rule amends the FAR by increasing the justification and approval thresholds for DoD, NASA, and the U.S. Coast Guard from \$50,000,000 to \$75,000,000. This change implements Section 815 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, which amends 10 U.S.C. 2304(f)(1)(B) (Public Law 108-375). This reduces the administrative burden of approving a justification for other than full and open competition by allowing the head of the procuring activity in DoD, NASA, or the Coast Guard to approve justifications up to \$75 million. In addition to this change, FAR 6.304(a)(3)(ii) is corrected to replace the outdated GS-16 reference with “a grade above GS-15.”

Item III—Extension of Authority for Use of Simplified Acquisition Procedures for Certain Commercial Items, Test Program (FAR Case 2004-034)

This final rule amends the Federal Acquisition Regulation (FAR) by extending until January 1, 2008, the timeframe in which an agency may use simplified procedures to purchase

commercial items in amounts greater than the simplified acquisition threshold, but not exceeding \$5,000,000 (\$10,000,000 for acquisitions in support of a contingency operation or to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack). This change implements section 817 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, which amended section 4202(e) of the Clinger-Cohen Act of 1996 (Public Law 104-106). The statute allows continued reduction of the burden on contracting officers and industry when acquiring commercial items or items treated as commercial items in accordance with 12.102(f)(1).

Item IV—Addition of Landscaping and Pest Control Services to the Small Business Competitiveness Demonstration Program (FAR Case 2004-036) (Interim)

This interim rule amends Federal Acquisition Regulation (FAR) Subpart 19.10, Small Business Competitiveness Demonstration Program, to add two North American Industry Classification System (NAICS) codes, landscaping (561730) and pest control services (561710) to this program. This amendment implements Section 821 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108-375, which amends

Section 717 of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note). This rule provides unrestricted competition in acquisitions of landscaping and pest control services.

Item V—Nonavailable Articles—Policy (FAR Case 2003–021)

This final rule addresses Congressional concerns regarding appropriate use of the list of domestically nonavailable items at FAR 25.104(a). This final rule primarily impacts contracting officers who purchase items that are on the list, or items that contain an item on the list as a significant component. The final rule clarifies that being on the list does not mean that an item is completely nonavailable from U.S. sources, but that the item is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. Therefore, the final rule emphasizes the need to conduct market research, appropriate to the circumstances, for potential domestic sources, when acquiring an article on the list.

Item VI—Cost Accounting Standards Administration (FAR Case 1999–025)

This final rule amends the FAR by revising Part 30, Cost Accounting Standards Administration, and the related contract clause at FAR 52.230–6, Administration of Cost Accounting Standards. In addition, a new contract clause is added at FAR 52.230–7, Proposal Disclosure—Cost Accounting Practice Changes. The rule describes the process for determining and resolving the cost impact on contract and subcontracts when a contractor makes a compliant change to a cost accounting practice or follows a noncompliant practice. The case was initiated by OUSD(AT&L)DPAP to address the CAS cost-impact process. The rule is of particular importance to contracting officers and contractors who negotiate and administer CAS-covered contracts and subcontracts in accordance with FAR Part 30.

Item VII—Elimination of Certain Subcontract Notification Requirements (FAR Case 2003–024) (Interim)

This interim rule affects contractors that have cost-reimbursement contracts with the Department of Defense, Coast Guard, or NASA. It amends FAR 44.201–2, Advance Notification Requirements, under cost-reimbursement contracts so that contractors that maintain a purchasing system approved by the contracting

officer for the contract do not have to notify the agency before the award of any—

- Cost-plus-fixed-fee subcontract; or
- Fixed-price subcontract that exceeds the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

This rule implements section 842 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136).

Item VIII—Use of FAR Clause 52.244–6, Subcontracts for Commercial Items (FAR Case 2002–021)

This final rule revises FAR 44.403 by requiring the use of the clause at 52.244–6, Subcontracts for Commercial Items, in solicitations and contracts other than those for commercial items. The revised clause prescription clarifies to contracting officers who acquire construction that the clause is required in all solicitations and contracts other than those for commercial items, thereby clearly including construction contracts that are not for the acquisition of commercial items. This rule does not make any changes to existing OFPP guidance addressing the applicability of FAR Part 12 to construction acquisitions.

Item IX—Technical Amendments

Editorial changes are made at FAR 28.203–3(d), 31.101, 42.203, and 52.225–13(b) in order to update references.

Dated: February 24, 2005.

Rodney P. Lantier,

Director, Contract Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005-01 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-01 is effective March 9, 2005, except for Items III, V, and VI, which are effective April 8, 2005.

Dated: February 24, 2005.

Deidre A. Lee,

Director, Defense Procurement and Acquisition Policy.

Dated: February 22, 2005.

Pat Brooks,

Acting Senior Procurement Executive, Office of the Chief Acquisition Officer, General Services Administration.

Dated: February 17, 2005.

Tom Luedtke,

Deputy Chief Acquisition Officer, National Aeronautics and Space Administration.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 8, 16, and 36

[FAC 2005–01; FAR Case 2004–001; Item I]

RIN 9000–AK15

Federal Acquisition Regulation; Improvements in Contracting for Architect-Engineer Services

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 implement Section 1427(b) of the Services Acquisition Reform Act of 2003 (Title XIV of Pub. L. 108–136).

DATES: *Effective Date:* March 9, 2005.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before May 9, 2005 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–01, FAR case 2004–001 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Agency Web Site: <http://www.acqnet.gov/far/ProposedRules/proposed.htm>. Click on the FAR case number to submit comments.