Panoptic Enterprises'

FEDERAL CONTRACTS PERSPECTIVE

Federal Acquisition Developments, Guidance, and Opinions

Vol. XX, No. 8 **August 2019**

SBA ADJUSTS MONETARY-BASED SMALL BUSINESS SIZE STANDARDS, PROPOSES CHANGE IN CALCULATION

The U.S. Small Business Administration (SBA) is adjusting the monetary-based industry size standards (that is, those that are receipts- and assets-based) for inflation that has occurred since the last inflation adjustment in 2014 (see the July 2014 *Federal Contracts Perspective* article "SBA Addresses Small Business Size Standards"). These include receipts-based size standards for 518 industries and nine subindustries (which are "exceptions" to the primary industry size standard) as well as assets-based size standards for five industries in North American Industry Classification System (NAICS) Sector 52, Finance and Insurance. In addition, SBA is proposing to modify its method for calculating the annual average receipts used to prescribe the small business size standards.

CONTENTS

The SBA's regulations in Title 13 of the Code of Federal Regulations (CFR), Part 121, Small Business Size Standards, paragraph (c) of Section 121.102, How Does SBA Establish Size Standards? (13 CFR 121.102(c)), states that "SBA's Office of Size Standards will examine the impact of inflation on monetary-based size standards (*e.g.*, receipts, net income, assets) at least once every five years and submit a report to the [SBA] administrator or designee. If SBA finds that inflation has significantly eroded the value of the monetary-based size standards, it will issue a proposed rule to increase size standards." This implements the Small Business Jobs Act of 2010 (Public Law 111-240), paragraph (a)(2) of Section 1344, Updated Size Standards, which mandates that "The [SBA] administrator shall ensure that each size standard for small business concerns…is reviewed…not less frequently than once every 5 years."

The SBA's introduction to the interim rule states, "A number of businesses may have lost small business eligibility for federal assistance [such as loans or eligibility to participate in small business set aside programs] under SBA's monetary-based industry size standards simply because of inflation-led revenue growth that has occurred since the 2014 adjustment. This rule aims to reinstate those firms' small business eligibility for federal assistance." SBA estimates that nearly 90,000 additional businesses will gain small business status under the adjusted size standards and become eligible for SBA loan and contracting programs. "This could lead to as much as $750 million in additional federal contracts awarded to small businesses and up to 120 additional small business loans totaling nearly $65 million."

The size standards that are being adjusted are in the table in 13 CFR 121.201, What size standards has SBA identified by North American Industry Classification System codes? The size standards are being adjusted by multiplying their current levels by 1.0837 (the 8.37% inflation experienced since the first quarter of 2014 according to the chain-type price index for the U.S. Gross Domestic Product [GDP price index]) and rounding the results to the nearest $500,000. For example, the size standard for chicken egg production (NAICS code 112310) had a monetary-based industry size standard of $15.0 million. Multiplying $15.0 million by 1.0837 produces a $16.3 million result, and rounding $16.3 million to the closest $500,000 produces a new industry size standard of $16.5 million.

There are several exceptions to this methodology:

- The $750,000 size standard for agricultural industries was established by the Consolidated Appropriations Act for 2001 (Public Law 106-554), Section 806, Size Standards, so it was not included in previous inflation adjustments. However, the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Public Law 114-328), Section 1831, Improvements to Size Standards for Small Agricultural Producers, directed SBA to review and adjust size standards for all agricultural enterprises in the same manner as for other industries "under the procedures established under Section 1344(a) of the Small Business Jobs Act of 2010…" Therefore, SBA is adjusting the $750,000 size standard for agricultural industries by 40.26%, the inflation that was experienced between the first quarter of 2001 and the fourth quarter of 2018: $750,000 multiplied by 1.4026 equals $1,052,000, and rounding the result to the nearest $500,000 produces the new size standard of $1.0 million for agricultural industries.

- SBA has established a few size standards on a program basis rather than on an industry basis. The ones SBA has decided to adjust are: (1) sales or leases of government property (see 13 CFR 121.502, What size standards are applicable to programs for sales or leases of Government property?), from $7.5 million to $8.0 million; and (2) stockpile purchases (see 13 CFR 121.512, What is the size standard for stockpile purchases?), from $62.5 million to $67.5 million.

- Footnote 9 to the table in 13 CFR 121.201 addresses the size standard for the leasing of building space to the federal government by owners. The $38.5 million size standard was multiplied by 1.0837 to obtain an adjusted size standard of $41.5 million after rounding. This size standard exception applies to all 4 industries in NAICS Group 5311, Lessors of Real Estate.

The following are the revised monetary-based size standards:

Vivina McVay, Editor-in Chief

The ***Federal Contracts Perspective*** is published monthly by Panoptic Enterprises, 6055 Ridge Ford Drive, Burke, VA 22015.

Current Monetary-Based Size Standards ($ million)	Size Standards Adjusted for Inflation, but Not Rounded for Inflation ($ million)	Size Standards Adjusted for Inflation, Rounded to Nearest $500,000 ($ million)	Number of Industries (including exceptions)
$0.75	$1.05	$1.0	46
$5.5	$6.0	$6.0	4
$7.5	$8.1	$8.0	126
$11.0	$11.9	$12.0	39
$15.0	$16.3	$16.5	95
$18.0	$19.5	$19.5	1
$19.0	$20.6	$20.5	2
$20.5	$22.2	$22.0	39
$25.0	$27.1	$27.0	1
$27.5	$29.8	$30.0	55
$29.5	$32.0	$32.0	3
$32.0	$34.7	$34.5	2
$32.5	$35.2	$35.0	39
$36.5	$39.6	$39.5	11
$37.5	$40.6	$40.5	1
$38.5	$41.7	$41.5	63
$550.0	$596.0	$600.0	5

These changes go into effect on August 19, 2019.

Comments on this interim rule must be submitted no later than September 16, 2019, identified as "RIN 3245-AH17," by either of the following methods: (1) the Federal eRulemaking Portal: **http://www.regulations.gov**; or (2) mail/hand delivery/courier: U.S. Small Business Administration, Khem R. Sharma, Ph.D., Chief, Office of Size Standards, 409 Third Street SW, Mail Code 6530, Washington, DC 20416.

In addition, SBA has published a proposed rule that would modify its method for calculating annual average receipts used to prescribe receipts- and assets-based small business size standards.

Section 3(a)(2)(C)(ii)(II) of the Small Business Act (which is codified in Title 15 of the U.S. Code, Section 632, Definitions, subparagraph (a)(2)(C)(ii)(II) [15 USC 632(a)(2)(C)(ii)(II)], provided that "unless specifically authorized by statute, no federal department or agency may prescribe a size standard for categorizing a business concern as a small business concern, unless such proposed size standard…(ii) provides for determining…(II) the size of a business concern providing services on the basis of the annual average gross receipts of the business concern over a period of not less than 3 years…"

The Small Business Runway Extension Act of 2018 (Public Law 115-324) modified the method for prescribing size standards for business concerns by striking "3 years" in 15 USC 632(a)(2)(C)(ii)(II) and inserting "5 years". In the introduction to the proposed rule, SBA states, "during the period when annual revenues are rising, the 5-year average will generally be lower than the 3-year average, thereby allowing: (i) mid-sized businesses who have just exceeded size

standards to regain their small business status, and (ii) advanced small businesses close to exceeding the size standard to retain their small business status for a longer period. It is notable that, when annual revenues are declining, the 5-year average may be higher than the 3-year average. This would cause small businesses near the size thresholds to lose their small business status sooner under the 5-year average than under the 3-year average. This is more likely to happen during economic downturns."

To implement this change, SBA proposes substituting "5" for "3" in 13 CFR 121.104, How does SBA calculate annual receipts?, paragraph (c), which addresses the "period of measurement." The following is the current text of 13 CFR 121.104(c) with the proposed substitute language in *italics*:

> "(1) Annual receipts of a concern that has been in business for three [*five*] or more completed fiscal years means the total receipts of the concern over its most recently completed three [*five*] fiscal years divided by three [*five*].
>
> "(2) Annual receipts of a concern which has been in business for less than three [*five*] complete fiscal years means the total receipts for the period the concern has been in business divided by the number of weeks in business, multiplied by 52.
>
> "(3) Where a concern has been in business three [*five*] or more complete fiscal years but has a short year as one of the years within its period of measurement, annual receipts means the total receipts for the short year and the two [*four*] full fiscal years divided by the total number of weeks in the short year and the two [*four*] full fiscal years, multiplied by 52."

Comments on this proposed rule must be submitted no later than August 23, 2019, identified as "RIN 3245-AH16," by either of the following methods: (1) the Federal eRulemaking Portal: **http://www.regulations.gov**; or (2) mail/hand delivery/courier: U.S. Small Business Administration, Khem R. Sharma, Ph.D., Chief, Office of Size Standards, 409 Third Street SW, Mail Code 6530, Washington, DC 20416.

ARMY ACQUISITION REGULATIONS REPEALED AS "OBSOLETE"

The Department of the Army has removed from Title 48 of the ***Code of Federal Regulations*** (CFR) the four parts that constitute Chapter 51, Department of the Army Acquisition Regulations (48 CFR Chapter 51), leaving it devoid of regulations, or policies, or guidance, or anything. This is because these parts were adopted in 1989 but never updated, so they are considered obsolete. (**EDITOR'S NOTE:** 48 CFR Chapter 51 consists of regulations that have gone through the regulatory approval process and, as such, are mandatory. This is not the same as the Army Federal Acquisition Regulation Supplement [AFARS], which "implements and supplements the Federal Acquisition Regulation [FAR], the Defense FAR Supplement [DFARS], and the DFARS Procedures, Guidance, and Information [PGI] to establish uniform *policies* for Army acquisition" [*emphasis* added] [AFARS 5101.101, Purpose].).

■ **Repeal of 48 CFR Part 5108, Required Sources of Supplies and Services:** This final rule removes 48 CFR part 5108, which was codified on September 20, 1989, and never updated. The

purpose of the regulation was to provide Army-specific procedures for industrial preparedness production planning for a three-year test period. 48 CFR part 5108 consisted of 48 CFR 5108.070, Definitions, which provided definitions for "Memorandum of Understanding Planned Producer," "Limited Fee Planned Producer," and "Restricted Specified Base Planned Producer." Over the years, the procedures for industrial preparedness planning in the Department of Defense (DOD) have evolved and made 48 CFR part 5108 obsolete, so it is removed.

■ **Repeal of 48 CFR Part 5119, Small Business and Small Disadvantaged Business Concerns:** This final rule removes 48 CFR part 5119, which was codified on April 18, 1989, and never updated. The purpose of the regulation was to implement Public Law 100-656, Business Opportunity Development Reform Act of 1988, Section 722, Expanding Small Business Participating in Dredging, which directed the Secretary of the Army to conduct a test program to expand the participation of small business concerns in contracting opportunities for dredging through restricted competition.

48 CFR part 5119 consisted of 48 CFR subpart 5119.10, Small Business Competitiveness Demonstration Program, which was repealed by Public Law 111-240, The Small Business Jobs Act of 2010, Section 1335, Repeal of Small Business Competitiveness Demonstration Program. The expiration of the statutory authority and the existence of regulations concerning small business participation in the FAR and DFARS made 48 CFR part 5119 obsolete, so it is removed.

For more on the removal of FAR subpart 19.10, Small Business Competitiveness Demonstration Program by Federal Acquisition Circular (FAC) 2005-48, see the January 2011 ***Federal Contracts Perspective*** article "Competitiveness Demonstration Program Removed."

■ **Repeal of 48 CFR Part 5145, Government Property:** This final rule removes 48 CFR part 5145, which was codified on September 27, 1989, and never updated. The purpose of the regulation was to describe the conditions under which the government could provide property (facilities or material) to contractors for use under contracts. The rule was intended to be in place for a two-year test period. 48 CFR part 5145 consisted of 48 CFR subpart 5145.3, Authorizing the Use and Rental of Government Property, which consisted of 48 CFR 5145.301, Definitions, 48 CFR 5145.302-3, Other Contracts, and 48 CFR 5145.303, Providing Material.

On May 15, 2007, FAC 2005-17 amended FAR part 45 to simplify the procedures related to the management and disposition of government property in the possession of contractors (see the June 2007 ***Federal Contracts Perspective*** article "FAR Coverage on Government Property Simplified, Clarified, Trimmed"), most notably by reducing the 19 FAR clauses related to government property to three. The DFARS was subsequently revised to reflect the revisions made by FAC 2005-17 (see the September 2011 ***Federal Contracts Perspective*** article "A Few More Changes to the DFARS"). Since several of the FAR and DFARS government property clauses provide comprehensive coverage of various aspects of government property management, 48 CFR part 5145 is considered obsolete and removed.

■ **Repeal of 48 CFR Part 5152, Solicitation Provisions and Contract Clauses:** This final rule removes 48 CFR part 5152 because the three clauses it contains are being removed. The clauses are: 48 CFR 5152.208-9001, Industrial Preparedness Planning, which implemented the regulations in 48 CFR part 5108, which is removed (see above); and 48 CFR 5152.245-9000, Government Property for Installation Support Services (Fixed-Price Contracts), and 48 CFR

5152.245-9001, Government Property for Installation Support Services (Cost-Reimbursement Contracts), which implemented the regulations in 48 CFR part 5145, which is removed (see above).

THIRTY MORE BIOBASED PRODUCTS DESIGNATED

The United States Department of Agriculture (USDA) is adding 30 sections to Title 7 of the Code of Federal Regulations (CFR), Part 3201, Guidelines for Designating Biobased Products for Federal Procurement (7 CFR Part 3201), to add 30 more biobased products to be given preference in federal procurements as provided under Section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA) (Public Law 107-171), and to specify the minimum level of biobased content to be contained in the procured products. These 30 product categories contain finished products that are made, in large part, from intermediate ingredients that have been designated for federal procurement preference. Additionally, USDA is amending the existing designated product categories of general purpose de-icers, firearm lubricants, laundry products, and water clarifying agents.

The following are the new designated items and their 7 CFR Part 3201 section numbers:

3201.120, Adhesives
3201.121, Animal Habitat Care Products
3201.122, Cleaning Tools
3201.123, Concrete Curing Agents
3201.124, Concrete Repair Materials
3201.125, Durable Cutlery
3201.126, Durable Tableware
3201.127, Epoxy Systems
3201.128, Exterior Paints And Coatings
3201.129, Facial Care Products
3201.130, Feminine Care Products
3201.131, Fire Logs and Fire Starters
3201.132, Folders and Filing Products
3201.133, Foliar Sprays
3201.134, Gardening Supplies and Accessories
3201.135, Heating Fuels and Wick Lamps
3201.136, Kitchenware and Accessories
3201.137, Other Lubricants
3201.138, Phase Change Materials
3201.139, Playground and Athletic Surface Materials
3201.140, Powder Coatings
3201.141, Product Packaging
3201.142, Rugs and Floor Mats
3201.143, Shopping and Trash Bags
3201.144, Soil Amendments
3201.145, Surface Guards, Molding, And Trim
3201.146, Toys and Sporting Gear

3201.147, Traffic and Zone Marking Paints
3201.148, Transmission Fluids
3201.149, Wall Coverings

In addition, USDA is amending the existing designated product categories of general purpose de-icers (3201.37, De-Icers); firearm lubricants (3201.38, Firearm Cleaners, Lubricants, and Protectants); laundry products (3201.40, Laundry Products); and water clarifying agents (3201.99, Water and Wastewater Treatment Chemicals). Since USDA finalized the designation of each of these product categories (2012 for water and wastewater treatment chemicals, 2008 for the others), USDA has obtained additional information on products within these four categories. Therefore, USDA is now amending these four categories to more closely align the existing categories with the data gathered since the categories were originally designated.

Five respondents submitted comments on the proposed rule (see the October 2018 ***Federal Contracts Perspective*** article "USDA Proposes 30 New Biobased Products"). As a result of those comments, the following changes are made to the final rule:

■ The definition for "Rug and Floor Mats" in 7 CFR 3201.142 is revised to clarify that products composed of woven, tufted, or knitted fiber and a backing system are excluded from this category since they are already included in the designated product category "Carpets" (7 CFR 3201.33).

■ The definition for "Traffic and Zone Marking Paints" in 7 CFR 3201.147 has been revised to clarify the types of products (and the common usages of these products) that would fall into this category for those who may not be familiar with the traffic and zone marking paint industry. The *italicized* language is added to the proposed language: "Traffic and zone marking paints are products that are formulated and marketed for marking and striping *parking lots, roads,* streets, highways, or other traffic surfaces including, but not limited to, curbs, crosswalks, driveways, sidewalks, and airport runways."

■ USDA has revised the minimum biobased content requirement for "Folders and Filing Products" (7 CFR 3201.132) to account for new data that USDA obtained. After the proposed rule was published and a minimum biobased content of at least 66% was proposed, USDA obtained new biobased content data regarding the products upon which the proposed minimum for this category was set. These products were reformulated and now each contain 59% biobased content, as measured by ASTM D6866, Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis. USDA did not find a reason to exclude either of these products and has determined that it is reasonable to change the minimum biobased content for this category to include these products. Thus, the minimum biobased content for this product category is 56%, based on the products with tested biobased content of 59%.

EDITOR'S NOTE: As a general rule, procuring agencies must purchase biobased products within these designated items where the purchase price of the procurement item exceeds $10,000 or where the quantity of such items or functionally equivalent items purchased over the preceding fiscal year equaled $10,000 or more, unless products within a designated item: (1) are not reasonably available within a reasonable period of time; (2) fail to meet the reasonable

performance standards of the procuring agencies; or (3) are available only at an unreasonable price. The $10,000 threshold applies to federal agencies as a whole and not to agency subgroups such as regional offices or subagencies of the larger federal department or agency.

For more information on the biobased program and all the products in the program, go to **http://www.biopreferred.gov/**.

GSA ISSUES UNIQUE ID STANDARD FOR SAM.GOV

The General Services Administration (GSA) has issued the technical specifications for the Unique Entity Identification (ID) that will be used as the official identifier for doing business with the government. This non-proprietary ID will replace the Data Universal Numbering System (DUNS®) numbers currently used to identify entities and will be be generated in the System for Award Management (SAM – **https://www.sam.gov**).

SAM is the federal database where vendors register to do business with the government. It has consolidated several federal databases into one: the Federal Agency Registration (FedReg); the Online Representations and Certifications Application (ORCA); the Excluded Parties List System (EPLS); and the Wage Determinations On-Line (WDOL), and there are plans to consolidate even more federal databases into SAM. The purpose of SAM is to: (1) allow users to employ a single login to access all the capabilities found in the old systems; (2) eliminate data overlap by sharing the data among the systems; and (3) provide a standardized format across all webpages to make it easier to navigate and find information.

The government must validate the identity of each entity (company, individual, organization, etc.) that registers in SAM to do business with the government. For decades these services were provided by Dun and Bradstreet (D&B) though its DUNS® numbers. The government required its contractors to obtain and report a unique DUNS® number as a condition for receiving a contract award. This proprietary number permitted the government to: (1) uniquely identify a contractor entity; and (2) roll-up government procurements to the ultimate parent organization to show the corporate family receiving U.S. obligations. However, the Digital Accountability and Transparency Act of 2014 (DATA Act) (Public Law 113-101) specifically states that the data shall, to the extent reasonable and practicable, "incorporate a widely accepted, *nonproprietary*, searchable, platform-independent computer-readable format" and "include unique identifiers for federal awards and entities receiving federal awards that can be consistently applied governmentwide" (*emphasis* added). After soliciting for nonproprietary unique Entity IDs, GSA selected Ernst and Young to provide entity validation services for the federal award process (see the April 2019 ***Federal Contracts Perspective*** article "GSA Announces Award for Entity Validation Services"). The transition from DUNS® numbers to the SAM-generated Unique Entity ID will take place through December 2020.

The following is the explanation and specifications GSA has provided for the SAM-generated Unique Entity ID:

> "The Unique Entity ID is a new data element assigned by SAM.gov. It is stored as a twelve (12)-character, alpha-numeric value within databases and passed as such within interfaces and extracts. This 12-character value will adhere to the following rules:
>
> - The letters "O" or "I" will not be used, to avoid confusion with zero and one

- The first character will not be zero, to avoid cutting off digits that can occur during data imports – for example, into spreadsheet programs

- Nine-digit sequences will not be used in the identifier to avoid collision with the nine-digit DUNS® number or Taxpayer Identification Number (TIN)

- The first five characters will be structured to avoid collision with the Commercial and Government Entity (CAGE) code formatting (**EDITOR'S NOTE:** "The CAGE Code is a five-character ID number used extensively within the federal government, assigned by the Department of Defense's Defense Logistics Agency. The CAGE Code supports a variety of mechanized systems throughout the government and provides a standardized method of identifying a given legal entity at a specific location… You do not need to have a CAGE Code prior to registering in the System for Award Management [SAM]." See the following article for proposed changes to the FAR involving the definition of "CAGE code.")

- The Unique Entity ID will not be case sensitive

Also see the October 2018 ***Federal Contracts Perspective*** article "FAC 2005-101 Updates Instructions for System for Award Management Registration" for changes made to the FAR to accommodate the transition from DUNS® numbers to nonproprietary unique Entity IDs.

ELECTRONIC SUBMISSION OF DD FORM 254 PROPOSED

An amendment to the FAR has been proposed that would require electronic submission of the Department of Defense (DD) Form 254, Contract Security Classification Specification.

The government uses the DD Form 254 to convey security requirements to contractors when contract performance requires access to classified information, and prime contractors use the DD Form 254 to convey security requirements to subcontractors that require access to classified information to perform on a subcontract. In addition, subcontractors may use the DD Form 254 if access to classified information is required to convey security requirements to additional subcontractors.

The National Industrial Security Program (NISP) was established as a single, integrated program designed to safeguard classified information released to contractors. DOD is responsible for providing industrial security oversight services to DOD and those nondefense agencies that have industrial security services agreements with DOD. The NISP Contracts Classification System (**https://www.dss.mil/is/nccs/**) is one of 14 modules within the Procurement Integrated Enterprise Environment (PIEE – **https://www.dla.mil/HQ/InformationOperations/Procurement-Integrated-Enterprise-Environment/**) (formerly the Wide Area WorkFlow application). The module provides a centralized repository for classified contract security requirements and automates DD Form 254 processes and workflows.

This rule proposes to amend the FAR as follows to provide procedures for use of the DD Form 254 and the requirement to use the PIEE:

- FAR 2.101, Definitions, would be amended to relocate the definition of CAGE code from FAR subpart 4.18, Commercial and Government Entity Code, since the term is used in multiple FAR sections and clauses.

- In FAR 4.402, General [for safeguarding classified information within industry], a new paragraph (d) would be added (current paragraph (d) would be redesignated as paragraph (e)). This new paragraph (d) would require the use of the DD Form 254 by nondefense agencies that have industrial security services agreements with DOD to provide security classification guidance to contractors and subcontractors requiring access to information as "Confidential," "Secret," or "Top Secret. " It would require agency preparation of the DD Form 254 using the NISP Contracts Classification System module of the PIEE unless a nondefense agency has an existing DD Form 254 information system. Finally, it would clarify that (1) each contractor and subcontractor location of performance listed on a DD Form 254 is required to have a unique CAGE code; and (2) registration in the System for Award Management (SAM – **https://www.sam.gov**) is not required for contractor and subcontractor performance locations solely for the purposes of the DD Form 254.

- In FAR 4.403, Responsibilities of Contracting Officers, paragraph (c)(1) would be revised to require that nondefense agencies that have industrial security services agreements with DOD shall use the DD Form 254. It would continue by stating that the contracting officer, or authorized representative, is the approving official for the DD Form 254 associated with the prime contract, and would make the approving official responsible for (1) ensuring the DD Form 254 is properly prepared and distributed, and (2) coordinating with requirements and security personnel to complete the DD Form 254, including when completed in the NISP Contracts Classification System accessible through the PIEE unless a nondefense agency has an existing DD Form 254 information system.

- To FAR 52.204-16, Commercial and Government Entity (CAGE) Code Reporting, would be added an Alternate I for use when FAR 52.204-2, Security Requirements, is included in a solicitation. It would state, "A subcontractor requiring access to classified information under a contract shall be identified with a Commercial and Government Entity (CAGE) code on the DD Form 254. A subcontractor requiring access to classified information shall provide its CAGE code with its name and address or otherwise include it prominently in the proposal. Each location of subcontractor performance listed on the DD Form 254 is required to reflect a corresponding unique CAGE code for each listed location unless the work is being performed at a government facility, in which case the agency location code shall be used. The CAGE code must be for that name and address. Insert the word "CAGE" before the number. The CAGE code is required prior to award."

- To FAR 52.204-18, Commercial and Government Entity Code Maintenance, would be added an Alternate I for use when FAR 52.204-16, Commercial and Government Entity Code Reporting, is included in a solicitation. Alternate I would add a paragraph (f) to FAR 52.204-16, which would state, "Contractors shall ensure that subcontractors maintain their CAGE code(s) throughout the life of the contract."

- The introductory text to FAR 53.204-1, Safeguarding Classified Information Within Industry (DD Form 254, DD Form 441), would be revised to state, "The following forms [DD Form 254 and DD Form 441, Security Agreement], which are prescribed by the Department of Defense, shall be used by DOD components and those nondefense agencies with which DOD has agreements to provide industrial security services for the National Industrial Security Program if contractor access to classified information is required, as specified in [FAR] subpart 4.4 [Safeguarding Classified Information Within Industry] [and the clause at [FAR] 52.204-2…"

Comments on this proposed rule must be submitted no later than September 10, 2019, identified as "FAR Case 2015-002," by either of the following methods: (1) the Federal eRulemaking Portal: **http://www.regulations.gov**; or (2) mail: General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Lois Mandell, 1800 F Street NW, Second Floor, Washington, DC 20405.

EO PROMOTES AMERICAN-MADE GOODS, PRODUCTS, MATERIALS

On July 15, President Trump issued Executive Order 13881, Maximizing Use of American-Made Goods, Products, and Materials, to "to maximize, consistent with law, the use of goods, products, and materials produced in the United States."

The fundamental law governing federal purchases of foreign products is the Buy American Act of 1933 (41 USC 8301-8305). Enacted during the Great Depression, the Buy American Act discourages the federal government from buying foreign products for three reasons: to make American industry stronger, to protect domestic labor markets, and to keep federal funds in the U.S. While the Buy American Act does not prohibit the acquisition of foreign products, it handicaps them by requiring the application of factors to the prices of the foreign products, thus making them less competitive. The Buy American Act is covered in FAR subpart 25.1, Buy American Act – Supplies, and FAR subpart 25.2, Buy American Act – Construction Materials.

In 1954, President Eisenhower issued Executive Order 10582, Prescribing Uniform Procedures for Certain Determinations Under the Buy American Act, which established that materials shall be, for purposes of the Buy American Act, considered of foreign origin if the cost of the foreign products used in such materials constitutes 50% or more of the cost of all the products used in such materials. Also, EO 10582 established that, in determining whether the bid or offered price of materials of domestic origin is unreasonable or inconsistent with the public interest, the executive agencies shall add 6% to the total bid or offered price of materials of foreign origin. (**EDITOR'S NOTE:** Subsequently, this was amended to provide that 12% would be added to the total bid or offered price of materials of foreign origin if the lowest domestic offer is from a small business – see paragraph (b) of FAR 25.105, Determining Reasonableness of Cost.)

Executive Order 13881 directs that the FAR Council "consider" proposing a FAR amendment that would provide that materials are considered to be of foreign origin if:

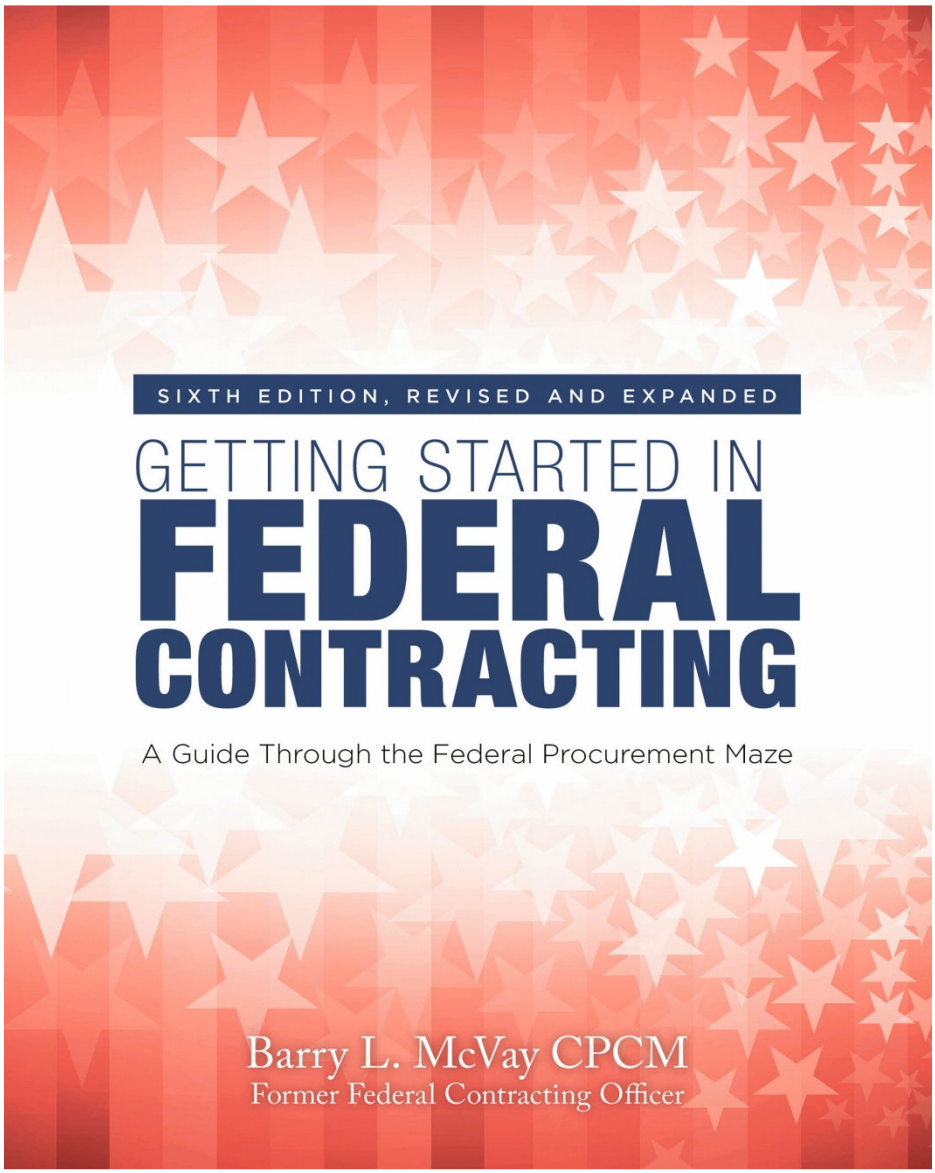
- For iron and steel end products, the cost of foreign iron and steel used in such iron and steel end products constitutes 5% or more of the cost of all the products used in such iron and steel end products (the 5% limitation on foreign content in iron and steel end products is new).

- For all other end products, the cost of the foreign products used in such end products constitutes 45% or more of the cost of all the products used in such end products (down from 50%).

- In determining whether the bid or offered price of materials of domestic origin is unreasonable or inconsistent with the public interest, the executive agencies shall add 20% to the total bid or offered price of materials of foreign origin (up from 6%); the executive agencies shall add 30% to the total bid or offered price of materials of foreign origin if the lowest domestic offer is from a small business (up from 12%).

The president orders that this FAR amendment "consideration" be conducted within 180 days of the date of the order date of the order – that is, by January 13, 2020.

REVISED AND EXPANDED!



468 pages, 2017, ISBN: 978-0-912481-27-2, $39.95
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, Small Business Programs, go to
http://www.FedGovContracts.com/Chap11.pdf
Chapter 13, Federal Supply Schedules, go to
http://www.FedGovContracts.com/Chap13.pdf