

FEDERAL CONTRACTS PERSPECTIVE

Federal Acquisition Developments, Guidance, and Opinions

Vol. XII, No. 12

December 2011

FAC 2005-54 PERMITS SMALL BUSINESS SET-ASIDES FOR MULTIPLE-AWARD CONTRACTS

Federal Acquisition Circular (FAC) 2005-54 provides agencies the authority to set aside or reserve for small businesses multiple-award contracts (MACs) and orders. In addition, FAC 2005-54 adopts as final several interim and proposed rules, including those requiring notification of employee rights under the National Labor Relations Act, implementing a policy preventing personal conflicts of interest for contractor employees performing acquisition functions, and permitting small disadvantaged businesses to self-certify.

■ **Small Business Set-Asides of Task- and Delivery-Orders Under Multiple-Award Contracts (MACs):** This interim rule implements

Section 1331 of the Small Business Jobs Act of 2010 (Public Law 111-240). Section 1331, Reservation of Prime Contract Awards for Small Businesses, directed the Administrator of the Office of Federal Procurement Policy (OFPP), the Administrator of the Small Business Administration (SBA), and the Administrator of the General Services Administration (GSA) to issue regulations permitting federal agencies to “(1) set aside part or parts of a multiple award contract for small business concerns...; (2) notwithstanding the fair opportunity requirements...set aside orders placed against multiple award contracts for small business concerns...; and (3) reserve one or more contract awards for small business concerns under full and open multiple award procurements...” Therefore, OFPP, SBA, and GSA have requested that the Federal Acquisition Regulation (FAR) be amended to provide federal agencies with guidance they can use while SBA completes the drafting and coordination of a proposed rule that will set forth more specific guidance.

This interim rule makes the following amendments to the FAR:

- FAR 8.405-5, Small Business, is revised to make clear that set-asides may be used in connection with the placement of orders and blanket purchase agreements under Federal Supply Schedules.
- FAR 12.207, Contract Type, is amended to acknowledge that discretionary set-asides may be used if placing an order under a multiple-award delivery-order contract for commercial items.

CONTENTS	
FAC 2005-54 Permits Set-Asides for MACs.....	1
Limitation on Generic DUNS Numbers Proposed	7
SBA Proposes Increasing Size Standards.....	10
3% Payment Withholding Repealed	11
President, OFPP Order Spending Reductions.....	12

- To FAR 16.505, Ordering, is added text acknowledging that set-asides may be used in connection with the placement of orders under MACs, notwithstanding the requirement to provide each contract holder a fair opportunity to be considered.
- FAR 19.502-4, Multiple-Award Contracts and Small Business Set-Asides, is added to authorize agencies to: (1) use set-asides under MACs, including set-asides for small businesses participating in the small business programs identified in paragraph (a)(3) of FAR 19.000, Scope of Part (that is, “setting acquisitions aside for exclusive competitive participation by small business, 8(a) business development participants, HUBZone small business concerns, service-disabled veteran-owned small business concerns, and economically disadvantaged women-owned small business concerns and women-owned small business concerns eligible under the Women-Owned Small Business Program;” and (2) reserve one or more contract awards under MACs for small businesses, including any of the socio-economic groups identified in FAR 19.000(a)(3).
- FAR 38.101, General [Federal Supply Schedule Program], is amended to add a reference to FAR 8.405-5 to make clear that order set-asides may be used in connection with the placement of orders and blanket purchase agreements under Federal Supply Schedules.
- FAR 52.219-3, Notice of HUBZone Set-Aside or Sole-Source Award; FAR 52.219-6, Notice of Total Small Business Set-Aside; FAR 52.219-13, Notice of Set-Aside of Orders; FAR 52.219-27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside; FAR 52.219-29, Notice of Set-Aside for Economically Disadvantaged Women-Owned Small Business Concerns; and FAR 52.219-30, Notice of Set-Aside for Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program, are amended to provide notice of total set-asides and partial set-asides under MACs.
- FAR 52.219-14, Limitations on Subcontracting, is revised to address limitations on subcontracting for small businesses under MACs.

The introduction to the interim rule states, “Contracting officers are encouraged to modify, on a bilateral basis, existing multiple-award contracts...if the remaining period of performance extends at least six months after the effective date, and the amount of work or number of orders expected under the remaining performance period is substantial.”

Comments on this interim rule must be submitted no later than January 3, 2012, identified as “FAC 2005-54, FAR Case 2011-024,” by any of the following methods: (1) the Federal eRulemaking Portal: <http://www.regulations.gov>; (2) fax: 202-501-4067; or (3) mail: General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE, 7th Floor, Washington, DC 20417.

Vivina McVay, Editor-in Chief

©2011 by Panoptic Enterprises. All rights reserved. Reproduction, photocopying, storage, or transmission by any means is prohibited by law without the express written permission of Panoptic Enterprises. Under no circumstances should the information contained in *Federal Contracts Perspective* be construed as legal or accounting advice. If a reader feels expert assistance is required, the services of a professional counselor should be retained.

The *Federal Contracts Perspective* is published monthly by Panoptic Enterprises, P.O. Box 11220, Burke, VA 22009-1220.

■ **Notification of Employee Rights Under the National Labor Relations Act:** This adopts as final, without changes, the interim rule that added FAR Subpart 22.16 and accompanying clause FAR 52.222-40, both titled “Notification of Employee Rights Under the National Labor Relations Act,” to implement Executive Order 13496, Notification of Employee Rights Under Federal Labor Laws, which requires contractors to display a notice to employees of their rights under federal labor laws.

FAR Subpart 22.16 requires contracting officers to insert FAR 52.222-40 in all solicitations and contracts including acquisitions for commercial items and commercially available off-the-shelf (COTS), except acquisitions: (1) under the simplified acquisition threshold; (2) for work performed exclusively outside the United States; or (3) covered in their entirety by an exemption granted by the Secretary of Labor. FAR 52.222-40 requires covered contractors and subcontractors “to post a notice, of such size and in such form, and containing such content as the Secretary of Labor shall prescribe, in conspicuous places in and about its plants and offices where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract...”

The National Labor Relations Act gives workers the right to organize and bargain collectively, and the notice advises employees of these rights. Covered contractors or subcontractors that fail to post the notice, do not comply with the provisions of the notice, or do not comply with related rules may have their contracts cancelled, terminated, or suspended in whole or in part, and be declared ineligible for further government contracts.

Three respondents submitted comments on the interim rule, but none of the comments were adopted, so the interim rule is finalized without changes.

For more on the interim rule, see the January 2011 *Federal Contracts Perspective* article “FAC 2005-47 Revises HUBZone Program, Allows Subcontractor SDB Self-Certification.”

■ **Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions:** This finalizes, with changes, the rule proposed to implement Section 841(a) of the Fiscal Year 2009 National Defense Authorization Act (Public Law 110-417), which requires the OFPP to “develop and issue a standard policy to prevent personal conflicts of interest by contractor employees performing acquisition functions closely associated with inherently governmental functions (including the development, award, and administration of government contracts) for or on behalf of a federal agency or department.” In addition, the proposed rule would require covered contractors to prohibit employees with access to non-public government information from using it for personal gain, and covered contractors would be responsible for:

- Having procedures to screen for potential personal conflicts of interest;
- Informing covered employees of their obligations with regard to these policies;
- Maintaining effective oversight to verify compliance;
- Reporting any personal conflicts-of-interest violations to the contracting officer; and
- Taking appropriate disciplinary action with employees who fail to comply with these policies.

The rule proposed new FAR Subpart 3.11, Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions, and FAR 52.203-16, Preventing

Personal Conflicts of Interest. Nineteen respondents submitted comments on the proposed rule. In response to those comments, the following changes are made in the final version:

- The applicability to subcontracts is clarified in the definition of “covered employee” in FAR 3.1101, Definitions: “A subcontractor that is a self-employed individual treated as a covered employee of the contractor because there is no employer to whom such an individual could submit the required disclosures.”
- The contracting officer’s procedures that are detailed in FAR 3.1103, Procedures, are clarified.
- FAR 3.1105, Violations, is clarified.
- New paragraph (c) is added to FAR 3.1106, Contract Clause, to provide additional clarification on use of FAR clause 52.203-16 when contracting with a self-employed individual (“Do not insert the clause in solicitations or contracts with a self-employed individual if the acquisition functions closely associated with inherently governmental functions are to be performed entirely by the self-employed individual, rather than an employee of the contractor”).
- Paragraph (a)(9) of FAR 12.503, Applicability of Certain Laws to Executive Agency Contracts for the Acquisition of Commercial Items, is added to clarify that Section 841(a) does not apply to contracts for the acquisition of commercial items.
- FAR 52.203-16 is revised to:
 - Clarify the financial disclosure requirements in paragraph (b)(1), including deletion of the requirement for an annual update of the disclosure statement.
 - Add to the list of possible personal conflicts-of-interest violations in paragraph (b)(6) (“(iii) Failure of a covered employee to comply with the terms of a non-disclosure agreement”).
 - Remove the list of remedies in paragraph (d).
 - In paragraph (d) (formerly paragraph (e)), clarify the flowdown of FAR 52.203-16 to subcontractors: “The contractor shall include the substance of this clause, including this paragraph (d), in subcontracts (1) that exceed \$150,000; and (2) in which subcontractor employees will perform acquisition functions closely associated with inherently governmental functions (*i.e., instead of performance only by a self-employed individual*)” (emphasis added).

For more on the proposed rule, see the December 2009 *Federal Contracts Perspective* article “Proposed Rule Would Require Contractors to Prevent Employees' Personal Conflicts of Interest.”

In addition to this final rule is a request for public comments on whether additional guidance is necessary to address personal conflicts of interest by employees of government contractors.

Section 841(b) of Public Law 110-417 requires that OFPP conduct a review of the FAR to determine whether coverage of personal conflicts of interest should be expanded beyond contractors whose work supports acquisition functions closely associated with inherently governmental functions. Therefore, public comments are being sought on the following questions:

- (1) Are there contracting methods, types, and services (other than those covered by the final rule above) that raise heightened concerns for potential personal conflicts of interest?
- (2) Should regulatory coverage be expanded to address personal conflicts of interest by contractor employees with respect to functions other than those covered by the final rule above? If so, what additional functions should be considered to ensure policies for the prevention and mitigation of personal conflicts of interest are sufficiently rigorous, comprehensive, and uniform?

Comments should be submitted no later than January 3, 2012, identified as “FAR PCI COMMENT,” by any of the following methods: (1) the Federal eRulemaking Portal: <http://www.regulations.gov>; (2) fax: 202-501-4067; or (3) mail: General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE, 7th Floor, Washington, DC 20417.

■ **Small Disadvantaged Business Self-Certification:** This rule finalizes, without changes, the interim rule that amended FAR Subpart 19.7, The Small Business Subcontracting Program, and associated clauses to allow subcontractors on federal contracts to self-represent their status as small disadvantaged businesses (SDBs) to prime contractors in good faith when seeking federal subcontracting opportunities. Previously, federal prime contractors were required to confirm that subcontractors representing themselves as small disadvantaged businesses were certified by the SBA as SDB firms.

No comments were submitted on the interim rule, so it is finalized without changes. For more on the interim rule, see the January 2011 *Federal Contracts Perspective* article “FAC 2005-47 Revises HUBZone Program, Allows Subcontractor SDB Self-Certification.”

■ **Certification Requirement and Procurement Prohibition Relating to Iran Sanctions:** This rule finalizes, with changes, the interim rule that added FAR 25.703, Prohibition on Contracting with Entities that Engage in Certain Activities Relating to Iran, and FAR 52.225-25, Prohibition on Contracting with Entities Engaging in Sanctioned Activities Relating to Iran – Certification, to require prospective contractors to certify they have not engaged in any action for which sanctions may be imposed under the Iran Sanctions Act of 1996, and prohibit agencies from entering into or extending contracts for goods or services with persons that export certain sensitive technology to Iran as determined by the President and listed on the Excluded Parties List System (EPLS) (<https://www.epls.gov/>).

Two respondents submitted comments on the interim rule, and the prescription for FAR 52.225-25 in paragraph (e) of FAR 25.1103, Other Provisions and Clauses, is revised from “The contracting officer shall include in *each solicitation for the acquisition of products or services* the provision at 52.225-25” to “The contracting officer shall include in *all solicitations* the

provision at 52.225-25” (emphasis added). This change is made because “products or services” could be interpreted as excluding construction, when the intention was to include construction.

For more on the interim rule, see the October 2010 *Federal Contracts Perspective* article “FAC 2005-46 Exempts Commercial IT from BAA.”

■ **Representation Regarding Export of Sensitive Technology to Iran:** This interim rule amends FAR 52.225-25, retitled “Prohibition on Contracting with Entities Engaging in Sanctioned Activities Relating to Iran – Representation and Certification,” to require the offeror to represent that it “does not export any sensitive technology to the government of Iran or any entities or individuals owned or controlled by, or acting on behalf or at the direction of, the government of Iran” (paragraph (c)(1)). The interim rule provides an exception to the representation requirement for offerors that are providing eligible products in acquisitions that are subject to trade agreements (paragraph (c) of FAR 25.703-3, Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, Section 106).

This interim rule expands on the final rule mentioned above.

Comments on this interim rule must be submitted no later than January 3, 2012, identified as “FAC 2005-54, FAR Case 2010-018,” by any of the following methods: (1) the Federal eRulemaking Portal: <http://www.regulations.gov>; (2) fax: 202-501-4067; or (3) mail: General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE, 7th Floor, Washington, DC 20417.

■ **Sudan Waiver Process:** This finalizes, without changes, the rule proposed to revise FAR 25.702, Prohibition on Contracting with Entities that Conduct Restricted Business Operations in Sudan, to add specific criteria that an agency must address when applying to the president or his appointed designee for a waiver of the prohibition on awarding a contract to a contractor that conducts restricted business operations in Sudan.

Section 6 of the Sudan Accountability and Divestment Act of 2007 (Public Law 110-174), requires that each contract entered into by an agency include a certification that the contractor does not conduct certain business operations in Sudan. According to Section 6(c) of the act, the president may waive this certification requirement on a case-by-case basis if the president determines and certifies to the appropriate congressional committees that it is in the national interest to do so.

Section 6 of the act was implemented in the FAR (see the September 2009 *Federal Contracts Perspective* article “FAC 2005-36 Tidies Up Some Loose Ends” and the July 2008 *Federal Contracts Perspective* article “Contractors Banned from Conducting Business in Sudan”), but the rule did not include specific criteria for the waiver request. Therefore, a proposal was published to amend FAR 25.702-4, Waiver, to add (1) waiver criteria that agencies must address when requesting a waiver to enter into a contract with a firm that conducts restricted business operations in Sudan, including specific criteria for the waiver request; and (2) a waiver consultation process that will require all requests to be submitted through the OFPP to the president or his appointed designee for consideration.

No comments were submitted on the proposed rule, so it is finalized without changes.

■ **Successor Entities to the Netherlands Antilles:** This final rule revises the definitions of “Caribbean Basin country” and “designated country” to reflect the change in status of the islands that comprised the Netherlands Antilles.

On October 10, 2010, Curacao and Sint Maarten became autonomous territories of the Kingdom of the Netherlands. Bonaire, Saba, and Sint Eustatius now fall under the direct administration of the Netherlands. Therefore, “Netherlands Antilles” is replaced by the five successor entities (Bonaire, Curacao, Saba, Sint Eustatius, and Sint Maarten) in the definitions of “Caribbean Basin country” and “designated country” in FAR 25.003, Definitions; 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.

■ **Labor Relations Costs:** This finalizes, with an editorial change, the rule that was proposed to implement Executive Order 13494, Economy in Government Contracting, which makes unallowable the costs of any activities undertaken to persuade employees to exercise or not to exercise the right to organize and bargain collectively through representatives of the employee’s own choosing. “Examples of unallowable costs...include, but are not limited to, the costs of: (1) preparing and distributing materials; (2) hiring or consulting legal counsel or consultants; (3) meetings (including paying the salaries of the attendees at meetings held for this purpose); and (4) planning or conducting activities by managers, supervisors, or union representatives during work hours” (proposed revision to paragraph (b) of FAR 31.205-21, Labor Relations Costs).

Comments on the proposed rule were submitted by fourteen respondents, but no changes were made to the final rule except for an editorial change in paragraph (b) (from “examples of unallowable changes in paragraph (b) of this section include...” to “examples of unallowable costs under this paragraph include...”).

For more on the proposed rule, see the May 2010 *Federal Contracts Perspective* article “Labor Organizing Costs Proposed to be Unallowed.”

LIMITATION ON GENERIC DUNS NUMBER SUBSTITUTES PROPOSED

Changes to FAR Subpart 4.6, Contract Reporting, and FAR Subpart 4.11, Central Contractor Registration, are being proposed that would limit the use of generic substitutes instead of Data Universal Numbering System (DUNS) numbers, and update the policies and procedures associated with reporting in the Federal Procurement Data System (FPDS) (<https://www.fpds.gov/>).

For decades, the DUNS number provided by Dun & Bradstreet (D&B) has been the government’s unique identifier for contractors – like a Social Security number for individuals. However, generic DUNS numbers that do not identify the contractor are sometimes used in overseas contracting – for example, foreign local contractors where D&B registration is impracticable, or foreign contractors when identification may endanger the contractor. When a generic DUNS number is used, the identity of the contractor is masked beyond the local contracting office. The contractor is identified as “Miscellaneous Foreign Vendor,” along with all other contractors using the generic DUNS number.

The use of generic DUNS numbers makes it almost impossible to differentiate a contractor from others with the same generic DUNS number, and the contractor is not able to access various databases to perform its own reporting requirements. Because a generic DUNS number should be limited to those actions where it is truly necessary, the proposed rule would make the

following changes to FAR Subparts 4.6 and 4.11 to more strictly limit the use of the generic DUNS number to foreign contract actions valued at or below \$25,000:

- Paragraphs (a) and (b) of FAR 4.603, Policy, would be revised to clarify that contract reporting for the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282) and in FPDS, is to be performed for all unclassified contract actions exceeding the micro-purchase threshold (\$3,000). This would emphasize that classified contract actions are exempt from the reporting requirements.
- Paragraph (b)(1) of FAR 4.604, Responsibilities, would be revised to add procedures clarifying the contracting officer's responsibility to complete the contract action report (CAR), and that a report in a draft or error status is not considered complete. Paragraph (b)(2) would be revised to require completion of the CAR within three business days after contract award. Paragraph (c) would state that the chief acquisition officer of each agency would be required to submit an annual certification of whether, and to what degree, the agency's CAR data for the preceding fiscal year is complete and accurate. This certification would be submitted to the General Services Administration (GSA) within 120 days of the end of each fiscal year.
- FAR 4.605, Procedures, would be revised to clarify when a generic DUNS number can be used. A new paragraph (c), "Generic DUNS," would be added, and it would discourage use of generic DUNS numbers by establishing tighter controls on the use of the generic DUNS numbers. Use of a generic DUNS number would be limited to contract actions valued at or below \$25,000, or contracts awarded to individuals for performance overseas, and the contracting officer would be required to include in the contract file a written determination explaining the decision to use a generic DUNS as a protection from harm to the mission, contractor, or customer. The classified or national security circumstance for using a generic DUNS number would be deleted because such classified or national security contracts are not to be reported.
- FAR 4.607, Solicitation Provisions, would be renamed "Solicitation Provisions and Contract Clause" to indicate the addition of new clause FAR 52.204-XX, Data Universal Numbering System (DUNS) Number Maintenance, which would be added to contracts that do not contain the new FAR 52.204-YY, Central Contractor Registration Maintenance (see below).
- FAR 4.1102, Policy, would be revised to clarify that contractors are not required to be registered in Central Contractor Registration (CCR) (<https://www.bpn.gov/ccr/default.aspx>) prior to the making of micro-purchases using a governmentwide purchase card. Also, paragraph (a)(3)(ii) would be revised to exempt contracts awarded and performed outside the United States from CCR registration if the contract is less than \$25,000. Finally, an exception to CCR registration would be added for work outside the United States in danger zones.
- The Federal Service Desk website information in paragraph (a)(2) of FAR 4.1103, Procedures, would be revised from <http://www.ccr.gov> to <http://www.fsd.gov>. The Federal Service Desk is where CCR registration information can be located (the same change would be made to paragraph (f) of FAR 52.204-7, Central Contractor Registration, and (t)(4) of

FAR 52.212-1, Instructions to Offerors – Commercial Items). To paragraph (b)(3) would be added language indicating that when a contract action is awarded under unusual and compelling urgency circumstances (see FAR 6.302-2), the contracting officer must require the contractor to be registered in CCR within 30 days after contract award, or before three days prior to submission of the first invoice, whichever occurs first (a corresponding Alternate I of FAR 52.204-7 would be added for use in unusual and compelling urgency awards).

- FAR 4.1105, Solicitation Provision and Contract Clauses, would be revised to include the prescription for a new clause FAR 52.204-YY, Central Contractor Registration Maintenance (see below).

In addition, the following clauses and provisions would be revised or added:

- FAR 52.204-6, Data Universal Numbering System (DUNS) Number, would be revised to include a definition for DUNS number (“the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities, which is used as the identification number for federal contractors”).
- FAR 52.204-7, Central Contractor Registration, would be converted from a clause to a provision. Paragraphs (f) and (g) would be deleted and relocated to FAR 52.204-YY. These two paragraphs contain responsibilities of the contractor. Also, updated contact telephone numbers where offerors may obtain information on registration and annual confirmation requirements would be provided.
- New FAR 52.204-XX, Data Universal Numbering System (DUNS) Number Maintenance, would be added to ensure the DUNS number is maintained with D&B throughout the life of the contract. The clause would require the contractor to communicate any change to the DUNS number to the contracting officer within 30 days after the change so an appropriate modification could be issued to update the contract data. It also clarifies that a change in the DUNS number does not necessarily require that a novation be accomplished.
- New FAR 52.204-YY, Central Contractor Registration Maintenance, would be added. It would contain the language currently in FAR 52.204-7(f) and (g), which states that the contractor is responsible for: (1) the accuracy and completeness of the data within the CCR database; (2) any liability resulting from the government’s reliance on inaccurate or incomplete data; (3) remaining registered in the CCR database after the initial registration; and (4) reviewing and updating the information in the CCR database on an annual basis to ensure it is current, accurate, and complete.

Comments on this proposed rule must be submitted no later than January 30, 2012, identified as “FAR Case 2010-014,” by any of the following methods: (1) the Federal eRulemaking Portal: <http://www.regulations.gov>; (2) fax: 202-501-4067; or (3) mail: General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE, 7th Floor, Washington, DC 20417.

SBA PROPOSES INCREASING SMALL BUSINESS SIZE STANDARDS

The Small Business Administration (SBA) is proposing to increase the small business size standards for 20 industries and one sub-industry in North American Industry Classification System (NAICS) Sector 53, Real Estate and Rental and Leasing, and nine industries in NAICS Sector 61, Educational Services.

The following are the industries, their current small business size standards, and their proposed small business size standards:

NAICS Code	Industry Title	Current Size Standard (\$ million)	Proposed Size Standard (\$ million)
Sector 53			
531110	Lessors of Residential Buildings and Dwellings	\$7.0	\$25.5
531120	Lessors of Nonresidential Buildings (except Miniwarehouses)	\$7.0	\$25.5
531190	Lessors of Other Real Estate Property	\$7.0	\$25.5
except	Leasing of Building Space to Federal Government by Owners	\$20.5	\$35.5
531210	Offices of Real Estate Agents and Brokers	\$2.0	\$7.0
531311	Residential Property Managers	\$2.0	\$7.0
531312	Nonresidential Property Managers	\$2.0	\$7.0
531320	Offices of Real Estate Appraisers	\$2.0	\$7.0
531390	Other Activities Related to Real Estate	\$2.0	\$7.0
532111	Passenger Car Rental	\$25.5	\$35.5
532112	Passenger Car Leasing	\$25.5	\$35.5
532120	Truck, Utility Trailer, and RV (Recreational Vehicle) Rental and Leasing	\$25.5	\$35.5
532210	Consumer Electronics and Appliances Rental	\$7.0	\$35.5
532220	Formal Wear and Costume Rental	\$7.0	\$19.0
532230	Video Tape and Disc Rental	\$7.0	\$25.5
532291	Home Health Equipment Rental	\$7.0	\$30.0
532411	Commercial Air, Rail, and Water Transportation Equipment Rental and Leasing	\$7.0	\$30.0
532412	Construction, Mining and Forestry Machinery and Equipment Rental and Leasing	\$7.0	\$30.0
532420	Office Machinery and Equipment Rental and Leasing	\$25.0	\$30.0
532490	Other Commercial and Industrial Machinery and Equipment Rental and Leasing	\$7.0	\$30.0
533110	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	\$7.0	\$35.5
Sector 61			
611110	Elementary and Secondary Schools	\$7.0	\$10.0

611210	Junior Colleges	\$7.0	\$19.0
611310	Colleges, Universities and Professional Schools	\$7.0	\$25.5
611420	Computer Training	\$7.0	\$10.0
611430	Professional and Management Development Training	\$7.0	\$10.0
611519	Other Technical and Trade Schools	\$7.0	\$14.0
611630	Language Schools	\$7.0	\$10.0
611699	All Other Miscellaneous Schools and Instruction	\$7.0	\$10.0
611710	Educational Support Services	\$7.0	\$14.0

Comments on the proposed changes to Sector 53 are to be submitted no later than January 17, 2012, identified as “RIN 3245-AG28,” by either of the following methods: (1) the Federal eRulemaking Portal: <http://www.regulations.gov>; or (2) mail/hand-delivery/courier to: Khem R. Sharma, PhD, Chief, Size Standards Division, 409 Third Street, SW, Mail Code 6530, Washington, DC 20416.

Comments on the proposed changes to Sector 61 are to be submitted no later than January 17, 2012, identified as “RIN 3245-AG29,” by either of the methods for submitting comments on the proposed changes comments on Sector 53.

3% PAYMENT WITHHOLDING REPEALED

On November 21, 2011, President Obama signed into law the Three Percent Withholding Repeal and Job Creation Act (Public Law 112-56). The law removes subsection (t) of Section 3402 of the Internal Revenue Code of 1986 (Title 26 of the United States Code, Section 3402, Income Tax Collected at Source). Subsection (t) had imposed a 3% withholding requirement on all government contract payments: “The government of the United States, every State, every political subdivision thereof, and every instrumentality of the foregoing (including multi-State agencies) making any payment to any person providing any property or services (including any payment made in connection with a government voucher or certificate program which functions as a payment for property or services) shall deduct and withhold from such payment a tax in an amount equal to 3 percent of such payment.”

Subsection (t) was added by Tax Increase Prevention and Reconciliation Act of 2005 (Public Law 109-222), and it was supposed to reduce the amount of unpaid taxes. However, its implementation was postponed twice by Congress because of complaints from state and local governments and contractors that the 3% withholding requirement would impose an accounting burden on both governments and contractors, would create cashflow problems for contractors (especially small businesses), and “keep capital out of the hands of job creators” according to President Obama. Even the Internal Revenue Service (IRS) delayed enforcement of subsection (t) for one year. Finally, enough bipartisan momentum got behind the repeal, and both the House of Representatives and the Senate voted unanimously to repeal subsection (t).

Other parts of the statute address veterans’ retraining assistance program, transition assistance, apprenticeship programs, training and rehabilitation for veterans with service-connected disabilities, veterans’ placement program, appointment of honorably discharged veterans, and priority of veterans for job training programs.

PRESIDENT, OFPP ORDER SPENDING REDUCTIONS

Both President Obama and the Office of Federal Procurement Policy (OFPP) have directed the federal government to reduce spending in various products and services.

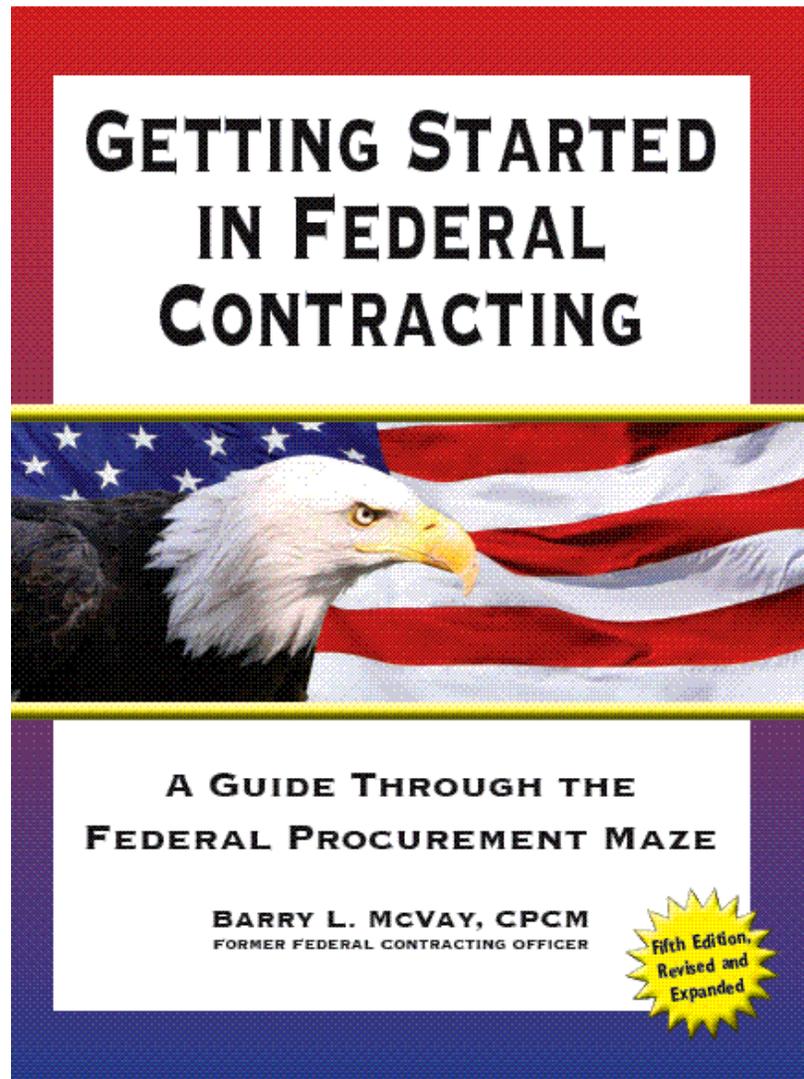
■ **Executive Order 13589, Promoting Efficient Spending:** President Obama ordered that each agency establish a plan for reducing in Fiscal Year 2013 the costs of travel, employee information technology devices, printing, the fleet of motor vehicles, and promotional items (for example, plaques, clothing, and commemorative items) by not less than 20% below Fiscal Year 2010 levels.

■ **Reduced Contract Spending for Management Support Services:** OFPP Director Daniel Gordon and Office of Management of Budget (OMB) Controller Danny Werfel issued a memorandum to all chief financial officers, chief acquisition officers, and senior procurement executives announcing “a goal of reducing spending on management support service contracts by 15% by the end of FY 2012. To achieve 15% savings, we will need to bring spending down by \$6.7 billion government-wide to \$37.4 billion in FY 2012.”

Management support services are the functions covered by the following 12 product and service codes. In FY 2010, agencies spent more than \$44 billion for these services.

Product and Service Code (PSC)	Product or Service Description	FY10 Obligations (\$M)
D302	Automated Data Processing (ADP) Systems Development Services	\$3,453
D307	Automated Information System Services	\$2,894
D310	ADP Backup and Security Services	\$132
D314	ADP Acquisition Support Services	\$446
R408	Program Management/Support Services	\$8,022
R413	Specifications Development Services	\$31
R414	System Engineering Services	\$4,887
R421	Technical Assistance	\$4,852
R423	Intelligence Services	\$349
R425	Engineering and Technical Services	\$17,972
R497	Personal Services Contracts	\$312
R707	Management Services/Contract and Procurement Support	\$778
	TOTAL	\$44,127

“Over the past decade, agency spending for management support functions has quadrupled, far outpacing the already fast growth in contract spending generally,” write Gordon and Werfel in the memorandum. “In addition, a review of historical buying trends indicate that agencies are twice as likely to buy these services using high-risk contract types, especially ‘time-and-materials’ contracts, which put the agencies – and therefore the taxpayers – at greater cost risk than when fixed prices are used. Moreover, these services are more frequently cited as creating a potential risk of overreliance on contractors for critical activities related to the agencies’ mission and operations. All of these reasons point to the need for a more careful review of what management support services we buy and how we buy them.”



**426 pages, 2009, ISBN: 978-1-912481-26-5, \$49.95
from Panoptic Enterprises (<http://www.FedGovContracts.com>) and
from Amazon.com**

**To see: Table of Contents, go to <http://www.FedGovContracts.com/contents.pdf>
Index, go to <http://www.FedGovContracts.com/index.pdf>**

**Sample Chapters: Chapter 11, Set-Asides and Preference Programs, go to
<http://www.FedGovContracts.com/chap11.pdf>
Chapter 13, Federal Supply Schedules, go to
<http://www.FedGovContracts.com/chap13.pdf>**