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FAC 2005-50 MANDATES COMPETITION FOR MAC ORDERS, SOCIOECONOMIC PROGRAM PARITY

Federal Acquisition Circular (FAC) 2005-50 contains some rather significant changes to the Federal Acquisition Regulation (FAR), particularly the rules on requirements for orders under multiple-award contracts (MACs); the establishment of parity among the 8(a) Business Development Program, the Historically Underutilized Business Zone (HUBZone) Program, and the Service-Disabled Veteran-Owned Small Business Program; justifications and approvals of sole-source 8(a) contracts over $20,000,000; and the proper use of cost-reimbursement contracts.

CONTENTS

■ **Requirements for Acquisitions Pursuant to Multiple-Award Contracts:** This interim rule implements Section 863 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417), which mandates enhanced competition for orders exceeding the simplified acquisition threshold ($150,000) placed under multiple-award contracts, including the General Services Administration's (GSA's) Federal Supply Schedules (FSS) (FAR Subpart 8.4).

The procedures in this interim rule are similar to the procedures imposed on the Department of Defense (DOD) by Section 803 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107) and implemented in the Defense FAR Supplement (DFARS) (see the November 2002 ***Federal Contracts Perspective*** article "DFARS Revised on Multiple Award Competitions, Enterprise Software Agreements, Honduras"). Now, all defense and civilian agencies will operate under the same set of rules.

The following changes are made to the FAR by this interim rule:

– Prior to this interim rule, FAR 8.405, Ordering Procedures for Federal Supply Schedules, provided competition guidance and ordering procedures for (1) supplies, and services not requiring a statement of work (FAR 8.405-1), and (2) services requiring a statement of work (FAR 8.405-2). Both of these were further subdivided into three categories of purchases: (1) orders at or below the micro-purchase threshold; (2) orders exceeding the micro-purchase threshold but not exceeding the maximum-order threshold identified in the schedule contract; and (3) orders exceeding the maximum-order threshold. This interim rule retains the three categories but replaces the maximum order threshold limitation in the second and third categories with the simplified acquisition threshold.

Also, for acquisitions conducted under either FAR 8.405-1 or FAR 8.405-2, the interim rule requires the ordering activity to issue an RFQ and either: (1) post it on e-Buy (**https://www.ebuy.gsa.gov/**) to give all FSS contractors an opportunity to submit a quotation, or (2) issue it to as many FSS contractors as practicable, consistent with market research appropriate to the circumstances, to reasonably ensure that quotations will be received from at least three FSS contractors that can fulfill the requirement. The ordering activity is required to document compliance with the ordering procedures, such as that three quotations were received. If fewer than three quotations are received and e-Buy was not used, the contracting officer must document the efforts made to obtain quotes from at least three FSS contractors. If the contracting activity decides to limit the number of sources considered, the contracting officer must prepare a justification in accordance with FAR 8.405-6 and obtain higher-level approval for orders exceeding $650,000. In addition, the contracting officer must publish a notice and the justification itself on FedBizOpps (**http://www.fedbizopps.gov**) within 14 days of award, and leave it posted for at least 30 days.

– The interim rule version of FAR 8.405-3, Blanket Purchase Agreements (BPAs), consolidates FSS BPA procedures and makes a number of changes to improve competition in the establishment of FSS BPAs and the placement of orders under such BPAs. It establishes a preference for multiple-award BPAs over single-award BPAs to encourage and facilitate competition, and imposes essentially the same procedures as those in FAR 8.405-1 and FAR 8.405-2 on the establishment of FSS BPAs (that is, either post the RFQ on e-Buy, seek quotations from as many FSS contractors as practicable to reasonably ensure that quotations will be received from at least three FSS contractors, or exercise a limited sources justification and obtain appropriate approval in accordance with FAR 8.405-6). The duration of a single-award BPA is limited to one year. While a single-award BPA may include up to four one-year options, the exercise of each option will require a written determination approved by the ordering activity competition advocate. A single-award BPA that is expected to exceed $103,000,000 (including any options) may not be awarded unless the head of the agency determines a single-award BPA is appropriate.

  Orders under multiple-award BPAs may be made as follows:

  - An order under the micro-purchase threshold may be placed with any FSS BPA holder.
  - When placing an order exceeding the micro-purchase threshold but not exceeding the simplified acquisition threshold, the ordering activity must provide each multiple-award BPA holder a fair opportunity to be considered for the order unless one of the exceptions at FAR 8.405-6 applies. The ordering activity contracting officer must document the circumstances justifying limiting

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consideration to fewer than all the multiple-award BPA holders.

- When placing an order exceeding the simplified acquisition threshold, the ordering activity shall provide an RFQ to all BPA holders under the multiple-award BPA unless the requirement is waived on the basis of a justification that is prepared and approved in accordance with FAR 8.405-6.

An order under a single-award BPA may be placed with the single-award BPA holder when the need for the supply or service arises.

– Procedures for the placement of non-FSS indefinite-delivery multiple-award contracts and orders in FAR Subpart 16.5, Indefinite-Delivery Contracts, parallel those in FAR Subpart 8.4, except that solicitations cannot be posted on e-Buy (which is reserved for FSS orders), and the contracting officer must give every awardee a fair opportunity to be considered for a delivery-order or task-order exceeding $3,000 unless a statutory exception applies.

Comments on this interim rule must be submitted no later than May 16, 2011, identified as "FAC 2005-50, FAR Case 2007-002," 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, Washington, DC 20417.

■ **Socioeconomic Program Parity:** This interim rule amends FAR Part 19, Small Business Programs, to implement Section 1347 of the Small Business Jobs Act of 2010 (Public Law 111-240) and the Small Business Administration (SBA) regulations governing specific contracting and business assistance programs. Section 1347 changed the word "shall" to "may" in Section 31(b)(2)(B) of the Small Business Act (15 U.S.C. 657a(b)(2)(B)): "Notwithstanding any other provision of law…a contract opportunity ***shall*** be awarded pursuant to this section on the basis of competition restricted to HUBZone [Historically Underutilized Business Zone] small business concerns if the contracting officer has a reasonable expectation that not less than 2 qualified HUBZone small business concerns will submit offers and that the award can be made at a fair market price." This resolved a long running dispute between the executive and judicial branches about whether the word "shall" in Section 31(b)(2)(B) gave the HUBZone program precedence over the 8(a) Business Development program and the Service-Disabled Veteran-Owned Small Business (SDVOSB) program. The substitution of the word "may" permits contracting officers to use their discretion when determining whether an acquisition will be restricted to a small business participating in the 8(a), HUBZone, or SDVOSB programs. (For more on Public Law 111-240, see the October 2010 ***Federal Contracts Perspective*** article "Parity Among Small Business Programs Mandated by Statute.")

To implement Section 1347, FAR 19.203, Relationship Among Small Business Programs, is added to state, "There is no order of precedence among the 8(a) Program (Subpart 19.8), HUBZone Program (Subpart 19.13), or Service-Disabled Veteran-Owned Small Business (SDVOSB) Procurement Program (Subpart 19.14)." For acquisitions above the simplified acquisition threshold (*i.e.*, $150,000), "the contracting officer shall first consider an acquisition for the 8(a), HUBZone, or SDVOSB programs before using a small business set-aside…" For acquisitions at or below the simplified acquisition threshold, "the requirement to exclusively

reserve acquisitions for small business concerns at 19.502-2(a) [Total Small Business Set-Asides] does not preclude the contracting officer from awarding a contract to a small business under the 8(a) Program, HUBZone Program, or SDVOSB Program." Finally, "small business set-asides have priority over acquisitions using full and open competition."

Comments on this interim rule must be submitted no later than May 16, 2011, identified as "FAC 2005-50, FAR Case 2011-004," 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, Washington, DC 20417.

■ **Justification and Approval of Sole-Source 8(a) Contracts:** This interim rule amends FAR Subpart 6.3, Other Than Full and Open Competition, and FAR Subpart 19.8, Contracting with the Small Business Administration (The 8(a) Program), to implement Section 811 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84). Section 811 prohibits the award of a sole-source contract in an amount over $20,000,000 under the 8(a) program without first obtaining a written Justification and Approval (J&A) approved by an appropriate official and making it public.

The interim rule makes the following revisions:

- Paragraph (b) of FAR 6.204, Section 8(a) Competition, is amended to add cross-references to FAR 6.302-5, Authorized or Required by Statute, and FAR 6.303-1, Requirements [for J&As], for sole source 8(a) awards over $20,000,000.

- FAR 6.302-5, which sets forth the situations in which other than full-and-open competition is authorized or required by statute, is modified to state that 8(a) sole-source awards over $20,000,000 must be supported by a J&A prior to award.

- A new paragraph (b) is added to FAR 6.303-1 requiring the approval by the appropriate official of a J&A before awarding a sole-source 8(a) contract over $20,000,000

- Paragraph (d) is added to FAR 6.303-2, Content [of the J&A], which lists the following five elements for the sole-source 8(a) J&A that are required by Section 811:

  (1) A description of the needs of the agency concerned for the matters covered by the contract.
  (2) A specification of the statutory provision providing the exception from the requirement to use competitive procedures in entering into the contract (see FAR 19.805-1, General [for Competitive 8(a)]).
  (3) A determination that the use of a sole-source contract is in the best interest of the agency concerned.
  (4) A determination that the anticipated cost of the contract will be fair and reasonable.
  (5) Such other matters as the head of the agency concerned shall specify.

  Note that these requirements are significantly reduced from the 12 elements required by FAR 6.303-2(b) for other than full and open competition J&As.

– Paragraph (a) of FAR 19.808-1, Sole Source, is revised to inform the contracting officer that the SBA may not accept for negotiation a sole-source 8(a) contract over $20,000,000 unless the requesting agency has completed a J&A in accordance with the requirements at FAR 6.303, Justifications.

Comments on this interim rule must be submitted no later than May 16, 2011, identified as "FAC 2005-50, FAR Case 2009-038," 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, Washington, DC 20417.

For more on the acquisition-related provisions of Public Law 111-84, see the November 2009 ***Federal Contracts Perspective*** article "FY10 Defense Authorization Restricts A-76 Competitions."

■ **Proper Use and Management of Cost-Reimbursement Contracts:** This interim rule amends FAR Subpart 7.1, Acquisition Plans, and FAR Subpart 16.3, Cost-Reimbursement Contracts, to implement Section 864 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417). Section 864 requires that the FAR be revised to address: (1) when, and under what circumstances, cost-reimbursement contracts are appropriate; (2) the acquisition plan findings necessary to support a decision to use cost-reimbursement contracts; and (3) the acquisition workforce resources necessary to award and manage cost-reimbursement contracts.

To implement Section 864, the following changes are made to the FAR:

– FAR 1.602-2, Responsibilities (of Contracting Officers), is amended to add a requirement that the contracting officer designate and authorize a properly trained contracting officer's representative (COR) prior to award of a contract or order that is other than firm-fixed price. This requirement is added because of the "great concern that a lack of involvement in contract oversight by program offices is primarily present in other than firm-fixed-price contracts." The appointment of a COR (or "contracting officer's technical representative (COTR)) should provide greater accountability for the management and oversight of these contracts.

– To FAR 7.103, Agency-Head Responsibilities, is added paragraphs to ensure that: (1) acquisition planners document the file to support the selection of the contract type in accordance with FAR Subpart 16.1, Selecting Contract Types (paragraph (d)); (2) the statement of work is closely aligned with the performance outcomes and cost estimates (paragraph (f)); and (3) the plan is approved and signed at least one level above the contracting officer (paragraph (j)).

– Paragraph (b)(5)(iv) is added to FAR 7.105, Contents of Written Acquisition Plans, to require that the strategy for transitioning from cost-reimbursement contracts (or orders) to firm-fixed-price contracts be addressed.

– Paragraph (d) of FAR 16.103, Negotiating Contract Type, is amended to require additional documentation when other than a firm-fixed-price contract type is selected.

- FAR 16.301-2, Application, is amended to give the contracting officer guidance on the circumstances in which to use cost-reimbursement contracts is appropriate, and on documenting the rationale for selecting the cost-reimbursement contract type.

- Paragraph (a) of FAR 16.301-3, Limitations, is amended to: (1) provide additional guidance to the contracting officer as to when a cost-reimbursement contract may be used; (2) ensure all factors in FAR 16.104, Factors in Selecting Contract Types, have been considered; and (3) ensure that adequate government resources are available to award and manage cost-reimbursement type contracts, including the designation of at least one qualified COR.

Comments on this interim rule must be submitted no later than May 16, 2011, identified as "FAC 2005-50, FAR Case 2008-030," 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, Washington, DC 20417.

For more on the acquisition-related provisions of Public Law 110-417, see the November 2008 ***Federal Contracts Perspective*** article "2009 Defense Authorization Act Includes Clean Contracting Act."

■ **Additional Requirements for Market Research:** This finalizes, with changes, the interim rule that amended FAR Part 10, Market Research, FAR Subpart 44.4, Subcontracts for Commercial Items and Commercial Components, and FAR 52.244-6, Subcontracts for Commercial Items, to implement Section 826 the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181). Section 826 requires agencies to: (1) conduct market research appropriate to the circumstances before awarding a task or delivery order in excess of the simplified acquisition threshold ($150,000); and (2) ensure that any contractor with a contract over $5,000,000 for the procurement of items other than commercial items, and under which the contractor is acting as a purchasing agent for the government with respect to a purchase that exceeds the simplified acquisition threshold, engages in market research.

Three respondents submitted comments on the interim rule. As a result of these comments, coverage on market research is deleted from FAR Subpart 44.4, and Alternate I to FAR 52.244-6 (added by the interim rule) is relocated to new FAR 52.210-1, Market Research, because FAR Subpart 44.4 covers (and is titled) "Subcontracts for Commercial Items," and Section 826 covers contracts over $5,000,000 for the procurement of items *other than commercial items*. Also, a prescription for the new FAR 52.210-1 is added to FAR 10.003, Contract Clause, and a cross-reference to FAR 52.210-1 is added as paragraph (h) to FAR 16.506, Solicitation Provisions and Contract Clauses, for when the contract is over $5,000,000 for the procurement of items other than commercial items.

For more on the interim rule, see the July 2010 ***Federal Contracts Perspective*** article "FAC 2005-42 Addresses Disclosure of Noncompetitive Contract Justifications, Recovery Act."

For more on the acquisition-related provisions of Public Law 110-181, see the February 2008 ***Federal Contracts Perspective*** article "Defense Authorization Act Restricts A-76 Competitions, Extends FAR Subpart 13.5."

■ **Use of Commercial Services Item Authority:** This finalizes, without changes, the interim rule that amended FAR 15.403-1, Prohibition on Obtaining Cost or Pricing Data (10 U.S.C. 2306a and 41 U.S.C. 254b), to implement Section 868 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417). Section 868 provides that purchases of commercial services that are not offered and sold competitively in substantial quantities in the commercial marketplace may be considered commercial items only if the contracting officer determines that the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price of such services. This provision was added as paragraph (c)(3)(ii) of FAR 15.403-1 by the interim rule.

Four 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 November 2009 ***Federal Contracts Perspective*** article "FAC 2005-37 Provides Guidance on Use of Award Fees." For more on the acquisition-related provisions of Public Law 110-417, see the November 2008 ***Federal Contracts Perspective*** article "2009 Defense Authorization Act Includes Clean Contracting Act."

■ **Trade Agreements Thresholds:** This finalizes, without changes, the interim rule that amended FAR Part 25, Foreign Acquisition, to reflect the United States Trade Representative's most recent determinations adjusting the thresholds for application of the World Trade Organization Government Procurement Agreement and the free trade agreements (see the January 2010 ***Federal Contracts Perspective*** article "Thresholds for Trade Agreements Adjusted").

No comments were submitted on the interim rule, so the interim rule is finalized without changes. For more on the interim rule, see the August 2010 ***Federal Contracts Perspective*** article "Trade Agreements Thresholds Increased."

■ **Disclosure and Consistency of Cost Accounting Practices for Contracts Awarded to Foreign Concerns:** This finalizes, without changes, the interim rule that revised FAR 52.230-4, Disclosure and Consistency of Cost Accounting Practices – Foreign Concerns, and its prescription at FAR 30.201-4, Contract Clauses [regarding Cost Accounting Standards (CAS)], to reflect changes made in the CAS Board clause "Disclosure and Consistency of Cost Accounting Practices – Foreign Concerns."

The CAS Board required the use of a new clause "Disclosure and Consistency of Cost Accounting Practices – Foreign Concerns," in CAS-covered contracts and subcontracts awarded to foreign concerns. This clause, at paragraph (f) of CAS 9903.201-4, Contract Clauses, was adopted because the clause previously used, CAS 9903.201-4(c), Disclosure and Consistency of Cost Accounting Practices, had to be modified whenever it was included in contracts and subcontracts with foreign firms to reflect the different CAS applicable to foreign firms. When the CAS Board adopted a new clause specifically for foreign firms subject to CAS, the FAR had to be amended to maintain consistency with the CAS. Therefore, FAR 52.230-4 was replaced to reflect the new CAS clause, and the FAR 52.230-4 prescription at FAR 30.201-4(c) was revised to specify the circumstances under which the clause is to be used.

No comments were submitted on the interim rule, so the interim rule is finalized without changes. For more on the interim rule, see the July 2010 ***Federal Contracts Perspective*** article "FAC 2005-42 Addresses Disclosure of Noncompetitive Contract Justifications, Recovery Act." For more on the CAS clause, see the April 2008 ***Federal Contracts Perspective*** article "New CAS Clause for Contracts with Foreign Concerns."

■ **Compensation for Personal Services:** This finalizes, without changes, the interim rule that revised paragraph (q)(2)(ii) and deleted paragraph (q)(2)(i) of FAR 31.205-6, Compensation for Personal Services, to bring (q)(2) into conformance with the changes made by the CAS Board to CAS 412, Cost Accounting Standard for Composition and Measurement of Pension Cost, and CAS 415, Accounting for the Cost of Deferred Compensation.

The CAS Board specified that the accounting of Employee Stock Ownership Plan (ESOP) costs, regardless of type, would be covered by the provisions of CAS 415 only and not by CAS 412. The CAS Board also provided criteria in CAS 415 for measuring ESOP costs and assigning these costs to cost accounting periods. To bring the FAR into conformance with the CAS Board changes, FAR 31.205-6(q)(2)(i) was deleted in its entirety (it addressed when ESOPs were to be covered by CAS 412), and FAR 31.205-6(q)(2)(ii) (now redesignated as subparagraph (q)(2)(i)) was revised by deleting "For ESOPs that do not meet the definition of a pension plan at [FAR] 31.001 [Definitions]…", so all that remained was "the contractor measures, assigns, and allocates costs in accordance with 48 CFR 9904.415 [CAS 415]."

No comments were submitted on the interim rule, so the interim rule is finalized without changes. For more on the interim rule, see the July 2010 ***Federal Contracts Perspective*** article "FAC 2005-42 Addresses Disclosure of Noncompetitive Contract Justifications, Recovery Act." For more on the CAS Board changes, see the June 2008 ***Federal Contracts Perspective*** article "CAS Address Costs for Contractors' ESOPs."

AN AVALANCHE OF DFARS CHANGES!

The Department of Defense (DOD) continues its massive revamping of the Defense FAR Supplement (DFARS), issuing six final rules, two interim rules, five proposed rules, three class deviations, and five policy memoranda during March.

■ **Preservation of Tooling for Major Defense Acquisition Programs:** This finalizes, with minor changes, the proposed rule that would add paragraph (S-73) to DFARS 207.106, Additional Requirements for Major Systems, to implement Section 815 of the National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417). Section 815 requires "the preservation and storage of unique tooling associated with the production of hardware for a major defense acquisition program through the end of the service life of the end item associated with such a program."

Four respondents submitted comments on the proposed rule, in which paragraph (S-73) stated, "Acquisition plans for major weapons systems shall include a plan for the preservation and storage of special tooling associated with the production of hardware for major defense acquisition programs through the end of the service life of the related weapons system. The plan shall include the identification of any contract clauses, facilities, and funding required for the preservation and storage of such tooling. Section 815 also allows USD(AT&L) [Under Secretary of Defense for Acquisition, Technology and Logistics] to waive this requirement if USD(AT&L) determines that it is in the best interest of DOD." No changes were made in response to any of the comments, but the last sentence is changed in the final rule to "The Undersecretary of Defense for Acquisition, Technology, and Logistics (USD (AT&L)) may waive this requirement if USD (AT&L) determines that it is in the best interest of DOD."

For more on the proposed rule, see the June 2010 ***Federal Contracts Perspective*** article "DOD Publishes Five Proposed Rules, Two Deviations."

■ **Payments in Support of Emergencies and Contingency Operations:** This finalizes, with minor changes, the interim rule that added DFARS 232.901, Applicability [of prompt payments], and DFARS 252.232-7011, Payments in Support of Emergencies and Contingency Operations, to bring DOD into compliance with Office of Management and Budget (OMB) implementation of the Prompt Payment Act by exempting military contingencies, and certain payments related to emergencies and the release or threatened release of hazardous substances.

DFARS 232.901 provides that FAR Subpart 32.9, Prompt Payment, does not apply when (1) there is an emergency, a contingency operation, or the release or threatened release of hazardous substances; (2) the HCA determines that conditions exist that limit normal business operations; and (3) payments will be made in the operational area or made contingent upon receiving supporting documentation (that is, contract, invoice, and receiving report) from the operational area.

DFARS 252.232-7011, which is to be included along with the appropriate FAR payment clause prescribed in FAR 32.908, Contract Clauses, in solicitations and contracts when there is an emergency, a contingency operation, or the release or threatened release of hazardous substances states, "payment will be made as soon as possible once a proper invoice is received and matched with the contract and the receiving/acceptance report."

One respondent submitted comments on the interim rule. The respondent pointed out that, while DFARS 232.901 states that FAR Subpart 32.9 does not apply under the conditions cited, the prescription for DFARS 252.232-7011 in DFARS 232.908, Contract Clauses, requires that DFARS 252.232-7011 to be included "in solicitations and contracts in addition to the approved clause prescribed in FAR 32.908". To correct this contradiction, DFARS 232.901 is revised to state, "Except for FAR 32.908, FAR Subpart 32.9, Prompt Payment, does not apply when…"

For more on the interim rule, see the August 2010 ***Federal Contracts Perspective*** article "More Guidance and Regulatory Changes from DOD."

■ **Multiyear Contract Authority for Electricity From Renewable Energy Sources:** This finalizes, without changes, the interim rule that added DFARS 217.175, Multiyear Contracts for Electricity from Renewable Energy Sources, to authorize DOD to enter into contracts for a period not to exceed 10 years for the purchase of electricity from sources of renewable energy.

DFARS 217.175 states that DOD may exercise this authority to enter into a contract for a period in excess of five years only if the head of the contracting activity determines, on the basis of a business case analysis prepared by DOD, that (1) the proposed purchase of electricity under such contract is cost effective; and (2) it would not be possible to purchase electricity from the source in an economical manner without the use of a contract for a period in excess of five years.

For more on the interim rule, see the July 2010 ***Federal Contracts Perspective*** article "A Plethora of Changes to DFARS in June."

■ **Safety of Facilities, Infrastructure, and Equipment for Military Operations:** This finalizes, without changes, the interim rule that added DFARS 246.270, Safety of Facilities, Infrastructure, and Equipment for Military Operations, and the identically titled clause at DFARS 252.246-7004 to implement Section 807 of the National Defense Authorization Act of 2010 (Public Law 111-84). Section 807 requires that facilities, infrastructure, and equipment that are intended for use by military or civilian personnel of the DOD, in current or future military operations, be inspected for safety and habitability prior to use, and that such facilities be brought into compliance with generally accepted standards for the safety and health of personnel

to the maximum extent practicable consistent with the requirements of military operations and the best interests of DOD to minimize the safety and health risk posed to such personnel.

No comments were received in response to the interim rule, so it is finalized without changes. For more on the interim rule, see the November 2010 ***Federal Contracts Perspective*** article "The DFARS Continues to Metamorphose." For more on the acquisition-related provisions of Public Law 111-84, see the November 2009 ***Federal Contracts Perspective*** article "FY10 Defense Authorization Restricts A-76 Competitions."

■ **Repeal of Restriction on Ballistic Missile Defense Research, Development, Test, and Evaluation:** This final rule deletes DFARS 225.7016, Restriction on Ballistic Missile Defense Research, Development, Test, and Evaluation (consisting of DFARS 225.7016-1 through DFARS 225.7016-4), and DFARS 252.225-7018, Notice of Prohibition of Certain Contracts with Foreign Entities for the Conduct of Ballistic Missile Defense Research, Development, Test, and Evaluation, in accordance with Section 222 of the National Defense Authorization Act for Fiscal Year 2011 (Public Law 111-383), which repealed the restriction that was required by Section 222 of the DOD Authorization Act for Fiscal Years 1988 and 1989.

For more on the acquisition-related provisions of Public Law 111-383, see the February 2011 ***Federal Contracts Perspective*** article "Defense Authorization Act Enacted."

■ **Technical Amendments:** This final rule adds DFARS 215.300, Scope of Subpart, to DFARS Subpart 215.3, Source Selection. DFARS 215.300 states, "Contracting officers shall follow the principles and procedures in Director, Defense Procurement and Acquisition Policy memorandum dated March 4, 2011, Department of Defense Source Selection Procedures, when conducting negotiated, competitive acquisitions utilizing FAR Part 15 [Contracting by negotiations] procedures."

The "Source Selection Procedures" forwarded by the memorandum are effective July 1, 2011, and are mandatory for all competitive acquisitions conducted under FAR Part 15 procedures. The Procedures are divided into five chapters and two appendices:

Chapter 1, Purpose, Roles, and Responsibilities
Chapter 2, Pre-Solicitation Activities
Chapter 3, Evaluation and Decision Process
Chapter 4, Documentation Requirements
Chapter 5, Definitions
Appendix A, Lowest Price Technically Acceptable Source Selection Process
Appendix B, Debriefing Guide

Highlights of the Procedures include:

- Required use of standardized rating criteria and descriptions for the "technical" and "past performance" factors; and
- A requirement that the Source Selection Advisory Council (SSAC) be appointed on source selections valued at more than $100,000,000. Also, the SSAC will be required to provide the Source Selection Authority (SSA) with a comparative analysis of proposals and an award recommendation for the SSA's consideration.

■ **Government Support Contractor Access to Technical Data:** This interim rule amends DFARS Subpart 227.71, Rights in Technical Data, and the corresponding clauses, to implement Section 821 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84), which provides authority for certain types of government support contractors to have access to proprietary technical data belonging to prime contractors and other third parties, provided the technical data owner may require the support contractor to execute a non-disclosure agreement having certain restrictions and remedies.

The basic allocation of rights in technical data reflected in the DFARS entitles a private party to restrict the government's rights to release or disclose privately-developed technical data outside the government. This "limited rights" license limits the government's use of such data only for in-house use and does not include release to government support contractors.

Historically, there have been only two categorical exceptions to the basic non-disclosure requirements for such privately-developed data:

1. A "type" exception, in which the government is granted unlimited rights in certain types of "top-level" data that are considered not to provide a competitive advantage by being treated as proprietary (for example, form, fit, and function data; data necessary for operation, maintenance, installation, or training; publicly available data); and

2. A "special needs" exception for certain important government activities that are considered critical to government operations (for example, emergency repair and overhaul; evaluation by a foreign government), and are allowed only when the recipient of the data is made subject to strict non-disclosure restrictions on any further release of the data.

Section 821 adds a new third exception to the prohibition on release of privately developed data outside the government: "allowing a covered government support contractor access to, and use of, any technical data delivered under a contract for the sole purpose of furnishing independent and impartial advice or technical assistance directly to the government in support of the government's management and oversight of the program or effort to which such technical data relates."

Section 821 goes on to define a "covered government support contractor" as:

> "a contractor under a contract the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the government in support of the government's management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), which contractor –
>
> (1) is not affiliated with the prime contractor or a first tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and
>
> (2) executes a contract with the government agreeing to and acknowledging –
>
> (A) that proprietary or nonpublic technical data furnished will be accessed and used only for the purposes stated in that contract;
>
> (B) that the covered government support contractor will enter into a non-disclosure agreement with the contractor to whom the rights to the technical data belong;

(C) that the covered government support contractor will take all reasonable steps to protect the proprietary and nonpublic nature of the technical data furnished to the covered government support contractor during the program or effort for the period of time in which the government is restricted from disclosing the technical data outside of the government;
(D) that a breach of that contract by the covered government support contractor with regard to a third party's ownership or rights in such technical data may subject the covered government support contractor –
(i) to criminal, civil, administrative, and contractual actions in law and equity for penalties, damages, and other appropriate remedies by the United States; and
(ii) to civil actions for damages and other appropriate remedies by the contractor or subcontractor whose technical data is affected by the breach; and
(E) that such technical data provided to the covered government support contractor under the authority of this section shall not be used by the covered government support contractor to compete against the third party for government or non-government contracts.

Because of the detail in Section 821, DOD decided to incorporate the original statutory language into DFARS Subpart 227.71 (DFARS 227.7102-2, Rights in Technical Data, and DFARS 227.7103-5, Government Rights) and the corresponding clauses in DFARS Part 252, Solicitation Provisions and Contract Clauses:

- DFARS 252.227-7013, Rights in Technical Data – Noncommercial Items
- DFARS 252.227-7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation
- DFARS 252.227-7015, Technical Data – Commercial Items
- DFARS 252.227-7018, Rights in Noncommercial Technical Data and Computer Software – Small Business Innovation Research (SBIR) Program
- DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends

Comments on this interim rule must be submitted no later than May 2, 2011, identified as "DFARS Case 2009-D031," by any of the following methods: (1) the Federal eRulemaking Portal: **http://www.regulations.gov**; (2) e-mail: **dfars@osd.mil**; (3) fax: 703-602-0350; or (3) mail: Defense Acquisition Regulations System, Attn: Amy Williams, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060.

For more on the acquisition-related provisions of Public Law 111-84, see the November 2009 ***Federal Contracts Perspective*** article "FY10 Defense Authorization Restricts A-76 Competitions."

■ **Nonavailability Exception for Procurement of Hand or Measuring Tools:** This interim rule amends DFARS 225.7002, Restrictions on Food, Clothing, Fabrics, and Hand or Measuring Tools, to implement Section 847 of the National Defense Authorization Act for Fiscal Year 2011 (Public Law 111-383), which provides a nonavailability exception to the requirement at 10 U.S.C. 2533a (the "Berry Amendment") to acquire only domestic hand or measuring tools.

Previously, paragraph (b) of DFAR 225.7002-2, Exceptions, permitted contracting officers to acquire "any of the items in [DFARS] 225.7002-1(a), if the Secretary concerned determines that

items grown, reprocessed, reused, or produced in the United States cannot be acquired as and when needed in a satisfactory quality and sufficient quantity at U.S. market prices…" However, the items in paragraph (b) of DFARS 225.7002-2, "hand or measuring tools, unless the tools were produced in the United States," were not covered by this exception – only U.S-produced hand or measuring tools could be acquired.

Section 847 removed the prohibition against the Secretary authorizing the purchase of hand or measuring tools not produced in the United States. Therefore, this interim rule revises the introductory text of DFAR 225.7002-2(b) to change "any of the items in 225.7002-1(a)" to "any of the items in 225.7002-1". By eliminating paragraph "(a)" from "225.7002-1," the nonavailability exception now applies to all the items covered by DFARS 225.7002-1 paragraphs (a) *and* (b).

Comments on this interim rule must be submitted no later than May 16, 2011, identified as "DFARS Case 2011-D025," by any of the following methods: (1) the Federal eRulemaking Portal: **http://www.regulations.gov**; (2) e-mail: **dfars@osd.mil**; (3) fax: 703-602-0350; or (3) mail: Defense Acquisition Regulations System, Attn: Amy Williams, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060.

■ **Identification of Critical Safety Items:** This proposed rule would add DFARS 252.209-700X, Critical Safety Items, which would identify aviation critical safety items and ship critical safety items so contract administration activities can readily identify such items and apply additional risk-based surveillance to comply with joint agency instructions, such as Management of Aviation Critical Safety Items (dated January 25, 2006).

DFARS 252.225-700X would provide the following definitions:

> "Aviation critical safety item means a part, an assembly, installation equipment, launch equipment, recovery equipment, or support equipment for an aircraft or aviation weapon system if the part, assembly, or equipment contains a characteristic, any failure, malfunction, or absence of which could cause –
>
> "(1) A catastrophic or critical failure resulting in the loss of, or serious damage to, the aircraft or weapon system;
>
> "(2) An unacceptable risk of personal injury or loss of life; or
>
> "(3) An uncommanded engine shutdown that jeopardizes safety."
>
> "Ship critical safety item means any ship part, assembly, or support equipment containing a characteristic, the failure, malfunction, or absence of which could cause –
>
> "(1) A catastrophic or critical failure resulting in loss of, or serious damage to, the ship; or
>
> "(2) An unacceptable risk of personal injury or loss of life."

Comments on this proposed rule must be submitted no later than May 16, 2011, identified as "DFARS Case 2010-D022," by any of the following methods: (1) the Federal eRulemaking Portal: **http://www.regulations.gov**; (2) e-mail: **dfars@osd.mil**; (3) fax: 703-602-0350; or (3) mail: Defense Acquisition Regulations System, Attn: Meredith Murphy, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060.

■ **Display of DOD Inspector General (IG) Fraud Hotline Posters:** This proposed rule would require the use of a new clause, DFARS 252.203-700X, Display of Fraud Hotline Poster(s), in place of FAR 52.203-14, Display of Hotline Poster(s).

FAR 52.203-14(c) states, "If the contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, such as a hotline poster, then the contractor need not display any agency fraud hotline posters, other than any required DHS [Department of Homeland Security] posters." However, the DOD IG has determined that defense contractors, including contractors who have an ethics and compliance program that includes a reporting mechanism such as a hotline poster, need to display DOD fraud hotline posters in a common work area within business segments performing work under the contract and at contract work sites. The DOD IG believes this exemption would reduce contractor exposure to DOD IG fraud hotline posters and diminish the means by which fraud, waste, and abuse can be reported under the protection of federal whistleblower protection laws. Therefore, DFARS 252.203-700X would require contractors and subcontractors with contracts exceeding $5,000,000 to display DOD IG fraud hotline posters and any applicable DHS hotline poster identified by the contracting officer. The only exceptions would be contracts for the acquisition of a commercial item or that would be performed entirely outside the United States (revised paragraph (b)(2)(ii) of DFARS 203.1004, Contract Clauses, which would be the prescription for DFARS 252.203-700X).

Comments on this proposed rule must be submitted no later than May 10, 2011, identified as "DFARS Case 2010-D026," by any of the following methods: (1) the Federal eRulemaking Portal: **http://www.regulations.gov**; (2) e-mail: **dfars@osd.mil**; (3) fax: 703-602-0350; or (3) mail: Defense Acquisition Regulations System, Attn: Clare Zebrowski, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060.

■ **Independent Research and Development Technical Descriptions:** This proposed rule would amend DFARS 231.205-18, Independent Research and Development and Bid and Proposal Costs, to require contractors to report to the Defense Technical Information Center (DTIC) independent research and development (IR&D) projects that generate annual costs in excess of $50,000.

Beginning in the 1990s, DOD reduced its technical exchanges with industry, in part to ensure independence of IR&D. The result has been a loss of linkage between funding and technological purpose. Without the collection of this information, DOD is unable to maximize the value of the IR&D funds it disburses without infringing on the independence of contractors to choose which technologies to pursue in IR&D programs.

To ameliorate this situation, the proposed rule would add paragraph (c)(iii)(C) to DFARS 231.205-18, which would state, "For a contractor's annual IR&D costs in excess of $50,000 to be allowable, the IR&D projects generating the costs must be reported to the Defense Technical Information Center (DTIC) using the DTIC's on-line input form and instructions. The inputs must be updated at least annually and when the project is completed. Copies of the input and updates must be made available for review by the cognizant administrative contracting officer (ACO) and the cognizant Defense Contract Audit Agency auditor to support the allowability of the costs."

Comments on this proposed rule must be submitted no later than May 2, 2011, identified as "DFARS Case 2010-D011," by any of the following methods: (1) the Federal eRulemaking Portal: **http://www.regulations.gov**; (2) e-mail: **dfars@osd.mil**; (3) fax: 703-602-0350; or (3) mail: Defense Acquisition Regulations System, Attn: Mark Gomersall, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060.

■ **Multiyear Contracting:** This proposed rule would amend DFARS Subpart 217.1, Multiyear Contracting, to update and clarify its requirements.

This proposed rule would reorganize existing coverage for multiyear acquisitions, such as locating all the basic congressional notification requirements under DFARS 217.170, General. In addition, the contents of DFARS 217.173, Multiyear Contracts for Weapons Systems, and DFARS 217.174, Multiyear Contracts that Employ Economic Order Quantity Procurement, would be merged into DFARS 217.170 and DFARS 217.172, Multiyear Contracts for Supplies. Also, the requirements governing multiyear contracts for military family housing, currently in paragraph (b) of DFARS 217.171, Multiyear Contracts for Services, would be placed in its own section, DFARS 217.173, Multiyear Contracting for Military Family Housing. Finally, citations to the United States Code, relevant DOD regulations, and the FAR would be updated.

Comments on this proposed rule must be submitted no later than May 2, 2011, identified as "DFARS Case 2009-D026," by any of the following methods: (1) the Federal eRulemaking Portal: **http://www.regulations.gov**; (2) e-mail: **dfars@osd.mil**; (3) fax: 703-602-0350; or (3) mail: Defense Acquisition Regulations System, Attn: Manual Quinones, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060.

■ **Increase the Use of Fixed-Price Incentive (Firm Target) Contracts:** This proposed rule would add DFARS 216.403-1, Fixed-Price Incentive (Firm Target) Contracts, to require contracting officers to: (1) give particular consideration to the use of fixed-price incentive (firm target) contracts, especially for acquisitions moving from development to production; and (2) pay particular attention to share lines and ceiling prices for fixed-price incentive (firm target) contracts, with a 120% ceiling and a 50/50 share ratio as the default arrangement.

The purpose of this new clause is to incentivize productivity and innovation in industry in accordance with the direction provided by Under Secretary of Defense for Acquisition, Technology, and Logistics Ashton Carter in his memorandum to the secretaries of the military departments and directors of DOD agencies, "Implementation Directive for Better Buying Power – Obtaining Greater Efficiency and Productivity in Defense Spending." In that memorandum, the Under Secretary stated, "Effective immediately, you will give greater consideration to using Fixed-Price Incentive Firm Target (FPIF) contracts, particularly for efforts moving from development to production…I expect acquisition teams to pay particular attention to share lines and ceiling prices, and FPIF contracts with a 120% ceiling and a 50/50 share ratio should be the norm, or starting point. Effective immediately, you will implement this guidance for all programs under your immediate direction." (For more on the memorandum, see the December 2010 ***Federal Contracts Perspective*** article "Another Deluge of DFARS Changes").

Comments on this proposed rule must be submitted no later than May 2, 2011, identified as "DFARS Case 2010-D010," by any of the following methods: (1) the Federal eRulemaking Portal: **http://www.regulations.gov**; (2) e-mail: **dfars@osd.mil**; (3) fax: 703-602-0350; or (3) mail: Defense Acquisition Regulations System, Attn: Amy Williams, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060.

■ **Class Deviation on the Designation of Contracting Officer's Representatives (CORs):** This class deviation requires contracting officers to use a substitute paragraph (2)(i) for DFARS 201.602-2, Responsibilities [of contracting officers]. The substitute paragraph (2)(i) clarifies that a COR must be an employee, military or civilian, of the U.S. government, a foreign governments, or North Atlantic Treaty Organization (NATO)/Coalition partners, and that contractor personnel may not serve as CORs.

■ **Class Deviation on Simplified Acquisition Threshold for Humanitarian or Peacekeeping Operations:** This class deviation adds the following definition of "simplified acquisition threshold:" "…in addition to the meaning at FAR 2.101 [Definitions], means $300,000 when soliciting or awarding contracts to be awarded and performed outside the United States, or making purchases outside the United States, for acquisitions of supplies or services that, as determined by the head of the contracting activity, are to be used to support humanitarian or peacekeeping operation, as defined at FAR 2.101."

■ **Class Deviation on Utilities Privatization:** This class deviation may be used when awarding qualified contracts in conjunction with the conveyance of a utility system under 10 U.S. Code 2688, Utility Systems: Conveyance Authority, which permits the secretary of a military department to convey a utility system, or part of a utility system, under the jurisdiction of the secretary to a municipal, private, regional, district, or cooperative utility company or other entity.

To qualify for the deviation, a contract must meet the conditions detailed in Attachment A, Deviation from FAR Part 31, Contract Cost Principles and Procedures, and the Cost Accounting Standards Board waiver that is Attachment B to the deviation.

The deviation includes a statement of which elements of the waiver contractors must meet for each type of situation, a requirement for contractors to meet all the conditions in the waiver, and expansion of the permissible contract types.

■ **Continuation of Defense Acquisition Workforce Improvement Initiative:** This memorandum from Ashton Carter, Under Secretary of Defense (Acquisition, Technology and Logistics), and Robert Hale, Under Secretary of Defense (Comptroller/Chief Financial Officer), announces that "DOD is holding the civilian workforce at FY10 levels for three years with limited exceptions such as the acquisition workforce."

"The Department of Defense currently has in place a strategy to increase acquisition workforce capacity by approximately 10,000 civilian Full Time Equivalents (FTE's) by Fiscal Year 2015…" write the two under secretaries. "When the Defense Acquisition Workforce Development Fund (DAWDF) hires are transitioned to FTE positions, those positions are to be supported within existing civilian ceilings, which have been adjusted accordingly. The strategy requires that the Components provide funding for long-term sustainment of the in-sourced positions…Additional in-sourcing of acquisition functions may be considered. However, all insourcing will be on a case-by-case basis, after careful consideration of critical need, whether a function is inherently governmental, and benefit demonstrated by a cost-benefit analysis. Additional insourcing must be supportable within current budget levels, including the current continuing resolution while it remains in place. If added insourcing would breach the existing civilian ceilings, then the proposal and associated justification must be provided to the Director, AT&L Human Capital Initiatives prior to execution. The proposal will be reviewed by the two Under Secretaries signing this letter and approved by the Deputy Secretary of Defense."

■ **Update to Deployment of Subaward Reporting Requirements for the Federal Funding Accountability and Transparency Act:** This memorandum from Shay Assad, Director of Defense Procurement Acquisition Policy, reduces the threshold for reporting Treasury Account Symbols (TAS) to the Federal Procurement Data System (FPSD) for any contract or order valued greater than $550,000. Previously, the TAS reporting threshold had been $20,000,000.

Included as an attachment to the memorandum are "Frequently Asked Questions" regarding TAS and the reporting of TAS to the FPDS. These "Frequently Asked Questions" are available at **http://www.acq.osd.mil/dpap/pdi/eb/federal_subaward_reporting_system.html**.

■ **Upcoming Changes to the Contracting Curriculum in Fiscal Year 2012:** This memorandum, signed by Richard Ginman, Deputy Director of Defense Procurement Acquisition Policy, announces a major revision of the contracting course curriculum that "will incorporate more emphasis in the areas of pricing, service contracting, source selection, competition, negotiations, contract administration, and small business participation. As a result of these changes, the training standards associated with the Defense Acquisition Workforce Improvement Act certification levels in the contracting field will change effective October 1, 2011."

The attachment to the memorandum provides a summary list of the courses required for certification at each level as of October 1, 2011, and provides a course transition plan so that components can plan for and meet the certification needs of their workforce members who are in the process of completing their certification requirements.

TECHNICAL SERVICES SIZE STANDARDS INCREASE PROPOSED

The Small Business Administration (SBA) is proposing to increase the small business size standards for 35 industries and one sub-industry in North American Industry Classification System (NAICS) Sector 54, Professional, Scientific and Technical Services and one industry in NAICS Sector 81, Other 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)
541110	Offices of Lawyers	7.0	10.0
541191	Title Abstract and Settlement Offices	7.0	10.0
541199	All Other Legal Services	7.0	10.0
541211	Offices of Certified Public Accountants	8.5	14.0
541213	Tax Preparation Services	7.0	14.0
541214	Payroll Services	8.5	14.0
541219	Other Accounting Services	8.5	14.0
541310	Architectural Services	4.5	19.0
541320	Landscape Architectural Services	7.0	19.0
541330	Engineering Services	4.5	19.0
Except	Marine Engineering and Naval Architecture	18.5	25.5
541340	Drafting Services	7.0	19.0
541350	Building Inspection Services	7.0	19.0
541360	Geophysical Surveying and Mapping Services	4.5	19.0
541370	Surveying and Mapping (except Geophysical) Services	4.5	19.0
541380	Testing Laboratories	12.0	19.0
541511	Custom Computer Programming Services	25.0	25.5
541512	Computer Systems Design Services	25.0	25.5
541513	Computer Facilities Management Services	25.0	25.5

541519	Other Computer Related Services	25.0	25.5
541611	Administrative Management and General Management Consulting Services	7.0	14.0
541612	Human Resources Consulting Services	7.0	14.0
541613	Marketing Consulting Services	7.0	14.0
541614	Process, Physical Distribution and Logistics Consulting Services	7.0	14.0
541618	Other Management Consulting Services	7.0	14.0
541620	Environmental Consulting Services	7.0	14.0
541690	Other Scientific and Technical Consulting Services	7.0	14.0
541720	Research and Development in the Social Sciences and Humanities	7.0	19.0
541810	Advertising Agencies	7.0	14.0
541820	Public Relations Agencies	7.0	14.0
541830	Media Buying Agencies	7.0	14.0
541840	Media Representatives	7.0	14.0
541850	Display Advertising	7.0	14.0
541860	Direct Mail Advertising	7.0	14.0
541870	Advertising Material Distribution Services	7.0	14.0
541890	Other Services Related to Advertising	7.0	14.0
811212	Computer and Office Repair and Maintenance	25.0	25.5

Comments on this proposed rule must be submitted no later than May 16, 2011, identified as "RIN 3245-AG07," by one of the following methods: (1) the Federal eRulemaking Portal: **http://www.regulations.gov**; or (2) mail/hand delivery/courier: Khem R. Sharma, PhD, Chief, Size Standards Division, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416.

EDAR REISSUED

The Department of Education has revised and reissued the Department of Education Acquisition Regulation (EDAR) for the first time since 1987. "In the years since then, the FAR has changed substantially," noted the introduction to the proposed rule. "These changes caused a need for the department to update the EDAR so that it correctly implements the FAR and reflects department policy." Among the significant changes that have taken place since 1987 are the enactment of the Federal Acquisition Streamlining Act, the Clinger-Cohen Act, and the Service Acquisition Reform Act; the establishment of the HUBZone and SDVOSB programs; and the advent of the Internet and electronic commerce.

The most noteworthy changes in the proposed EDAR addressed the procurement flexibility authorized in 1998 by 20 U.S.C. 1018a for the department's performance-based organization, the Office of Federal Student Aid (FSA).

No comments were submitted in response to the proposed rule. However, the Department of Education's contact telephone number for issues relating to human subjects changed, so the telephone number is updated in EDAR 3452.224-71, Notice About Research Activities Involving Human Subjects, and EDAR 3452.224-72, Research Activities Involving Human Subjects. In addition, a discrepancy was discovered between EDAR 3416.470, Award Term Contracting, and EDAR 3452.216-71, Award-Term. To eliminated this discrepancy, the following sentence is removed from EDAR 3416.470: "These decisions are not subject to the Disputes clause." Finally, minor technical and editorial changes were made.

For more on the proposed rule, see the September 2010 ***Federal Contracts Perspective*** article "Department of Education Proposes Reissuing EDAR."

CHANGES TO DIAR PROPOSED

The Department of the Interior (DOI) is proposing to revise the Department of the Interior Acquisition Regulation (DIAR) to make it consistent with the FAR; to update references to other federal and departmental directives; to remove obsolete material and references; and to add DIAR 1452.201-70, Authorities and Delegations, which would notify contractors of their roles and responsibilities in complying with technical direction given by authorized representatives of the contracting officer.

Comments on this proposed rule must be submitted no later than May 23, 2011, identified as "RIN 1093-AA13," through the Federal eRulemaking Portal at **http://www.regulations.gov**.

GSA TO RESTORE CONSTRUCTION FINAL PAYMENTS GUIDANCE

The General Services Administration (GSA) is proposing to restore guidance on making final payments under construction and building service contracts to the GSA Acquisition Regulation (GSAR). This guidance, which prescribed the use of GSA Form 1142, Release of Claims, for releases of claims under construction and building service contracts, was inadvertently deleted during the rewrite of GSAR Part 532, Contract Financing (see the November 2009 ***Federal Contracts Perspective*** article "GSAR Parts 503 and 532 Rewritten").

A release of claims is a requirement under GSAR 552.232-72, Final Payment, prior to making final payment under construction and building service contracts. GSA contracting

officers relied upon GSA Form 1142 to obtain this release of claims under these contracts. GSA Form 1142 uses standard language for the contractor to attest that it is has no claims, or no claims except for those it may set forth where indicated on the form. The form requires a signature from the contractor and a witness. Additionally, there is a location for the firm's seal.

During the GSAR Part 532 rewrite, GSAR 532.905-71, Final Payment – Construction and Building Services Contracts, which prescribed the use of GSA Form 1142 and provided guidance on deductions to final payments under construction and building service contracts, was inadvertently deleted. GSA believes the GSA Form 1142 provides great value and accountability in providing uniformity and consistency for the release of claims process. Without the GSA Form 1142, GSA contracting officers are required to verify that contractor release of claims letter includes appropriate wording before final payment is made, increasing their administrative burden unnecessarily. Further, the coverage on deductions under GSAR 532.905-71 was useful in preventing overpayments to contractors.

Consequently, GSA proposes to restore the language that had previously been in GSAR 532.905-71. Since the GSAR Part 532 rewrite also deleted GSAR 532.905-70, the reinstated language will become GSAR 532.905-70, Final Payment – Construction and Building Service Contracts.

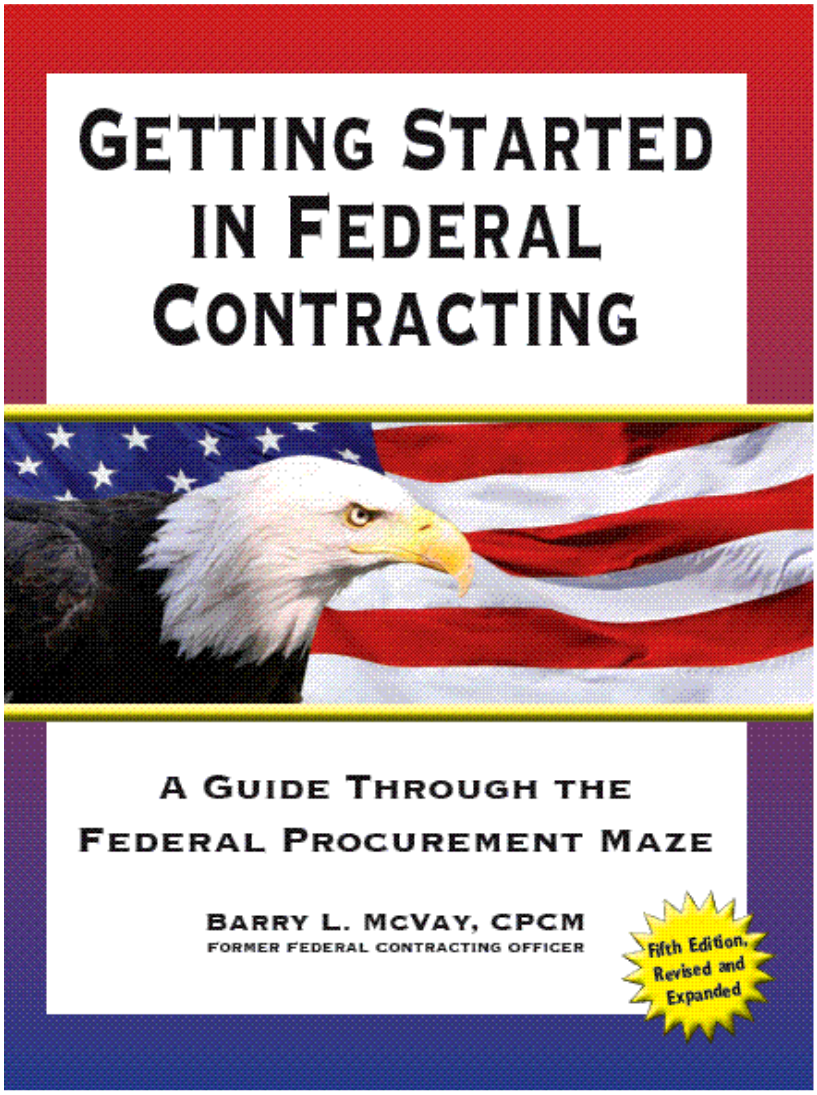
Comments on this proposed rule must be submitted no later than May 10, 2011, identified as "GSAR Case 2010-G509," by any of the following methods: (1) the Federal eRulemaking Portal: **http://www.regulations.gov**; (2) fax: 202-501-4067; or (3) mail: General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE, Washington, DC 20417.

ENERGY PROPOSES TO UPDATE GOVERNMENT PROPERTY REGS

The Department of Energy (DOE) is proposing to amend the DOE Acquisition Regulation (DEAR) to conform to the FAR, remove out-of date government property coverage, and update references. Proposed for amendment are DEAR Part 908, Required Sources of Supplies and Services, DEAR Part 945, Government Property, and DEAR Part 970, Management and Operating Contracts.

Of particular note is the amendment of DEAR Part 945 to conform to FAR Part 45, Government Property, which was amended by FAC 2005-17 to simplify procedures, clarify language, and eliminate out-of-date requirements related to the management and disposition of government property in the possession of contractors by establishing a life-cycle approach to property management and sanctioning the use of consensus standards or industry-leading standards and practices for property management. FAC 2005-17 deleted outdated clauses and combined selected FAR property clauses into a single clause. This proposed rule updates corresponding sections in DEAR Part 945 to conform to the format and content of FAR Part 45 (for more on FAC 2005-17, see the June 2007 ***Federal Contracts Perspective*** article "FAR Coverage on Government Property Simplified, Clarified, Trimmed").

Comments on this proposed rule must be submitted no later than April 4, 2011, identified as "DEAR: Parts 908, 945 and 970 and RIN 1991-AB86," by any of the following methods: (1) the Federal eRulemaking Portal: **http://www.regulations.gov**; (2) e-mail: **DEARrulemaking@hq.doe.gov** (the preferred method); or (3) mail: U.S. Department of Energy, Office of Resource Management, MA-632, 1000 Independence Avenue, SW, Washington, DC 20585.



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