



# Federal Register

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**Friday,  
August 4, 2006**

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## **Part VII**

**Department of Defense  
General Services  
Administration**

**National Aeronautics and  
Space Administration**

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**48 CFR Chapter 1 and Parts 6, 12, 26, et  
al.**

**Federal Acquisition Regulations; Final  
Rules**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

[Docket FAR—2006—0023]

**Federal Acquisition Regulation; Federal Acquisition Circular 2005—12; Introduction**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

**ACTION:** Summary presentation of interim rule.

**SUMMARY:** This document summarizes the Federal Acquisition Regulation (FAR) rule agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2005—12. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at <http://acquisition.gov/far>.

**DATES:** For effective date and comment date, see separate document which follow.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact the analyst whose name appears in the table below in relation to the FAR case. Please cite FAC 2005—12, FAR case 2006—014. Interested parties may also visit our Web site at <http://acquisition.gov/far>. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501—4755.

Item	Subject	FAR case	Analyst
I .....	Local Community Recovery Act of 2006 (Interim) .....	2006—014	Cundiff.

**SUPPLEMENTARY INFORMATION:** A summary for the FAR rule follows. For the actual revisions and/or amendments to this FAR case, refer to the specific item number and subject set forth in the document following this item summary.

FAC 2005—12 amends the FAR as specified below:

**Item I—Local Community Recovery Act of 2006 (Interim) (FAR Case 2006—014)**

This interim rule adds a local area set-aside to the FAR for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities. The contracting officer defines the set-aside area. The rule implements the Local Community Recovery Act of 2006, which strengthens the government’s ability to promote local economic recovery. The local area set-aside does not replace small business set-asides. Both can be used at the same time. The rule imposes subcontracting restrictions when a local area set-aside is used. No competition justification is required for the local area set-aside.

Dated: July 28, 2006.  
**Ralph De Stefano,**  
*Director, Contract Policy Division.*

**Federal Acquisition Circular**

Federal Acquisition Circular (FAC) 2005-12 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 2005-12 is effective August 4, 2006.

Dated: July 28, 2006.  
**Col. Casey D. Blake,**  
*Director of Operations for Defense Procurement and Acquisition Policy.*

Dated: July 28, 2006.  
**Roger D. Waldron,**  
*Acting Senior Procurement Executive, General Services Administration.*

Dated: July 28, 2006.  
**Lou Becker,**  
*Acting Assistant Administrator for Procurement, National Aeronautics and Space Administration.*  
 [FR Doc. 06—6671 Filed 8—3—06; 8:45 am]  
**BILLING CODE 6820—EP—S**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 6, 12, 26, and 52**

[FAC 2005—12; FAR Case 2006—014; Docket 2006—0020, Sequence 8]

RIN 9000—AK54

**Federal Acquisition Regulation; FAR Case 2006—014, Local Community Recovery Act of 2006**

**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 the Local Community Recovery Act of 2006. The Local Community Recovery Act of 2006 amended the Robert T. Stafford Disaster Relief and Emergency Assistance Act to authorize set-asides for major disaster or emergency assistance acquisitions to businesses that reside or primarily do business in the geographic area affected by the disaster or emergency.

**DATES:** *Effective Date:* August 4, 2006.  
*Comment Date:* Interested parties should submit written comments to the FAR Secretariat on or before October 3, 2006 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAC 2005—12, FAR case 2006—014, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov/far>. Follow the instructions for submitting comments.
- Agency Web Site: <http://www.acquisition.gov/comp/far/ProposedRules/comments.htm>. Click on the FAR case number to submit comments.
- E-mail: [farcase.2006-014@gsa.gov](mailto:farcase.2006-014@gsa.gov). Include FAC 2005—12, FAR case 2006—014 in the subject line of the message.
- 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 cite FAC 2005—12, FAR case 2006—014, in all correspondence related to this case. All comments received will be posted without change to <http://www.acquisition.gov/comp/far/>

*ProposedRules/comments.htm*, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501-0044. Please cite FAC 2005-12, FAR case 2006-014. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This interim rule implements the Local Community Recovery Act of 2006 (Pub. L. 109-218). The Local Community Recovery Act of 2006 amended the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5150) to authorize set-asides for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance acquisitions to businesses that reside or primarily do business in the geographic area affected by the disaster or emergency. The set-aside may be used together with other authorized set-asides, for example, those in FAR Part 19 for small businesses.

The contracting officer determines the geographic area for a specific local area set-aside. The local area set-aside may be the whole of, or some subpart of, the affected area (e.g., one or more counties, including across state lines). However, it may not be outside of the declared disaster/emergency area.

This rule also imposes subcontracting restrictions when a local area set-aside is used. To promote local recovery efforts, the rule requires certain percentages of the contract to be expended for employees of the contractor or employees of other local area businesses. If the contract includes other subcontracting restrictions (e.g., FAR 52.219-3, 52.219-14, 52.219-27, 52.226-5, or 52.236-1), the contractor must meet all the subcontracting restrictions in the contract.

In addition, the rule establishes a new FAR Subpart 6.6 to clarify the competition justification requirements for Stafford Act acquisitions. The coverage on the Stafford Act previously located at FAR 6.302-5 has been moved to the new subpart.

The Councils would like to hear the views of interested parties on the sufficiency of these provisions. In particular, the Councils are interested in input on whether the "Restrictions on Subcontracting Outside Disaster or Emergency Area" and the "Disaster or Emergency Area Representation" should apply to preferences other than local

area set-asides; and whether the percentages for general or specialty construction should be raised. The Councils are also interested in input regarding the placement of various Stafford-Act-related coverage in the FAR: that is, comments addressing the optimal combination of regulatory treatment in FAR Subparts such as 6.2, 6.3, 6.6, and 26.2.

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 it authorizes a set-aside for local businesses in an area affected by a major disaster or emergency to promote economic recovery. The set-aside does not replace the small business set-aside. Both set-asides can apply to the acquisition. The local set-aside will encourage use of local small businesses. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 6, 12, 26, 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 2005-12, FAR case 2006-014), 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 this interim rule implements the Local Community Recovery Act of 2006 (Pub. L. 109-218). The Local Community Recovery Act of 2006 amended the Robert T. Stafford Disaster Relief and Emergency

Assistance Act (42 U.S.C. 5150) to authorize set-asides for major disaster or emergency assistance acquisitions to businesses that reside or primarily do business in the geographic area affected by the disaster or emergency. This action is necessary to improve the Government's ability to target local businesses and promote local economic recovery in an affected area. The statute went into effect April 20, 2006. 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 6, 12, 26, and 52**

Government procurement.

Dated: July 28, 2006.

**Ralph De Stefano,**

*Director, Contract Policy Division.*

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 6, 12, 26, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 6, 12, 26, 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 6—COMPETITION REQUIREMENTS**

**6.302-5 [Amended]**

■ 2. Amend § 6.302-5 by removing paragraph (b)(5) and redesignating paragraphs (b)(6) and (b)(7) as (b)(5) and (b)(6), respectively.

■ 3. Add Subpart 6.6 to read as follows:

**Subpart 6.6—Stafford Act Preference for Local Area Contractor**

*Sec.*

6.601 Scope of subpart.

6.602 Set-asides for local firms during a major disaster or emergency.

6.603 Use of procedures other than set-aside.

**6.601 Scope of subpart.**

This subpart prescribes competition policies and procedures for procurements under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5150).

**6.602 Set-asides for local firms during a major disaster or emergency.**

(a) To fulfill the statutory requirements relating to Pub. L. 109-218, part of the Stafford Act, contracting officers may set-aside solicitations to allow only offerors residing or doing business primarily in the area affected by such major disaster or emergency to compete (see Subpart 26.2).

(b) No separate justification or determination and findings are required under this part to set-aside a contract action. The set-aside shall be based on a specific geographic area, within a Presidential declaration(s) of disaster or emergency.

**6.603 Use of procedures other than set-aside.**

When implementing the Stafford Act preference by using procedures other than a set-aside under section 6.602, the requirements for a justification to support the use of this authority are in 6.303. These procurements qualify as other than full and open competition.

**PART 12—ACQUISITION OF COMMERCIAL ITEMS**

■ 4. Amend § 12.301 by adding paragraph (e)(4) to read as follows:

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

\* \* \* \* \*

(e) \* \* \*

(4) When setting aside under the Stafford Act (Subpart 26.2), include the representation at 52.226–3, the notice at 52.226–4, and the clause at 52.226–5 in the solicitation. This representation is not in the Online Representations and Certifications Application (ORCA) Database.

\* \* \* \* \*

**PART 26—OTHER SOCIOECONOMIC PROGRAMS**

■ 5. Amend § 26.200 by removing “6.302–5” and adding “Subpart 6.6” in its place.

■ 6. Add §§ 26.202 and 26.203 to read as follows:

**26.202 Procedures to accomplish the local area preference.**

(a) *Local area set-aside.* The contracting officer may set-aside solicitations to allow only offerors residing or doing business primarily in the area affected by such major disaster or emergency to compete (see 6.602).

(1) The contracting officer, in consultation with the requirements office, shall define the specific geographic area for the local set-aside.

(2) A major disaster may result in numerous Presidential declarations spanning counties in several contiguous States. The designated area need not include all the counties in the declared disaster/emergency area(s), but cannot go outside it.

(3) The contracting officer shall also consider whether a local area set-aside should be further restricted to small

business concerns in the designated area (see Part 19).

(b) *Other appropriate procedures.* The contracting officer may use other appropriate procedures to give preference to those organizations, firms, or individuals residing or doing business primarily in the area affected by the major disaster or emergency to the extent feasible and practicable. For example, the contracting officer may implement the preference by using an evaluation factor. (See 6.603).

**26.203 Solicitation provisions and contract clause.**

(a) The contracting officer shall insert the provision at 52.226–3, Disaster or Emergency Area Representation, for acquisitions using the local area set-aside. For commercial items see 12.301(e)(4).

(b) The contracting officer shall insert the provision 52.226–4, Notice of Disaster or Emergency Area Set-aside in solicitations and contracts for acquisitions that are set-aside for a Disaster or Emergency Area under 26.203(a).

(c) The contracting officer shall insert clause 52.226–5, Restrictions on Subcontracting Outside Disaster or Emergency Area, in all solicitations and contracts that contain the provision at 52.226–3.

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

■ 7. Amend § 52.212–5 by revising the date of the clause and paragraphs (b)(27) and (b)(28) to read as follows:

**52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.**

\* \* \* \* \*

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (AUG 2006)

\* \* \* \* \*

(b) \* \* \*

(27) 52.226–4, Notice of Disaster or Emergency Area Set-Aside (42 U.S.C. 5150).

(28) 52.226–5, Restrictions on Subcontracting Outside Disaster or Emergency Area (42 U.S.C. 5150).

\* \* \* \* \*

■ 8. Add §§ 52.226–3, 52.226–4, and 52.226–5 to read as follows:

**52.226–3 Disaster or Emergency Area Representation.**

As prescribed in 26.203(a), insert the following provision:

DISASTER OR EMERGENCY AREA REPRESENTATION (AUG 2006)

(a) *Set-aside area.* The area covered in this contract is: \_\_\_\_\_

[Contracting Officer to fill in with definite geographic boundaries.]

(b) *Representations.* The offeror represents as part of its offer that it  is,  is not a firm residing or primarily doing business in the designated area.

(c) Factors to be considered in determining whether a firm resides or primarily does business in the designated area include—

(1) Location(s) of the firm’s permanent office(s) and date any office in the designated area(s) was established;

(2) Existing state licenses;

(3) Record of past work in the designated area(s) (e.g., how much and for how long);

(4) Contractual history the firm has had with subcontractors and/or suppliers in the designated area;

(5) Percentage of the firm’s gross revenues attributable to work performed in the designated area;

(6) Number of permanent employees the firm employs in the designated area;

(7) Membership in local and state organizations in the designated area; and

(8) Other evidence that establishes the firm resides or primarily does business in the designated area.

(d) If the offeror represents it is a firm residing or primarily doing business in the designated area, the offeror shall furnish documentation to support its representation if requested by the Contracting Officer. The solicitation may require the offeror to submit with its offer documentation to support the representation.

(End of provision)

**52.226–4 Notice of Disaster or Emergency Area Set-Aside.**

As prescribed in 26.203(b), insert the following provision:

NOTICE OF DISASTER OR EMERGENCY AREA SET-ASIDE (AUG 2006)

(a) *Set-aside area.* Offers are solicited only from businesses residing or primarily doing business in \_\_\_\_\_

[Contracting Officer to fill in with definite geographic boundaries.] Offers received from other businesses shall not be considered.

(b) This set-aside is in addition to any small business set-aside contained in this contract.

(End of provision)

**52.226–5 Restrictions on Subcontracting Outside Disaster or Emergency Area.**

As prescribed in 26.203(c), insert the following clause:

RESTRICTIONS ON SUBCONTRACTING OUTSIDE DISASTER OR EMERGENCY AREA (AUG 2006)

The Contractor agrees that in performance of the contract in the case of a contract for—

(a) *Services (except construction)*. At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the Contractor or employees of other businesses residing or primarily doing business in the area designated in FAR 52.226-4;

(b) *Supplies (other than procurement from a nonmanufacturer of such supplies)*. The Contractor or employees of other businesses residing or primarily doing business in the designated area shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials;

(c) *General construction*. The Contractor will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees or employees of other businesses residing or primarily doing business in the designated area; or

(d) *Construction by special trade Contractors*. The Contractor will perform at least 25 percent of the cost of the contract, not including the cost of

materials, with its own employees or employees of other businesses residing or primarily doing business in the designated area.

(End of clause)

[FR Doc. 06-6672 Filed 8-3-06; 8:45 am]

**BILLING CODE 6820-EP-S**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

[Docket FAR—2006-0023]

**Federal Acquisition Regulation; Federal Acquisition Circular 2005-12; Small Entity Compliance Guide**

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

**ACTION:** Small Entity Compliance Guide.

**SUMMARY:** This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator of the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rule appearing in Federal Acquisition Circular (FAC) 2005-12 which amends the FAR. An asterisk (\*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding this rule by referring to FAC 2005-12 which precedes this document. These documents are also available via the Internet at <http://acquisition.gov/far>.  
**FOR FURTHER INFORMATION CONTACT:** Laurieann Duarte, FAR Secretariat, (202) 501-4225. For clarification of content, contact the analyst whose name appears in the table below.

Item	Subject	FAR case	Analyst
I .....	Local Community Recovery Act of 2006 (Interim) .....	2006-014	Cundiff.

**SUPPLEMENTARY INFORMATION:**

**Item I—Local Community Recovery Act of 2006 (Interim) (FAR Case 2006-014)**

This interim rule adds a local area set-aside to the FAR for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities. The contracting

officer defines the set-aside area. The rule implements the Local Community Recovery Act of 2006, which strengthens the government's ability to promote local economic recovery. The local area set-aside does not replace small business set-asides. Both can be used at the same time. The rule imposes subcontracting restrictions when a local

area set-aside is used. No competition justification is required for the local area set-aside.

Dated: July 28, 2006.

**Ralph De Stefano,**

*Director, Contract Policy Division.*

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