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FAC 2005-89 IMPLEMENTS SBA RULES ON SMALL BUSINESS SUBCONTRACTING

Federal Acquisition Circular (FAC) 2005-89 contains revisions to the Federal Acquisition Regulation (FAR) that implement Small Business Administration (SBA) regulatory changes made in response to provisions of the Small Business Jobs Act of 2010 that require a governmentwide policy on small business subcontracting. In addition, FAC 2005-89 conducts some FAR housekeeping by removing obsolete references, changing a waiver threshold for acquisitions from the Federal Prison Industries, and revising several standard forms that involve bonds.

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■ **Small Business Subcontracting Improvements:** This finalizes, with changes, the rule that proposed to amend FAR subpart 19.7, The Small Business Subcontracting Program, and FAR 52.219-9, Small Business Subcontracting Plan, to comply with regulatory changes made by the Small Business Administration (SBA) to implement Section 1321 and Section 1322 of the Small Business Jobs Act of 2010 (Public Law 111-240 – see the October 2010 ***Federal Contracts Perspective*** article "Parity Among Small Business Programs Mandated by Statute"), which require a governmentwide policy on small business subcontracting (a small business subcontracting plan is required for contracts valued above $1,500,000 for construction and $700,000 for all other contracts, except for those performed by small businesses, which are exempt from this requirement).

Section 1321, Subcontracting Misrepresentations, requires the establishment of a policy on "subcontracting compliance relating to small business concerns, including assignment of compliance responsibilities between contracting offices, small business offices, and program offices, and periodic oversight and review activities."

Section 1322, Small Business Subcontracting Improvements, requires large contractors to include in their small business subcontracting plans "a representation that the offeror or bidder will (i) make a good faith effort to acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns used in preparing and submitting to the contracting agency the bid or proposal, in the same amount and quality used in preparing and submitting the bid or proposal; and (ii) provide to the contracting officer a written explanation if the offeror or bidder fails to acquire articles, equipment, supplies, services, or materials or obtain the performance of construction work as described in (i)."

In response to SBA's regulatory changes implementing Sections 1321 and 1322 (see the August 2013 ***Federal Contracts Perspective*** article "SBA Amends Small Business Subcontracting Rules"), a proposed rule amending FAR subpart 19.7, FAR 52.219-9, and other related FAR sections was published (see the July 2015 ***Federal Contracts Perspective*** article "FAR Changes Would Implement Small Business Jobs Act"). Twenty-seven respondents submitted comments on the proposed rule, and several clarifications were made in the text of the final rule in response to those comments.

The following are the significant changes being made by this final rule:

- To paragraph (e) of FAR 19.301-2, Rerepresentation by a Contractor that Represented Itself as a Small Business Concern, which had stated that "a change in size status does not change the terms and conditions of the contract," is added the following: "However, the contracting officer may require a subcontracting plan for a contract containing 52.219-9, Small Business Subcontracting Plan, if a prime contractor's size status changes from small to other than small as a result of a size rerepresentation…"

- To paragraph (a)(2) of FAR 19.704, Subcontracting Plan Requirements, and paragraph (d)(1) of FAR 52.219-9, both of which specify that each subcontracting plan must include a statement of the total dollars planned to be subcontracted and a statement of the total dollars planned to be subcontracted to each of the various types of small businesses (that is, small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns), is added an option permitting contracting officers to require that the subcontracting goals be calculated in terms of total contract dollars *in addition to* total subcontracted dollars.

- New paragraph FAR 19.704(a)(10)(iii) and revised FAR 52.219-9(d)(10)(iii) require prime contractors with subcontracting plans on indefinite-delivery, indefinite-quantity (IDIQ) contracts intended for use by multiple agencies to report subcontracting data for each order after November 30, 2017 (which is when the Electronic Subcontracting Reporting System (eSRS – **https://www.esrs.gov/**) is expected to be ready to accommodate the requirement). This reporting requirement will enable the agencies placing the orders to receive the credit for small business subcontracting.

- New paragraphs FAR 19.704(a)(12) and FAR 52.219-9(d)(12) require the prime contractor to provide, in its subcontracting plan, "assurances that the offeror will make a good faith effort to acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns that the offeror used in preparing the bid or proposal, in the same or greater scope, amount, and quality used in preparing and submitting the bid or proposal."

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- New paragraphs FAR 19.704(a)(14) and FAR 52.219-9(d)(14) require the prime contractor to assure that it will not prohibit a subcontractor from discussing with the contracting officer any material matter pertaining to payment to or utilization of a subcontractor.

- New paragraph (b)(1) of FAR 19.705-1, General [for the small business subcontracting program], and revised paragraph (e) of FAR 19.705-2, Determining the Need for a Subcontracting Plan, permit the contracting officer to establish subcontracting goals at the order level on IDIQ contracts (but not a new subcontracting plan).

- New paragraph FAR 19.705-2(a)(2) obligates the contracting officer to require a subcontracting plan for a modification when the modification causes the contract to exceed the subcontracting plan threshold.

- Paragraph (e)(6) of FAR 52.219-9 is revised to require the prime contractor to provide the socioeconomic status of the winning subcontractor in the notifications to the unsuccessful small business offerors.

- New paragraph FAR 52.219-9(e)(7) requires the prime contractor to assign the North American Industry Classification System (NAICS) code and the corresponding size standard that best describes the principal purpose of the subcontract.

- Paragraph FAR 52.219-9(l)(1)(i) is revised to require the prime contractor to resubmit a corrected subcontracting report within 30 days of receiving the contracting officer's notice of report rejection.

The rule goes into effect November 1, 2016.

■ **Office of Management and Budget (OMB) Circular Citation Update:** This final rule updates outdated OMB Circular citation references throughout the FAR.

On December 26, 2013, guidance pertaining to grants promulgated by OMB as 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, went into effect. This "OMB Uniform Guidance" supersedes and streamlines requirements of OMB Circulars A-21, Cost Principles for Educational Institutions; A-50, Audit Followup; A-87, Cost Principles for State, Local and Indian Tribal Governments; A-89, Catalog of Federal Domestic Assistance; A-102, Grants and Cooperative Agreements With State and Local Governments; A-110, Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations; A-122, Cost Principles for Non-Profit Organizations; and A-133, Audits of States, Local Governments and Non-Profit Organizations.

This final rule replaces citations to these OMB circulars in the FAR and replaces them with cross-references to the appropriate portions of the OMB Uniform Guidance.

The cost principles under the OMB Uniform Guidance apply to contracts with non-profits, educational institutions, state and local governments, and Indian tribal governments. All other FAR contractual requirements (for example, contract administration, audit) take precedence over the OMB Uniform Guidance when there is a conflict.

In addition, this rule adds the following definition to FAR 2.101, Definitions: "OMB Uniform Guidance at 2 CFR part 200 is the abbreviated title for Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200), which supersedes OMB Circulars A-21, A-87, A-89, A-102, A-110, A-122, and A-133, and the guidance in Circular A-50 on Audit Followup."

■ **Federal Prison Industries (FPI) Blanket Waiver Threshold:** This final rule amends paragraph (e) of FAR 8.605, Exceptions [to mandatory acquisitions from FPI], to increase, from $3,000 to $3,500, the blanket waiver threshold for small dollar-value purchases of FPI-manufactured supplies by federal agencies. (**NOTE:** FPI is also referred to by its trade name, UNICOR – **http://www.unicor.gov**.)

FAR 8.603, Purchase Priorities, requires agencies to satisfy their requirements for supplies from the FPI if the FPI's supplies meet the government's needs in terms of price, quality, and time of delivery. If the contracting officer determines that FPI's supplies do not meet the government's needs in terms of price, quality, and time of delivery, FAR 8.605(a) permits the contracting officer to acquire the supplies from AbilityOne participating nonprofit agencies (see **http://www.abilityone.gov**) or, if AbilityOne's supplies do not meet the government's needs, then from commercial sources.

FAR 8.605 provides several other exceptions to the FAR 8.603 requirement to acquire FPI supplies if they are suitable. FAR 8.605(e) states that purchase from FPI is not mandatory when "acquiring listed items totaling $3,000 or less". FPI's Board of Directors has decided to increase the $3,000 threshold to $3,500 so it is same as the $3,500 micro-purchase threshold. Therefore, this final rule amends FAR 8.605(e) to reflect the threshold increase from $3,000 to $3,500. Customers may still purchase from FPI at, or below, this threshold, if they so choose.

■ **Revision to Standard Forms for Bonds:** This finalizes, without changes, the rule that proposed to amend the following Standard Forms (SF) prescribed for contracts involving bonds and other financial protections to (1) expand the options for organization types, and (2) clarify liability limitations: SF 24, Bid Bond; SF 25, Performance Bond; SF 25A, Payment Bond; SF 34, Annual Bid Bond; and SF 35, Annual Performance Bond.

The block for "Type of Organization" on these forms provided "Individual," "Partnership," Joint Venture," and "Corporation" check boxes. However, limited liability companies (LLC) are an increasingly prevalent form of business in the construction industry, so the proposed rule would add a check box labeled "Other: (Specify)" to the "Type of Organization" block on each of the five forms to expand the range of business types to include LLCs and other types of organizations as they evolve.

Also, there had been questions from the construction industry regarding the appropriate value to report in the "Liability Limit" block on SF 24, 25, and 25A, so the rule proposed to add the following clarifying instructions to item (4) of the SF 24 and item (3) of SFs 25 and 25A: "The value put into the LIABILITY LIMIT block is the penal sum (*i.e.,* face value) of the bond, unless a co-surety arrangement is proposed."

Three respondents submitted comments on the proposed rule, but none of the recommended changes were adopted, so the rule is finalized without changes. For more on the proposed rule, see the November 2015 ***Federal Contracts Perspective*** article "Three FAR Rules Proposed."

GOVERNMENTWIDE MENTOR-PROTÉGÉ PROGRAM ESTABLISHED

The Small Business Administration (SBA) is establishing a governmentwide mentor-protégé program for all small business concerns that is consistent with the mentor-protégé program for participants in its 8(a) Business Development (BD) program. In doing so, the SBA is implementing Section 1347 of the Small Business Jobs Act of 2010 (Public Law 111-240 – see the October 2010 ***Federal Contracts Perspective*** article "Parity Among Small Business Programs Mandated by Statute") and Section 1641 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112-239 – see the February 2013 ***Federal Contracts Perspective*** article "FY 2013 National Defense Authorization Act Extends FAR Subpart 13.5 Procedures Through 2014").

A new section in Title 13 of the Code of Federal Regulations (CFR), Business Credit and Assistance, Section 125.9 (13 CFR 125.9), What are the rules governing SBA's small business mentor-protégé program?, provides the following explanation of the mentor-protégé program: "The small business mentor-protégé program is designed to enhance the capabilities of protégé firms by requiring approved mentors to provide business development assistance to protégé firms and to improve the protégé firms' ability to successfully compete for federal contracts. This assistance may include technical and/or management assistance; financial assistance in the form of equity investments and/or loans; subcontracts (either from the mentor to the protégé or from the protégé to the mentor); trade education; and/or assistance in performing prime contracts with the government through joint venture arrangements. Mentors are encouraged to provide assistance relating to the performance of contracts set aside or reserved for small business so that protégé firms may more fully develop their capabilities." By mentoring a protégé, the mentor: (1) establishes a long-term business relationship with the protégé, thus improving the performance of subcontracts; (2) is permitted to acquire a minority interest in the protégé, and (3) can enter into joint-venture arrangements with its protégé to compete for, and perform on, federal government contracts.

Several agencies have developed mentor-protégé programs, some with congressional approval (Department of Defense, National Aeronautics and Space Administration, Department of Homeland Security, and Federal Aviation Administration), and some without (Department of Energy, Department of State, Department of Veterans Affairs, Environmental Protection Agency, General Services Administration, and U.S. Agency for International Development). All of these have different requirements, different rules, different procedures, etc. Congress recognized that the various mentor-protégé programs helped small businesses develop into viable and important government contractors, but that the agencies' disparate programs were needlessly confusing and burdensome. Therefore, Congress decided to assign SBA with the task of simplifying the mentor-protégé programs for all agencies except the Department of Defense, which is allowed to keep and operate its mentor-protégé program because it was the first and was such a success it inspired the establishment of the other mentor-protégé programs.

Paragraph (b)(3) of Section 1347, Small Business Contracting Parity, authorizes the Small Business administrator to "establish mentor-protégé programs for small business concerns owned and controlled by service-disabled veterans, small business concerns owned and controlled by women, and HUBZone [Historically Underutilized Business Zone] small business concerns modeled on the mentor-protégé program of the [SBA] for small business concerns participating in programs under Section 8(a) of the Small Business Act (15 USC 637(a))."

Section 1641, Mentor-Protégé Programs, added a new section to Title 15 of the U.S. Code – 15 USC 657r, Mentor-Protégé Programs. It authorizes the SBA to "establish a mentor-protégé program for all small business concerns." It goes on to require that the mentor-protégé program "be identical to the mentor-protégé program of the [SBA] for small business concerns that participate in the program under section 8(a)…except that the [SBA] may modify the program to the extent necessary given the types of small business concerns included as protégés." Furthermore, Section 1641 prohibits agencies from conducting their own mentor-protégé programs unless the head of the agency submits a plan to SBA for approval (however, this does not apply to DOD because it already has the necessary statutory and regulatory framework for its mentor-protégé program).

To implement these two statutory sections, SBA published a proposed rule (see the March 2015 ***Federal Contracts Perspective*** article "Governmentwide Mentor-Protégé Program Proposed"). "SBA decided to implement one new small business mentor-protégé program instead of four new mentor-protégé programs (one for small businesses, one for [service-disabled veteran-owned] small businesses, one for [women-owned small businesses] and one for HUBZone small businesses) since [they]…would be necessarily included within any mentor-protégé program targeting all small business concerns. SBA did not eliminate the 8(a) BD mentor-protégé program. Thus, the intent was to propose two separate mentor-protégé programs, one for 8(a) BD participants and one for all small businesses (including 8(a) participants if they choose to create a small business mentor-protégé relationship instead of a mentor-protégé relationship under the 8(a) BD program). The small business mentor-protégé program was drafted to be as similar to the 8(a) mentor-protégé program as possible."

SBA received 113 comments on the proposed rule. Most of the changes made to the final rule were to clarify the regulations and procedures pertaining to the new mentor-protégé program and those of small business programs in general.

The following are the main provisions of the final rule:

- Small business programs can be used "regardless of place of performance" (including overseas) (see paragraph (b) of 13 CFR 124.501, What general provisions apply to the award of 8(a) contracts?; paragraph (a) of 13 CFR 125.2, What are SBA's and the procuring agency's responsibilities when providing contracting assistance to small businesses?; paragraph (b) of 13 CFR 125.22, When may a contracting officer set-aside a procurement for SDVO SBCs [service-disabled veteran-owned small business concerns]?; 13 CFR 126.600, What are HUBZone contracts?; and 13 CFR 127.500, In what industries is a contracting officer authorized to restrict competition or make a sole source award under this part [women-owned small business programs]?).

- Small business regulations apply to reverse auctions (see 13 CFR 125.2(a) and paragraph (a)(1) of 13 CFR 125.5, What is the Certificate of Competency Program?).

- Three new sections are added to 13 CFR Part 125, Government Contracting Programs, to address the new mentor-protégé program: 13 CFR 125.8, What requirements must a joint venture satisfy to submit an offer for a procurement or sale set aside or reserved for small business?; 13 CFR 125.9, What are the rules governing SBA's small business mentor-protégé program?; and 13 CFR 125.10, Mentor-protégé programs of other agencies.

- The mentor and protégé firms must enter a written agreement setting forth an assessment of the protégé's needs and a detailed description and timeline for the delivery of that assistance by the mentor (see 13 CFR 125.9(e)(1)). The agreement must be approved by the SBA (see 13 CFR 125.9(e)(3)).

- The term of the mentor-protégé agreement cannot exceed three years, but it may be extended an additional three years provided the protégé has received the agreed-upon business development assistance and will continue to receive additional assistance (see 13 CFR 124.520(e)(5) and 13 CFR 125.9(e)(5)).

- A mentor can have up to three protégés (see paragraph (b)(2) of 13 CFR 124.520, What are the rules governing SBA's 8(a) Mentor-Protégé program?, and 13 CFR 125.9(b)(4)).

- With SBA approval, a protégé can have two mentors provided the second relationship will not compete or conflict with the assistance provided in the first relationship, and: (i) the second relationship pertains to an unrelated North American Industrial Classification System (NAICS) code; or (ii) the protégé firm is seeking to acquire a specific expertise that the first mentor does not possess (see 13 CFR 125.9(c)(2)).

- The SBA can authorize a small business to be both a mentor and a protégé (see 13 CFR 124.520(c)(4) and 13 CFR 125.9(c)(3)).

- A protégé that graduates or otherwise leaves the 8(a) BD program but continues to qualify as a small business may transfer its 8(a) mentor-protégé relationship to a small business mentor-protégé relationship (see 13 CFR 124.520(d)(1)(iii)).

- A mentor and a protégé may form a joint venture with SBA approval. The joint venture may compete as a small business for any government contract as long as the protégé meets the applicable size standard. The joint venture may seek any type of small business contract for which the protégé firm qualifies (for example, a protégé that qualifies as a WOSB could seek a WOSB set-aside with its SBA-approved mentor as a member of the joint venture) (see 13 CFR 121.103(h)(3)(ii), and 13 CFR 125.9(d)(1)).

- A joint venture can have its own employees perform administrative functions but not perform contracts awarded to the joint venture (see paragraph (b)(2)(ii) of 13 CFR 121.103, How does SBA determine affiliation?).

- The mentor can purchase up to 40% of the protégé to provide the protégé with necessary capital (see 13 CFR 125.9(d)(2)).

- Agencies can keep existing mentor-protégé programs for one year, then must get SBA approval to continue. An agency must obtain SBA approval before setting up a new mentor-protégé program (see 13 CFR 125.10(a)). This does not apply to the Department of Defense (see 13 CFR 125.10(c)(1)), or to any mentoring assistance provided under a Small Business Innovation Research (SBIR) program or a Small Business Technology Transfer (STTR) program (see 13 CFR 125.10(c)(2)).

OMB ISSUES CIRCULAR A-130 REVISION

For the first time since 2000, the Office of Management and Budget (OMB) has updated OMB Circular A-130, Managing Information as a Strategic Resource, to reflect advances in technology and changes in law, and to make the circular consistent with executive orders, presidential directives, recent OMB policy, and National Institute of Standards and Technology (NIST) standards and guidelines. It is available at **https://www.whitehouse.gov/omb/circulars_default/**.

OMB Circular A-130 provides guidance to federal agencies on the planning, budgeting, governance, acquisition, and management of federal information, personnel, equipment, funds, information technology (IT) resources, and supporting infrastructure and services.

"The way we manage information technology (IT), security, data governance, and privacy has rapidly evolved since A-130 was last updated in 2000," write Tony Scott, U.S. Chief Information Officer, Howard Shelanski, Administrator of the Office of Information and Regulatory Affairs, Anne Rung, U.S. Chief Acquisition Officer, and Marc Groman, Senior Advisor for Privacy at OMB, in a blog. "The updated circular promotes innovation, enables information sharing, and fosters the wide-scale and rapid adoption of new technologies while protecting and enhancing security and privacy."

The revised circular focuses on three key elements to help spur innovation throughout the government:

- ***Real Time Knowledge of the Environment.*** "In today's rapidly changing environment, threats and technology are evolving at previously unimagined speeds. In such a setting, the government cannot afford to authorize a system and not look at it again for years at a time. In order to keep pace, we must move away from periodic, compliance-driven assessment exercises and, instead, continuously assess our systems and build-in security and privacy with every update and redesign. Throughout the circular, we make clear the shift away from checklist exercises and toward the ongoing monitoring, assessment, and evaluation of federal information resources."

- ***Proactive Risk Management.*** "The federal government must modernize the way it identifies, categorizes, and handles risk to ensure both privacy and security. Significant increases in the volume of data processed and utilized by federal resources requires new ways of storing, transferring, and managing it. Circular A-130 emphasizes the need for strong data governance that encourages agencies to proactively identify risks, determine practical and implementable solutions to address said risks, and implement and continually test the solutions. This repeated testing of agency solutions will help to proactively identify additional risks, starting the process anew."

- ***Shared Responsibility.*** "From social media to email, the connectivity we have with one another can lead to tremendous advances. The updated A-130 helps to ensure everyone remains responsible and accountable for assuring privacy and security of information – from managers to employees to citizens interacting with government services."

The majority of the circular consists of two new appendices (the 2000 edition had four appendices: Appendix I, Federal Agency Responsibilities for Maintaining Records About

Individuals; Appendix II, Implementation of the Government Paperwork Elimination Act; Appendix III, Security of Federal Automated Information Resources; and Appendix IV, Analysis of Key Sections):

- **Appendix I, Responsibilities for Protecting and Managing Federal Information Resources:** This appendix establishes minimum requirements for federal information security programs and assigns responsibilities for the security of information and information systems. Also, it establishes minimum requirements for federal privacy programs, assigns responsibilities for privacy program management, and describes how agencies should take a coordinated approach to implementing information security and privacy controls.

  These revisions require agencies to:

  – Perform ongoing reauthorization of systems (replacing the triennial reauthorization process) to better protect agency information systems;
  – Continuously monitor, log, and audit user activity to protect against insider threats;
  – Periodically test response procedures and document lessons learned to improve incident response;
  – Encrypt moderate and high impact information at rest and in transit;
  – Ensure terms in contracts are sufficient to protect federal information;
  – Implement measures to protect against supply chain threats;
  – Provide identity assurance for secure government services; and,
  – Ensure agency personnel are accountable for following security and privacy policies and procedures.

  In addition, Appendix I requires NIST to develop guidance leveraging its "Cybersecurity Framework" and "Risk Management Framework" to improve agency information security. (**NOTE:** Appendix I had been Appendix III, Security of Federal Automated Information Resources, in the 2000 edition.)

- **Appendix II, Responsibilities for Managing Personally Identifiable Information (PII):** Appendix II outlines some of general responsibilities for federal agencies managing PII, including PII collected for statistical purposes under a pledge of confidentiality. While Appendix I focuses on both security and privacy, Appendix II is devoted to summarizing the responsibilities for federal agencies managing information resources involving PII.

  Appendix II summarizes requirements for federal agencies in the following areas:

  – Establishing and maintaining a comprehensive, strategic, agency-wide privacy program;
  – Designating Senior Agency Officials for Privacy;
  – Managing and training an effective privacy workforce;
  – Conducting Privacy Impact Assessments (PIA);
  – Applying NIST's Risk Management Framework to manage privacy risks in the information system development life cycle;

- Using the fair information practice principles when evaluating information systems, processes, programs, and activities that affect privacy;
- Maintaining an inventory of PII and reducing PII usage to the minimum necessary for the proper performance of authorized agency functions; and,
- Limiting the creation, collection, use, processing, storage, maintenance, dissemination, and disclosure of PII to that which is legally authorized, relevant, and reasonably deemed necessary for the proper performance of agency functions.

The prior version of Appendix II (which in the 2000 edition was Appendix I, Federal Agency Responsibilities for Maintaining Records About Individuals) described agency responsibilities for reporting and publication under the Privacy Act of 1974. This OMB guidance is being revised and will be issued as OMB Circular A-108, Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act, later this year.

In October 2015, OMB issued a proposed revision of Circular A-130 and sought comments. For more on the proposed revision to OMB Circular A-130, see the November 2015 ***Federal Contracts Perspective*** article "OMB Proposes A-130 Revisions, Seeks Comments."

In a related development, Anne Rung, U.S. Chief Acquisition Officer, and Mikey Dickerson, Administrator of the U.S. Digital Service, announced in a blog the unveiling of **TechFAR Hub** "which will provide agency personnel involved in the procurement process with practical tools and resources for applying industry best practices to digital service acquisitions." The TechFAR Hub is available through the General Services Administration's (GSA) **Acquisition Gateway**, "a one-stop portal for contract information, pricing tools, best practices, and other information" (**https://hallways.cap.gsa.gov/login-information** – see the March 2016 ***Federal Contracts Perspective*** article "GSA Opens Federal Acquisition Gateway to Public"), or directly at **https://techfarhub.cio.gov/**.

"Using the TechFAR Hub, acquisition professionals and other stakeholders in digital acquisition can discover resources that describe successful practices, discuss these ideas with other members of the community, get digital IT support through step-by-step aides built by agency experts, and then share what they learned with the community," wrote Rung and Dickerson.

The TechFAR Hub "provides resources to apply industry best practices to the world of digital service acquisition across the federal government." Among the resources are:

- Links to the "Digital Services Playbook" ("13 key 'plays' drawn from successful practices from the private sector and government that, if followed together, will help government build effective digital services") and the "TechFAR Handbook" ("resources on how to use contractors to support an iterative, customer-driven software development process, as is routinely done in the private sector" – see the September 2014 ***Federal Contracts Perspective*** article "Comments Sought on TechFAR Handbook")
- Training
- Podcasts
- Case Studies

- The Stack Exchange Acquisition Discussion Board ("a question and answer website that uses crowd sourcing to build a community around specific topics")
- Blogs
- The Agile Team Estimator tool ("helps build an Independent Government Cost Estimate (IGCE) for agile development services")
- "Build a Solicitation" to start creating a Request for Quote (RFQ) based on the "Digital Service Playbook"
- Sources Sought tool
- The "Digital Contracting Cookbook" ("provides information and suggestions about how to acquire digital services. This is an open source product so contributions are encouraged.")
- Templates
- Samples
- Links to governmentwide or agency-specific contract vehicles that specifically support digital service procurements

TREASURY PROPOSES CR FUNDING RULES

The Department of the Treasury is proposing to amend its Department of the Treasury Acquisition Regulation (DTAR) to add DTAR subpart 1032.7, Contract Funding, which would consist of one section: DTAR 1032.770, Incremental Funding During a Continuing Resolution. DTAR 1032.770 would provide policy for incremental funding of fixed-price, time-and-material, or labor-hour contracts during a continuing resolution (CR) ("an appropriation, in the form of a joint resolution, that provides budget authority for federal agencies, specific activities, or both to continue operation until the regular appropriations are enacted. Typically, a continuing resolution is used when legislative action on appropriations is not completed by the beginning of a fiscal year").

The Anti-Deficiency Act (31 USC 1341) and FAR 32.702, Policy [on contract funding], state that "no officer or employee of the government may create or authorize an obligation in excess of the funds available, or in advance of appropriations, unless otherwise authorized by law." A CR provides funding for continuing projects or activities that were conducted in the prior fiscal year for which appropriations, funds, or other authority were previously made available."

Amounts available under a CR are frequently insufficient to fully fund contract actions that may be required during its term. No existing contract clause permits partial funding of a contract action awarded during a CR. While other strategies are available to address the need to take contract actions during a CR (for example short-term awards), these are inefficient and may have other disadvantages.

This proposed rule would establish policies and procedures to facilitate successful, timely, and economical execution of Treasury fixed-price, time-and-material, and labor-hour contracts during a period in which funds are provided to Treasury under a CR. These procedures would be in DTAR 1032.770 (specifically, DTAR 1032.770-4, Policy; DTAR 1032.770-5, Limitations; and DTAR 1032.770-6, Procedures), and contract clause DTAR 1052.232-70, Limitation of Government's Obligation.

Comments on the proposed rule must be submitted no later than September 12, 2016, by any of the following methods: (1) the Federal eRulemaking Portal: **http://www.regulations.gov**; (2)

email: **thomas.olinn@treasury.gov**; or (3) mail: Department of the Treasury, Office of the Procurement Executive, Attn: Thomas O'Linn, 1722 I Street NW., Mezzanine – M12C, Washington, DC 20006.

USTR WAIVES RESTRICTIONS FOR MOLDOVA

U.S. Trade Representative (USTR) Michael Froman has agreed to waive discriminatory purchasing requirements for eligible products and suppliers of the Republic of Moldova because Moldova has become a party to the World Trade Organization Government Procurement Agreement (WTO GPA), and it has agreed to provide reciprocal competitive government procurement opportunities to U.S. products and services and to suppliers of such products and services.

Because of this waiver, a future FAC will add Moldova to the list of WTO GPA "designated countries" wherever the list appears in the FAR: FAR 22.1503, Procedures for Acquiring End Products on the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor; FAR 25.003, Definitions; FAR 52.222-19, Child Labor – Cooperation with Authorities and Remedies; FAR 52.225-5, Trade Agreements; FAR 52.225-11, Buy American Act – Construction Materials under Trade Agreements; and FAR 52.225-23, Required Use of American Iron, Steel, and Manufactured Goods – Buy American Act – Construction Materials Under Trade Agreements.

PROMPT PAYMENT INTEREST RATE SET AT 1 7/8%

The Treasury Department has established 1 7/8% (1.875%) as the interest rate for the computation of payments made between July 1, 2016, and December 31, 2016, under the Prompt Payment Act and the Contracts Disputes Act. This rate is also used in facilities capital cost of money calculations.

The interest rate for the prior six-month period (January 1, 2016, through June 30, 2016) was 2 1/2% (2.5%). The interest rate for July 1, 2015, through December 31, 2015, was 2 3/8% (2.375%).

All prompt payment interest rates since 1980 (in six-month increments) are available at **https://www.fiscal.treasury.gov/fsservices/gov/pmt/promptPayment/rates.htm**.

FAR subpart 32.9, Prompt Payment; FAR subpart 33.2, Disputes and Appeals; FAR 31.205-10, Cost of Money; and Cost Accounting Standard (CAS) 9904.414, Cost of Money as an Element of the Cost of Facilities Capital, are affected by this interest rate.