



Headquarters Policy Flash

FLASH 2004-20

DATE: July 12, 2004
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management
SUBJECT: **Federal Acquisition Circulars (FAC) 2001-24, Final and Interim Rules Amending the FAR**

SUMMARY: This Policy Flash transmits summary information regarding the revisions to the FAR resulting from FAC 2001-24, published in the Federal Register at 69 FR 34224 (June 18, 2004). The following item is available via the internet at <http://www.acqnet.gov/far/FAC/fac2001-24.pdf>

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Federal Acquisition Circular (FAC) 2001-24

**1. Incentives for Use of Performance-Based Contracting for Services (Interim)
(FAR Case 2004-004)**

Effective Date: June 18, 2004

What is the purpose of this FAR Case?

This interim rule amends the FAR providing authority to treat performance-based contract or task orders for services as commercial items if specific conditions are met. It also requires agencies to report on performance-based contracts or task orders awarded using this authority. This rulemaking affects FAR Parts 2, Definitions, 12, Acquisition of Commercial Items, 37, Service Contracting, and 52, Solicitation Provisions and Contract Clauses.

How will this affect work processes?

- ✓ Provides that performance-based contracts and task orders for services with an estimated value not to exceed \$25,000,000, be treated as commercial items.
- ✓ Consider contracts or task orders as a commercial item if –
 - The work is defined in measurable, mission related terms;
 - It identifies the specific end products or outputs to be achieved; and
 - Contains firm fixed prices for specific tasks to be performed or outcomes to be achieved.
- ✓ Evaluate whether the source of the services provides similar services to the general public under terms and conditions similar to those offered to the Federal Government.
- ✓ Ensure that the data collected, entered, and maintained in FPDS-NG is reliable and sufficient to identify the contracts or task orders treated as or considered commercial items

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2. Definitions Clause (FAR Case 2002-013)

Effective Date: July 19, 2004

What is the purpose of this FAR Case?

The final rule clarifies the applicability of FAR definitions to solicitation provisions and contract clauses. This rule amends FAR by deleting the list of definitions from the clause at FAR 52.202-1, Definitions, and replaces the list with general policy as to the appropriate FAR definition related to solicitation provisions and contract clauses.

How will this affect work processes?

- ✓ As of the effective date of this rule, all solicitations and contracts shall include the revised clause at 52.202-1.
- ✓ Inform proposed offers and contractors that when a word or term is defined in the FAR, the word or term has the same meaning as the definition in FAR 2.101.

3. Procurement Lists (FAR Case 2003-013)

Effective Date: July 19, 2004

What is the purpose of this FAR Case?

This final rule clarifies that the Javits-Wagner-O'Day (JWOD) program is a mandatory source when supplies or services have been added to the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled. In addition, this FAR case seeks to avoid misuse of mandatory source authority by correcting confusion.

How will this affect work processes?

- ✓ Creates web access to the "Procurement List" in order to determine if a supply or service should be obtained from a mandatory source.
- ✓ Provides an updated address for communication with the Committee for the Purchase From People Who Are blind or Severely Disabled on any related matter.

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4. Determining Official for Employment Provision Compliance-Immigration and Nationality Act (INA) (FAR Case 2004-009)

Effective Date: June 18, 2004

What is the purpose of this FAR Case?–

This final rule amends FAR Part 9, Contractor Qualifications, to assign responsibility to the Attorney General of the United States and the Secretary of Homeland Security for determining when a contractor is not in compliance with the Immigration and Nationality Act (INA).

How will this affect work processes?

- ✓ Debarring Officials may now debar a contractor based on a determination by the Secretary of Homeland Security or the Attorney General of the United States if that contractor is not in compliance with the Immigration and Nationality Act.

5. Federal Supply Schedules Services and Blanket Purchase Agreements (BPAs) (FAR Case 1999-603)

Effective Date: July 19, 2004

What is the purpose of this FAR Case?

This final rule amends the FAR to incorporate policies and procedures for services under Federal Supply Schedules by making several changes to FAR Part 8, Required Sources of Supplies and Services. There are a number of updates relevant to the use of Federal Supply Schedules, below is a limited list of essential revisions that are applicable to our daily processes. The Federal Acquisition Circular 2001-24 should be reviewed in its entirety for additional changes.

How will this affect work processes?

- ✓ When ordering against a Federal Supply Schedule (FSS) for another agency, contracting officers are responsible for applying regulatory and statutory requirements on behalf of that agency. Likewise, the requiring activity is obligated to provide the applicable regulatory and statutory requirements to the ordering CO.

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- ✓ Contracting officer's are advised to seek price reductions for any size order and at any time during the FSS order process especially when lower pricing for the same or comparable item can be found elsewhere or when a BPA is established for a recurring requirement.
- ✓ Contracting officers are directed not to seek competition outside of the FSS. However, competition within FSSs is still required.

6. Designated Countries-New European Communities Member States (FAR Case 2004-008)

Effective Date: June 18, 2004

What is the purpose of this FAR Case?

This final rule amends the FAR to implement a determination made by the U.S. Trade Representative that suppliers from 10 new member countries of the European Communities (EC) are eligible to participate in U.S. government procurement under the terms and conditions of the World Trade Organization Government Procurement Agreement (WTO GPA) and in accordance with the Trade Agreements Act.

How will this affect work processes?

- ✓ Contracting officers are advised that the new member countries are added to the list of designated countries at FAR Part 22, Application of Labor Laws to Government Acquisition and Part 25, Foreign Acquisition.
- ✓ Contracting officers can now accept offers, subject to WTO GPA, for eligible products from Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic, and Slovenia without application of the Buy American Act evaluation factor. However, in accordance with the Energy and Water Act of 2004 to the greatest extent practicable all equipment and products purchased with appropriated funds should be American Made.

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Buy American Act-Nonavailable Articles (FAR Case 2003-007)

Effective Date: July 19, 2004

What is the purpose of this FAR Case?

This final rule amends the FAR to add food and textile items to the list of articles not available from domestic sources in sufficient quantities and satisfactory quality.

How will this affect work processes?

- ✓ Contracting Officers are advised that the Buy American Act does not apply to the specified products unless he/she determines before the receipt of bids or final offer in negotiation that an article on the list is available domestically available in sufficient and reasonably available quantities and of a satisfactory quality.

Application of Cost Principles and Procedures and Accounting for Unallowable Costs (FAR Case 2002-006)

Effective Date: July 19, 2004

What is the purpose of this FAR Case?

This final rule amends the FAR to revise the application of principles and procedures in order to clarify and restructure.

How will this affect work processes?

- ✓ Contracting officers are advised that this revision does not affect policy and procedure; therefore, work processes will remain unchanged.

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9. Gains and Losses, Maintenance and Repair Costs, and Material Costs (FAR Case 2002-008)

Effective Date: July 19, 2004

What is the purpose of this FAR Case?

This final rule amends the FAR to delete the cost principle for maintenance and repair costs and revise the cost principles for contingencies, material costs, and training and education costs.

How will this affect work processes?

- ✓ Contracting officers are advised that this revision does not affect policy and procedure; therefore, work processes will remain unchanged.

10. Technical Amendments

The amendment makes editorial changes to FAR 8.003(d), 11.102, 11.202(b), and removes sections 53.301-254 and 53.301-255.

Written comments to the interim rulemaking are due in this office on or before August 6, 2004. This will allow time to prepare a consolidated response to the General Services Administration, as necessary.

Questions concerning this Flash should be directed to Denise P. Wright on (202) 586-6217 or via e-mail at Denise.Wright@hq.doe.gov



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cc:
PPAG Members