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FAC 2020-07 INCREASES SIMPLIFIED ACQUISITION, MICRO-PURCHASE THRESHOLDS

Federal Acquisition Circular (FAC) 2020-07 finally got around to amending the Federal Acquisition Regulation (FAR) to reflect the increases to the micro-purchase threshold to \$10,000 and the simplified acquisition threshold to \$250,000, as provided by the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018. In addition, FAC 2020-07 contains final rules that address multiple-award contracts, increases the threshold for requesting certified cost or pricing data, orders issued via fax or electronic commerce, and the DD Form 254, Contract Security Classification Specification.

■ **Increased Micro-Purchase and Simplified Acquisition Thresholds:** This finalizes, without changes, the rule that proposed to amend the definitions of “micro-purchase threshold” and “simplified acquisition threshold” in FAR 2.101, Definitions, to implement the NDAA for FY 2018 (Public Law 115-91), Section 805, Increased Simplified Acquisition Threshold, and Section 806, Requirements Related to the Micro-Purchase Threshold.

Section 805, which applies to acquisitions conducted under FAR part 13, Simplified Acquisition Procedures, increased the simplified acquisition threshold from \$150,000 to \$250,000. Section 806, which applies to acquisitions conducted under FAR subpart 13.2, Actions At or Below the Micro-Purchase Threshold, increased the micro-purchase threshold from \$3,500 to \$10,000.

In addition, the rule proposed to further amend the “micro-purchase threshold” definition in FAR 2.101 to implement paragraph (b) of the NDAA for FY 2017 (Public Law 114-328), Section 217, Increased Micro-Purchase Threshold for Research Programs and Entities, which increases the micro-purchase threshold for acquisitions from institutions of higher education or related or affiliated nonprofit entities, or from nonprofit research organizations or independent research institutes, from \$3,500 to \$10,000, or “a higher threshold, as determined appropriate by the head of the agency and consistent with clean audit findings under 31 USC chapter 75, Requirements for Single Audits; an internal institutional risk assessment; or state law.”

Finally, the rule proposed to replace numerical dollar thresholds that are intended to correspond with the micro-purchase threshold and the simplified acquisition threshold with “micro-purchase threshold” and “simplified acquisition threshold.” Referencing the thresholds by name instead of by a specific dollar value will ease the maintenance of the FAR since

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acquisition-related thresholds are required to be adjusted every five years to compensate for inflation (see the July 2020 *Federal Contracts Perspective* article “Inflation Adjustment of Acquisition-Related Thresholds Proposed”).

However, the rule proposed *not* to change some instances of “\$3,500” to “micro-purchase threshold” and “\$150,000” to “simplified acquisition threshold” because the dollar amount is mandated by statute or for other reasons.

Six respondents submitted comments on the proposed rule, but none of the suggested changes were adopted, so this finalizes the proposed rule without changes. For more on the proposed rule, see “Increased Micro-Purchase and Simplified Acquisition Thresholds” in the November 2019 *Federal Contracts Perspective* article “Four FAR Rules Proposed.”

EDITOR’S NOTE: The Civilian Agency Acquisition Council (CAAC) issued a FAR class deviation authorizing civilian agencies to increase the micro-purchase and simplified acquisition thresholds to \$10,000 and \$250,000, respectively, and 30 civilian agencies implemented those changes. For more on the CAAC FAR deviation, see the March 2018 *Federal Contracts Perspective* article “CAAC Authorizes Deviation Increasing Simplified Acquisition and Micro-Purchase Thresholds.”

The Department of Defense (DOD) issued its own FAR class deviation increasing the micro-purchase and simplified acquisition thresholds to \$10,000 and \$250,000, respectively. For more on the DOD FAR class deviation, see “Class Deviation on Micro-Purchase and Simplified Acquisition Thresholds, and Special Emergency Procurement Authority” in the October 2018 *Federal Contracts Perspective* article “DOD Continues Cleaning Up the DFARS.”

■ **Evaluation Factors for Multiple-Award Contracts:** This final rule implements the NDAA for FY 2017 (Public Law 114-328), Section 825, Exception to Requirement to Include Cost or Price to the Government as a Factor in the Evaluation of Proposals for Certain Multiple-Award Task or Delivery Order Contracts, which provides that, at the head of the agency’s discretion, solicitations for multiple-award contracts issued by the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), or the Coast Guard, for the same or similar services that state the government intends to award a contract to each qualifying offeror do not require price or cost as an evaluation factor for contract award. Section 825 goes on to provide that this exception does not apply to solicitations for multiple-award contracts that provide for sole source orders under the Small Business Administration’s (SBA) 8(a) program.

To implement Section 825, the final rule makes the following changes to the FAR:

- To FAR 2.101, Definitions, is added the following definition for “qualifying offeror”: “an offeror that is determined to be a responsible source, submits a technically acceptable proposal that conforms to the requirements of the solicitation, and the contracting officer has no reason to believe would be likely to offer other than fair and reasonable pricing...”
- Paragraph (a)(2) of FAR 4.1005-2, Exceptions [to data elements for line items and subline items], is amended to permit the omission of cost or price at the contract line item

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or subline item level when awarding multiple-award indefinite-delivery/indefinite-quantity (IDIQ) contracts “awarded using the procedures at [FAR] 13.106-1(a)(2)(iv)(A) or [FAR] 15.304(c)(1)(ii)(A)...provided that a total contract minimum and maximum is stated (see [FAR] 16.504(a)(1) [ordering from indefinite-delivery contracts]).” FAR 4.1005 requires price or cost to be included for each contract line item or subline item, so the amendment to FAR 4.1005-2(a)(2) is needed to permit DOD, NASA, and the Coast Guard to utilize Section 825.

- Paragraph (a)(2)(iv) of FAR 13.106-1, Soliciting Competition [under the simplified acquisition threshold], and paragraph (c)(1)(ii) of FAR 15.304, Evaluation Factors and Significant Subfactors [for negotiated acquisitions], are added. These two new paragraphs state:

“...for DOD, NASA, and the Coast Guard –

“(A) The contracting officer may choose not to include price or cost as an evaluation factor for award when a solicitation –

“(1) Has an estimated value above the simplified acquisition threshold;

“(2) Will result in multiple-award contracts (see [FAR] subpart 16.5 [Indefinite-Delivery Contracts]) that are for the same or similar services; and

“(3) States that the government intends to make an award to each and all qualifying offerors (see [FAR] 2.101).

“(B) If the contracting officer chooses not to include price or cost as an evaluation factor for the contract award, in accordance with paragraph (a)(2)(iv)(A) [or (c)(1)(ii)(A)] of this section, the contracting officer shall consider price or cost as one of the factors in the selection decision for each order placed under the contract.

“(C) The exception in paragraph (a)(2)(iv)(A) [or (c)(1)(ii)(A)] of this section shall not apply to solicitations for multiple-award contracts that provide for sole source orders pursuant to Section 8(a) of the Small Business Act (15 USC 637(a) [Additional Powers]).”

- To paragraph (b)(2) of FAR 16.505, Ordering [from indefinite-delivery contracts], which lists the exceptions to the fair opportunity process, is added paragraph (b)(2)(i)(G), which states, “for DOD, NASA, and the Coast Guard, the order satisfies one of the exceptions permitting the use of other than full and open competition listed in [FAR] 6.302 [Circumstances Permitting Other Than Full and Open Competition]...”

■ **Modifications to Cost or Pricing Data Requirements:** This finalizes, with minor editorial changes, the rule that proposed to implement the NDAA for FY 2018 (Public Law 115-91), Section 811, Modifications to Cost or Pricing Data and Reporting Requirements, by amending FAR 15.403-4, Requiring Certified Cost or Pricing Data (10 USC 2306a and 41 USC chapter 35), and FAR 30.201-4, Contract Clauses [for cost accounting standards and practices], to increase the threshold for requesting certified cost or pricing data from \$750,000 to \$2,000,000.

10 USC 2306a, Cost or Pricing Data: Truth in Negotiations, and 41 USC 3502, Required Cost or Pricing Data and Certification, require that the government obtain certified cost or pricing data for contract actions listed in FAR 15.403-4(a)(1), such as negotiated contracts, certain subcontracts, and certain contract modifications that exceed the certified cost or pricing data threshold. The threshold had been \$750,000, but Section 811 amended the threshold to \$2,000,000.

To implement Section 811, the rule proposed to make the following changes:

- Amend FAR 15.403-4(a)(1) to remove “The threshold for obtaining certified cost or pricing data is \$750,000” and replace it with “The threshold for obtaining certified cost or pricing data is \$750,000 for prime contracts awarded before July 1, 2018, and \$2 million for prime contracts awarded on or after July 1, 2018.” Also, revise the example provided of a price adjustment in paragraph (a)(1)(iii) to reflect the increased threshold.
- In FAR 30.201-4(b)(1), replace “\$750,000” with “\$2,000,000.” Paragraph (b)(1) required the inclusion of FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, in negotiated contracts when the contract amount was over \$750,000 but less than \$50,000,000 and the offeror certifies it is eligible for and elects to use modified Cost Accounting Standards coverage.
- Change the Cost Accounting Standards applicability threshold from “\$750,000” to “\$2,000,000” in FAR 52.230-1, Cost Accounting Standards Notices and Certification; FAR 52.230-2, Cost Accounting Standards; FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices; FAR 52.230-4, Disclosure and Consistency of Cost Accounting Practices – Foreign Concerns; and FAR 52.230-5, Cost Accounting Standards – Educational Institution. The threshold for Cost Accounting Standards applicability is required by paragraph (b)(1)(B) of 41 USC 1502, Cost Accounting Standards, to be the same as the threshold in FAR 15.403-4(a)(1).

Two respondents submitted comments on the proposed rule, but none of the suggested changes were adopted, so this finalizes the proposed rule with minor editorial changes. For more on the proposed rule, see “Modifications to Cost or Pricing Data Reporting Requirements” in the November 2019 *Federal Contracts Perspective* article “Four FAR Rules Proposed.”

■ **Orders Issued Via Fax or Electronic Commerce:** This finalizes, without changes, the rule that proposed to revise FAR 52.216-18, Ordering, to permit the issuance of task or delivery orders via fax or electronic commerce and to clarify when an order is considered “issued” when using these methods.

Paragraph (c) of FAR 52.216-18, which is included in solicitations and contracts when an indefinite-delivery definite-quantity, requirements, or indefinite-delivery indefinite-quantity (IDIQ) contract is contemplated, provided that “if mailed, a delivery order or task order is considered ‘issued’ when the government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule.”

This clause was last updated in 1995. In today’s business environment, the government and its contractors frequently use email, facsimile (fax), or other electronic commerce methods to communicate with one another. To reflect current business practices and maintain speed and

efficiency in the ordering process, the proposed rule would revise FAR 52.219-18 to delete the requirement for a separate authorization in the contract to use fax or electronic commerce to issue task or delivery orders.

In addition, the rule proposed to identify when a task or delivery order is considered “issued” when using such methods: “(1) If sent by mail (includes transmittal by U.S. mail or private delivery service), the government deposits the order in the mail; (2) if sent by fax, the government transmits the order to the contractor’s fax number; or (3) if sent electronically, the government either: (i) posts a copy of the delivery order or task order to a government document access system, and notice is sent to the contractor; or (ii) distributes the delivery order or task order via email to the contractor’s email address.”

Two comments were submitted in response to the proposed rule, but both were outside the scope of the rule, so the rule is finalized without changes. For more on the proposed rule, see “Orders Issued via Fax or Electronic Commerce” in the September 2019 *Federal Contracts Perspective* article “Two More FAR Changes Proposed.”

■ **Requirements for DD Form 254, Contract Security Classification Specification:** This finalizes, with minor editorial changes, the rule that proposed to require electronic submission of the Department of Defense (DD) Form 254, Contract Security Classification Specification, and require use of the DD Form 254 by nondefense agencies that have industrial security services agreements with DOD to specify the security classification for a contract involving access to classified information.

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) is 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/>). The module provides a centralized repository for classified contract security requirements and automates DD Form 254 processes and workflows.

The rule proposed to make the following changes to the FAR to provide procedures for use of the DD Form 254 and the requirement to use the PIEE:

- Move the definition of “Commercial and Government Entity (CAGE) code” from FAR subpart 4.18, Commercial and Government Entity Code, to FAR 2.101, Definitions, because the term is used in multiple FAR sections and clauses.
- Add a new paragraph (d) to FAR 4.402, General [for safeguarding classified information within industry] (existing paragraph (d) would be redesignated as paragraph (e)). 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.

- Paragraph (c)(1) of FAR 4.403, Responsibilities of Contracting Officers, would be revised to require that nondefense agencies that have industrial security services agreements with DOD shall use the DD Form 254. In addition, paragraph (c)(1) would state that the contracting officer, or authorized representative, is the approving official for the DD Form 254 associated with the prime contract, and the approving official would be 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.
- An Alternate I would be added to FAR 52.204-16, Commercial and Government Entity (CAGE) Code Reporting, for use when FAR 52.204-2, Security Requirements, is included in a solicitation. Alternate I would add a paragraph (g), which 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.”
- An Alternate I would be added to FAR 52.204-18, Commercial and Government Entity Code Maintenance, 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 52.204-18, which would state, “Contractors shall ensure that subcontractors maintain their CAGE code(s) throughout the life of the contract.”
- Revise the introductory text of FAR 53.204-1, Safeguarding Classified Information Within Industry (DD Form 254, DD Form 441), 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...”

Five respondents submitted comments on the proposed rule, but none of the comments were adopted. However, the FAR Council made several editorial changes to the final rule:

- Instead of adding an Alternate I that would add a paragraph (g) to FAR 52.204-16 when FAR 52.204-2 is included in a solicitation, paragraph (g) is added directly to FAR 52.204-16 for clarity and simplification.
- Instead of adding an Alternate I that would add a paragraph (f) to FAR 52.204-18 when FAR 52.204-16 is included in a solicitation, paragraph (f) is added directly to FAR 52.204-18 for clarity and simplification.
- In FAR 4.402(d), instead of requiring 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”, FAR 4.402(d) now states that “nondefense agencies with an existing DD Form 254 information system may use that system.”

For more on the proposed rule, see the August 2019 *Federal Contracts Perspective* article “Electronic Submission of DD Form 254 Proposed.”

CONTRACTORS WITH CHINESE TELECOMMUNICATIONS PROHIBITED

FAC 2020-08 consists of one interim rule, and it implements the NDAA for FY 2019 (Public Law 115-232), Section 889, Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment, paragraph (a)(1)(B), which was passed to combat national security and intellectual property threats that face the United States. FAC 2020-08 addresses the portion of Section 889 that prohibits executive agencies from entering into, or extending or renewing, a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system. The provision goes into effect August 13, 2020.

Section 889(a)(1) consists of two parts:

Paragraph (a)(1)(A) prohibits agencies from procuring, obtaining, extending, or renewing a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. This portion of Section 889 became effective one year after enactment of Public Law 115-232 – August 13, 2019.

Paragraph (a)(1)(B) prohibits agencies from entering into a contract (or extending or renewing a contract) with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. This portion of Section 889 becomes effective two years after enactment of Public Law 115-232 – August 13, 2020.

In other words, (a)(1)(A) prohibits government agencies from acquiring covered equipment, and (a)(1)(B) prohibits contracting with entities that use covered equipment.

Paragraph (a)(2) of Section 889 goes on to provide that “nothing in paragraph [a](1) shall be construed to: (A) prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or (B) cover telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.”

Section 889(f)(3) defines “covered telecommunications equipment or services” as “(A) telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); [or] (B) for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).”

Because Section 889(a)(1)(A) went into effect on August 13, 2019, FAC 2019-05 was issued with an effective date of August 13, 2019. It added FAR subpart 4.21, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, which included: the Section 889 definition for “covered telecommunications equipment or services”; the prohibition in Section 889(a)(1)(A); procedures contracting officers are to follow; waivers authorized to the prohibition; new FAR 52.204-24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment, which is to be included in all solicitations for contracts or orders under indefinite-delivery indefinite-quantity (IDIQ) contracts; and new FAR 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, which is to be included in all solicitations and contracts (see the September 2019 *Federal Contracts Perspective* article “FAC 2019-05 Prohibits Acquisition of Chinese Telecommunications and Surveillance Equipment”).

To implement Section 889(a)(1)(B), this interim rule supplements the FAC 2019-05 interim rule as follows:

- To FAR 2.101, Definitions, is added definitions for the following terms:
 - “*Backhaul* means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).”
 - “*Interconnection arrangements* means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.”
 - “*Reasonable inquiry* means an inquiry designed to uncover any information in the entity’s possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.”
 - “*Roaming* means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.”

The introduction to the interim rule states, “These terms are not currently defined in Section 889 or within the FAR. These definitions were developed based on consultation with subject matter experts as well as analyzing existing telecommunications regulations and case law.”

- The Section 889(a)(1)(B) prohibition is added to FAR 4.2102, Prohibition, as paragraph (b) (“on or after August 13, 2020, agencies are prohibited...”).
- Paragraph (a)(2) of FAR 4.2103, Procedures, is amended to state that the contracting officer may rely on the offeror’s representations in FAR 52.204-24.
- Authority for the head of the agency to waive the Section 889(a)(1)(B) prohibition is added to the authority for the head of the agency to waive the Section 889(a)(1)(A) prohibition in FAR 4.2104, Waiver. In addition, authority for the head of the agency to waive the two prohibitions for emergency acquisitions is added to FAR 4.2104 as paragraph (a)(3).
- FAR 13.201, General [actions at or below the micro-purchase threshold], is amended to add the Section 889(a)(1)(B) prohibition to the Section 889(a)(1)(A) prohibition in paragraph (j). The prohibition applies to all FAR contracts, including micro-purchases.
- FAR 39.101, Policy [for acquiring information technology], is amended to add the Section 889(a)(1)(B) prohibition to the Section 889(a)(1)(A) prohibition in paragraph (f).
- Paragraph (d) of FAR 52.204-24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment, is amended to require the offeror to complete of the following representation: “(2) After conducting a reasonable inquiry, for purposes of this representation, the offeror represents that it [] does, [] does not use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services.” **(EDITOR’S NOTE:** This representation does not have to be completed “if the offeror has represented that it ‘does not provide covered telecommunications equipment or services as a part of its offered products or services to the government in the performance of any contract, subcontract, or other contractual instrument’ in the provision at [FAR] 52.204-26, Covered Telecommunications Equipment or Services – Representation, or in paragraph (v) of the provision at [FAR] 52.212-3, Offeror Representations and Certifications-Commercial Items.” FAR 52.204-26, Covered Telecommunications Equipment or Services – Representation, was added by FAC 2020-03 to provide an annual representation, thus reducing the information collection burden imposed on the public. See the January 2020 *Federal Contracts Perspective* article “FAC 2020-03 Modifies Prohibition on Telecommunications.”)
- FAR 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, is amended to incorporate the definitions to the terms that were added to FAR 2.101 (see above) and to include the Section 889(a)(1)(B) prohibition as paragraph (b)(2). **(EDITOR’S NOTE:** The Section 889(a)(1)(A) prohibition in FAR 52.204-25 will continue to flow down to all subcontractors; however, the Section 889(a)(1)(B) prohibition will *not* flow down because the prime contractor is the only “entity” with which the agency “enters into a contract,” and an agency does not directly “enter into a contract” with any subcontractors at any tier. Therefore, FAR 52.204-25(e) now reads, “(e) *Subcontracts*. The contractor shall insert the substance of this clause, including this

paragraph (e) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.”

Comments on this interim rule must be submitted no later than September 14, 2020, identified as “FAR Case 2019-009” via the Federal eRulemaking Portal at <http://www.regulations.gov>.

The FAR Council is soliciting comments on the following questions regarding the anticipated affect on affected parties:

- To what extent do you currently use any equipment, system, or service that itself uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system?
 - The FAR Council is considering extending the Section 889(a)(1)(B) prohibition to the offeror and any affiliates, parents, and subsidiaries of the offeror that are domestic concerns, and expanding the representation in FAR 52.204-24(d)(2) so that the offeror represents on behalf of itself and any affiliates, parents, and subsidiaries of the offeror that are domestic concerns, whether they use covered telecommunications equipment or services. If the scope of rule were extended to cover affiliates, parents, and subsidiaries of the offeror that are domestic concerns, how would that affect your ability to comply with the prohibition?
- To the extent you use any equipment, system, or service that uses covered telecommunications equipment or services, how much do you estimate it would cost if you decide to cease such use to come into compliance with the rule?
- To what extent do you have insight into existing systems and their components?
- What equipment and services need to be checked to determine whether they include any covered telecommunications equipment or services?
 - What are the best processes and technology to use to identify covered telecommunications equipment or services?
 - Are there automated solutions?
- What are the challenges involved in identifying uses of covered telecommunications equipment or services (domestic, foreign and transnational) that would be prohibited by the rule?
- Do you anticipate use of any products or services that are unrelated to a service provided to the federal government and connects to the facilities of a third-party (*e.g.*, backhaul, roaming, or interconnection arrangements) that uses covered telecommunications equipment or services?
- To what extent do you currently have direct control over existing equipment, systems, or services in use (*e.g.*, physical security systems) and their components, as contrasted with contracting for equipment, systems, or services that are used by you within meaning of the statute yet provided by a separate entity (*e.g.*, landlords)? How long will it take if you decide

to remove and replace covered telecommunications equipment or services that your company uses?

- When a company identifies covered telecommunications equipment or services, what are the steps to take if you decide to replace the equipment or services?
 - What do companies do if their factory or office is located in foreign country where covered telecommunications equipment or services are prevalent and alternative solutions may be unavailable?
 - What are some best practices (*e.g.*, sourcing strategies) or technologies that can assist companies with replacing covered telecommunications equipment or services?
- Are there specific use cases in the supply chain where it would not be feasible to cease use of equipment, system(s), or services that use covered telecommunications equipment and services? Please be specific in explaining why cessation of use is not feasible.
 - Will the requirement to comply with this rule impact your willingness to offer goods and services to the federal government? Please be specific in describing the impact (*e.g.*, what types of products or services may no longer be offered, or offered in a modified form, and why).
 - The FAR Council recognizes there could be further costs associated with this rule (*e.g.*, lost business opportunities, having to relocate a building in foreign country where there is no market alternative). What are they?
 - What additional information or guidance do you view as necessary to effectively comply with this rule?
 - What other challenges do you anticipate facing in effectively complying with this rule?
- Do you have data on the extent of the presence of covered telecommunications equipment or services? If so, please provide that data.
- Do you have data on the fully burdened cost to remove and replace covered telecommunications equipment or services, if that is a decision that you decide to make? If so, please provide that data and identify how you would revise the estimated costs in the cost analysis.

EDITOR’S NOTE: Kim Herrington, Acting Principal Director, Department of Defense (DOD) Pricing and Contracting, has issued a memorandum with the subject “Implementation of the Section 889(a)(1)(B) Prohibition on Contracting with Entities Using Certain Telecommunications and Video Surveillance Services or Equipment.”

“The purpose of this memorandum is to facilitate implementation of interim FAR rule 2019-009 [FAC 2020-08], published on July 14, 2020, and effective on August 13, 2020,” writes Mr. Herrington. Since Section 889 applies to the Department of Defense and the rest of the federal government, this memorandum contains much information that is helpful. It explains what contracting officers are required to do to comply with Section 889(a)(1)(B); FAR 52.204-24 and FAR 52.204-25 requirements and procedures; exceptions; waivers; emergency procurements;

provides hyperlinks to additional information; and provides a “top level matrix” detailing who is to take what action under various circumstances.

The memorandum is available at <https://www.acq.osd.mil/dpap/policy/policyvault/USA001557-20-DPC.pdf>.

In addition, the General Services Administration (GSA) will be hosting a live and recorded virtual webinar on August 12, 2020, at 1:00 pm regarding its implementation of Section 889. The webinar will be held virtually and the call-in information will be made available to registrants. Industry partners wishing to virtually attend must register at https://gsa.zoomgov.com/webinar/register/WN_hQ6tHTRDR-mMNnRRxJy22Q. Members of the press, in addition to registering for this event, must also RSVP to press@gsa.gov by August 10, 2020.

GSA’s webinar features panel leaders from GSA’s business lines who will explain how they are implementing Section 889 FAR rule in their specific business lines. Panelists will also answer questions that have been pre-collected from industry. Send in your questions no later than close of business on August 5, 2020, Eastern to gsaombudsman@gsa.gov.

The webinar panelists will be:

Michael Thompson, Senior Policy Advisor, General Services Acquisition Policy Division, Office of Governmentwide Policy, Moderator

Stephanie Shutt, Director, Multiple Awards Schedule Program Management Office, Federal Acquisition Service (FAS)

Mary Gartland, Director City Pair Program, Office of Travel, Employee Relocation, and Transportation, FAS

Lawrence Hale, Director, IT Security Subcategory Office of Information Technology Category, FAS

Julie Milner, Director, Special Programs Division, Office of Project Delivery, Office of Design and Construction, Public Buildings Service (PBS)

Chip Pierpont, Director, Innovation Technology and Performance Division, Office of Facilities Management, PBS

Justin Hawes, Division Director, Lease Policy and Innovation Division, Office of Leasing, PBS

Len Fedoruk, Director, Vehicle Purchasing Division, Office of Motor Vehicle Management, FAS

For additional information, contact Patricia Richardson at patricia.m.richardson@gsa.gov or Maria Swaby at 202-208-0291.

UNITED STATES-MEXICO-CANADA AGREEMENT IN EFFECT

On July 1, 2020, the United States-Mexico-Canada Agreement Implementation Act (Public Law 116-113). went into effect, superseding the North American Free Trade Agreement (NAFTA) (Public Law 103-182).

To ensure agencies’ acquisition regulations reflect this change, the Civilian Agency Acquisition Council (CAAC) issued a memorandum authorizing civilian agencies to issue class deviations from the FAR to implement the United States-Mexico-Canada Agreement (USMCA), and the Department of Defense (DOD) issued a FAR deviation to implement the USMCA. **(EDITOR’S NOTE:** The CAAC memorandum serves as consultation in accordance with FAR

1.404, Class Deviations, thus allowing agencies to authorize deviations to their acquisition regulations to reflect the USMCA. FAR 1.404(a)(1) states “an agency official who may authorize a class deviation, before doing so, shall consult with the chairperson of the Civilian Agency Acquisition Council...” So far, the Department of the Treasury is the only civilian agency to issue a deviation, to the Department of the Treasury Acquisition Regulation [DTAR].)

The two documents remove references in the FAR and the DFARS to the “NAFTA” and “19 USC 3301 note” [definitions pertinent to NAFTA] and replaces them with references to the “USMCA” and “19 USC chapter 29 (sections 4501-4732),” respectively.

In addition, “Canada” is removed from all listings of Free Trade Agreement countries in the FAR and the Defense FAR Supplement (DFARS). This includes paragraph (b)(1) of FAR 22.1503, Procedures for Acquiring End Products on the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor (and FAR 52.222-19, Child Labor – Cooperation with Authorities and Remedies), and Table 1 in paragraph (b) of FAR 25.402, General [regarding trade agreements], where the \$25,000 threshold for Canadian products is no longer applicable. This is because Chapter 13 of the USMCA (which pertains to government procurement) applies only to the United States and Mexico. However, Canada is still a designated country under the World Trade Organization Government Procurement Agreement (WTO GPA).

The following are other FAR sections and clauses that are revised by the CAAC deviation:

- FAR 18.120, Use of Patented Technology Under the North American Free Trade Agreement, is removed because it is no longer authorized.
- FAR 27.204-1, Use of Patented Technology Under the North American Free Trade Agreement, is renamed “Use of Patented Technology Under the United States-Mexico-Canada Agreement,” and the detailed requirements regarding patented technology are deleted and replaced with “When questions arise with regard to use of patented technology under the USMCA, the contracting officer should consult with legal counsel.” This is because the requirements are no longer applicable or authorized.

The DOD deviation provides replacements for the following DFARS provisions and clauses:

- DFARS 252.225-7013, Duty-Free Entry.
- DFARS 252.225-7017, Photovoltaic Devices.
- DFARS 252.225-7018, Photovoltaic Devices Certificate.
- DFARS 252.225-7021, Trade Agreements (Basic and Alternate II).
- DFARS 252.225-7035, Buy American Free Trade Agreements Balance of Payments Program Certificate (Basic and Alternates II, IV, and V) [contracting officers are directed *not* to use Alternates I and III].
- DFARS 252.225-7036, Buy American Free Trade Agreements Balance of Payments Program (Basic and Alternates II, IV, and V) [contracting officers are directed *not* to use Alternates I and III].
- DFARS 252.225-7045, Balance of Payments Program Construction Material Under Trade Agreements (Basic and Alternates I, II, and III).

GSA PLANS TO REVAMP SMALL BUSINESS GWAC PROGRAM

The General Services Administration (GSA) has announced that it “is planning a new approach to its small business governmentwide acquisition contracts (GWACs) to help federal agencies partner with small businesses in various socioeconomic categories to meet the government’s information technology (IT) requirements.” It’s first step was the cancellation of the Alliant 2 Small Business (A2SB) solicitation. “Upon development and approval of the updates and new requirements - [it] will be re-procured under a new solicitation.”

EDITOR’S NOTE: A GWAC is an indefinite-delivery contract for various types of IT supplies and services that are negotiated, awarded, and administered by one agency which then makes it available for use by other agencies. Typically, GWACs have several contractors providing the same or similar IT supplies or services.

The A2SB had a troubled life. It was intended to provide vehicles for small businesses to offer up to \$15 billion of artificial intelligence (AI), distributed ledger technology (DLT), robotic process automation (RPA), and other types of emerging technologies. Over 500 firms submitted offers, and 61 firms received awards in December 2017. However, protests caused GSA to cancel the awards and resolicit. In February 2018 GSA made awards to 81 contractors, but more protests caused GSA to cancel all 81 awards. In August 2019 GSA resolicited once more and announced that it would increase the number of awards to 120, but GSA restricted competition to those firms that had submitted offers on the previous solicitations. This produced more protests, and GSA suspended all action until announcing the cancellation of A2SB on July 2.

In light of the A2SB cancellation, GSA is encouraging federal customers that are looking for a contract vehicle to fill IT services needs from small business prime contractors to use GSA’s portfolio of IT contracts, including the 8(a) STARS II [Streamlined Technology Application Resource for Services] GWAC (which had its ceiling raised from \$15 billion to \$22 billion in June), the VETS 2 GWAC (which is set-aside for Service-Disabled, Veteran-Owned Small Businesses [SDVOSB]), and the Multiple Award Schedule - Information Technology (formerly IT Schedule 70). “Businesses may continue to offer solutions through the Multiple Award Schedule, team with existing GSA GWAC contract holders, and consider the 8(a) STARS III GWAC solicitation.”

Four days later, on July 6, GSA announced it was issuing Request for Proposals (RFP) 47QTCB20R0005 for the 8(a) STARS III GWAC. The GWAC, reserved for firms that are participating in the Small Business Administration’s (SBA) 8(a) program, will provide IT services and IT services-based solutions that may include the integration of ancillary support necessary and integral to the IT services being acquired. It will have a contract ceiling of \$50 billion, and will include a greater focus on supply chain security, emerging technologies, and performance outside of the continental United States (OCOUS).

Offers are due August 19, 2020, and must be submitted via the Telecommunication Services Category Portal at <https://tscportal.fas.gsa.gov/>.

Visit <http://www.FedGovContracts.com>

COVID-19 PERSISTS, PRECIPITATES MORE ACTIONS

Since the COVID-19 pandemic has proven to be more persistent than anticipated, various federal agencies have decided to provide more acquisition guidance and direction, to extend the expiration dates of authorities that were granted to combat COVID-19, and to take additional actions, even overseas.

■ **Office of Management and Budget (OMB) Memorandum “Additional Guidance on Federal Contracting Resiliency in the Fight Against the Coronavirus Disease (COVID-19)”**: This memorandum, issued by Michael Rigas, Acting Deputy Director for Management, supplements the guidance provided in the OMB memoranda “Managing Federal Contract Performance Issues Associated with the Novel Coronavirus (COVID-19)” (see the April 2020 *Federal Contracts Perspective* article “Coronavirus Overruns United States, Emergency Acquisition Authorities Invoked”), and “Preserving the Resilience of the Federal Contracting Base in the Fight Against the Coronavirus Disease 2019 (COVID-19)” (see the May 2020 *Federal Contracts Perspective* article “Acquisition Community Fighting COVID-19 On a Multitude of Fronts”).

The memorandum forwards a set of “frequently asked questions” (FAQs) which are intended “to provide additional and updated guidance and highlight information and examples from agency guidance and activities that may further assist the acquisition workforce as it addresses impacts due to COVID-19. They also include reminders on a few potentially untapped flexibilities.”

The following are some of the FAQs and their answers:

- Is use of the purchase card encouraged for making open market purchases both below and above the micro-purchase threshold as part of an agency's strategy for timely response to COVID-19 requirements? **Answer:** Yes.
- Section 3610 of the Coronavirus Aid, Relief, and Economic Security Act (CARES) Act (Public Law 116-136) states that any reimbursement for paid leave must support maintaining the contractor in a “ready state.” What is a “ready state?” **Answer:** “Ready state” refers to a contractor’s ability to mobilize and resume performance in a timely manner as local conditions permit, consistent with the national guidelines for *Opening Up America Again* (see “OMB and Office of Personnel Management (OPM) Memorandum ‘Aligning Federal Agency Operations with the National Guidelines for *Opening Up America Again*’” under the May 2020 *Federal Contracts Perspective* article “Acquisition Community Fighting COVID-19 On a Multitude of Fronts”).
- Has the FAR Council developed a standard clause for the implementation of Section 3610? **Answer:** No. However, a few of the agency guidance documents include clauses that agencies are encouraged to review and adopt or adapt, as appropriate, in their contract modifications to clearly communicate expectations, such as for contractor reporting on credits.
- May a contractor be reimbursed for profit under Section 3610? **Answer:** Reimbursement should be limited to actual cost incurred and should not include profit.

■ **OMB Memorandum “Buying for America”:** This memorandum, issued by Russell T. Vought, Acting Director of OMB, reminds agencies that “the fourth quarter of each fiscal year (FY) is typically the busiest period for our country's buying offices, with up to 40% of total contract spending occurring during this three-month period. This year is no different. As the country reopens and recovers from the coronavirus (COVID) pandemic and our public servants work to meet mission needs – both non-COVID and COVID related - agencies are encouraged to keep the following considerations in mind to support timely awards and maximize return on investment from each taxpayer dollar.”

The following are the considerations identified in the memorandum:

- **Take full advantage of acquisition flexibilities and innovative tools.** “This week, the President’s Management Agenda unveiled a new cross-agency priority goal (CAP Goal) on ‘frictionless acquisition.’ This CAP Goal creates a management platform to leverage modern buying strategies that have been shown to achieve just-in-time delivery with improved customer satisfaction and enable access to a broader and more innovative suite of companies and solutions.” Resources and opportunities for collaboration are available at <https://www.performance.gov/CAP/frictionless-acquisition/>.
- **Use the resources of category management.** “Procurement involving common needs has been organized around categories of spending led by market experts who share business intelligence and help agencies avoid duplicative contracting work. This business structure has saved taxpayers more than \$27 billion since FY 2016 and made it much easier for buyers to make rapid, well-informed decisions on how best to acquire IT hardware, security, consulting services and many other everyday needs that account for more than half of all contract spending...Agencies should bookmark the category management dashboards on the acquisition gateway at <https://hallways.cap.gsa.gov/app/#/>.
- **Leverage small businesses, the AbilityOne Program, and Historically Black Colleges and Universities (HBCUs).** “Small businesses are the engine of the American economy and are responsible for bringing some of the most innovative solutions into the federal market space...The AbilityOne Program is one of the largest U.S. employers of people who are blind or have severe disabilities. By leveraging the federal acquisition system, AbilityOne and its network of nonprofit organizations provide approximately 45,000 jobs for this underemployed segment of our economy...HBCUs have helped our country make important headway in myriad academic disciplines, and they can be deemed uniquely qualified to provide solutions for the African American community, especially for requirements related to public health.”
- **Buy American.** “[Executive Order] EO 13881 strengthens the general preference for American-made goods and, for the first time in 65 years, increases the percentage of U.S. manufactured content that must be in a product to qualify for the preference, including a very high standard for iron and steel.” For more on EO 13881, see the August 2019 *Federal Contracts Perspective* article “EO Promotes American-Made Goods, Products, Materials.”

- **Accelerate payments for all businesses.** “Agencies are required to provide accelerated payments, to the fullest extent permitted by law, with a goal of 15 days after receipt of a proper invoice and all other required documentation. Agencies are encouraged, as they are able, to extend this goal to medium and large businesses during the pendency of the fight against COVID-19.” For more on the DOD final rule addressing accelerated payments to small businesses, see “Accelerated Payments for Small Business Contractors” under the May 2020 *Federal Contracts Perspective* article “DOD Cranks Up the Non-COVID-19 Rules, Too!” For more on the Civilian Agency Acquisition Council (CAAC) memorandum authorizing agencies to deviate from the FAR to accelerate payments to small businesses, see “Deviation Providing for Accelerated Payments to Small Business Contractors and Subcontractors” under the May 2020 *Federal Contracts Perspective* article “Two Proposed FAR Rules and a Deviation Issued.”

■ **Department of Defense (DOD) Memorandum “FedMall COVID-19 Non-Medical Personal Protective Equipment Contingency Corridor for Small Business”:** This memorandum from Kim Herrington, Acting Principal Director, Defense Pricing and Contracting, announces that the Defense Logistics Agency (DLA) has created a Contingency Corridor within the FedMall Marketplace (<https://www.fedmall.mil/>) to allow DOD small business contractors to purchase non-medical personal protective equipment (PPE) and similar material offered by commercial vendors. DLA implemented this corridor for small business contractors to maintain a safe workplace and ensure continued performance under DOD government contracts.

The restricted corridor provides the ability to order directly against non-DLA supplier catalogs that are posted on FedMall without a government contract. The corridor has vendor catalogs offering over 200 items such as nonmedical masks, hand sanitizer, temperature devices, disinfectant wipes, and materials to support social distancing such as Plexiglas. Purchases on FedMall are limited to \$10,000.

DOD small business contractors must obtain contracting officer authorization in accordance with FAR subpart 51.1, Contractor Use of Government Supply Sources, and DFARS 251.102, Authorization to Use Government Supply Sources. “As a part of establishing the authorization, the contractor must be assigned a DOD Activity Address Code (DODAAC) with requisitioning authority for use at FedMall, as well as possess a valid authentication credential, such as a Common Access Card (CAC), Personal Identify Verification card, or other electronic certificate that uniquely verifies identity such as a Public Key Infrastructure certificate. If the contractor does not already have a DODAAC, either the contracting officer or the contractor may initiate a request for one at <https://www.transactionservices.dla.mil/EDODAAD/index.asp>, with the two following exceptions: (a) if the contractor supports Army, requests can be initiated at <https://www.logsa.army.mil/> or by contacting usarmy.redstone.logsa.mbx.acsp@mail.mil; or (b) if the contractor supports Air Force, requests can be initiated at <https://dodaac.wpafb.af.mil/RequestDodaac.aspx> (CAC required) or by contacting 437SCOS.GWR.DoDAAC@us.af.mil.”

In addition, contracting officers will additionally need to authorize their small business contract holders by having them complete the “Contractor Registration Form for Access to the FedMall Contingency Store,” which is Attachment 1 of the memorandum. Upon completion by the small business contractor, the contracting officer will need to complete and sign the form, then submit it following the instructions on the form. The FedMall Program Office will rely on

the contracting officer's authorization as confirmation of the contractor's size status as a small business.

The FedMall Quick Start Guide is provided as Attachment 2 of the memorandum.

EDITOR'S NOTE: FedMall is an e-commerce ordering system for DOD, federal, state, and authorized local agencies to search for and acquire products from government reserves and commercial sources. Buyers have access to tens of millions of individual items of supply, from centrally-managed DOD and GSA assets to commercial off-the-shelf (COTS) products.

■ **DOD Memorandum “Guidance for Assessment of Other COVID-19 Related Impacts and Costs”:** This memorandum from Kim Herrington, Acting Principal Director, Defense Pricing and Contracting, provides additional guidance and warnings regarding the execution of contract modifications in response to the COVID-19 pandemic. “DOD contractors may have already incurred, and will likely continue to incur, delays and costs associated with their response to the COVID-19 pandemic. However, to date, no funds have been appropriated specifically for reimbursement of these costs.”

Mr. Herrington points out that DFARS Class Deviation 2020-O0013, CARES Act Section 3610 Implementation, provides a means for affected contractors to request reimbursement of costs incurred for paid leave granted to their employees during the COVID-19 pandemic (see “DOD Deviation 2020-O0013 on CARES Act Section 3610 Implementation” under the May 2020 *Federal Contracts Perspective* article “Acquisition Community Fighting COVID-19 on a Multitude of Fronts”). The purpose of Section 3610 of the CARES Act (Public Law 116-136) is to maintain the contracting workforce in a ready state if facility closures cause work stoppage and affected employees are unable to telework. Subject to the availability of funds, a contracting officer may modify contracts or other agreements to reimburse up to 40 hours per week of paid leave, including sick leave, to protect the life and safety of government and contractor personnel during the public health emergency declared for COVID-19.

“Contractors may face further unplanned costs due to COVID-19, such as those related to providing PPE [personal protective equipment] to employees, additional cleaning of work areas, changes to work spaces to accommodate social distancing, and delays in delivering and/or receiving purchased materials,” Mr. Herrington continues. “Where allowable and allocable, these costs may be recovered on cost-reimbursement and incentive contracts.”

However, unlike contractors performing under cost-type contracts, contractors performing under fixed-price contracts generally must bear the risk of cost increases, including those due to COVID-19, but contracting officers may, subject to the availability of funds, modify contracts to reflect changes to the government's needs as a result of COVID-19. “The costs that would be associated with such COVID-19 related, government-directed change modifications may be above and beyond current available funding. In such cases, contracting officers may not direct a change or execute a modification that results in an increase to the contract price until and unless the department [DOD] receives additional appropriations.”

■ **DOD Memorandum “Temporary Redeployment of Certain Contractor Employees from Iraq and Syria and Request for Information”:** This memorandum from Kim Herrington, Acting Principal Director, Defense Pricing and Contracting, directs contracting officers responsible for contracts with performance in Iraq and Syria to comply with the Combined Joint Task Force – Operation Inherent Resolve (CJTF-OIR) memorandum (which is attached) as soon as possible to respond to COVID-19 force health protection conditions in theater. “Based on

CJTF-OIR modeling of the spread of COVID-19, there is insufficient medical capability at each of the main base locations in Iraq and Syria to quarantine and treat all personnel who may become infected.”

To comply with the CJTF-OIR, contracting officers are to take the following actions:

- Complete and submit the CJTF-OIR Contract Personnel Movement Tracker to identify the number of “at-risk” contractor personnel performing in Iraq and Syria. To complete the tracker, contracting officers and their contracting officer representatives (COR) will determine what contract functions and services are mission-essential, then notify the contractors of those mission-essential functions and services. After this notification, the contractor will determine which of its at-risk employees are mission-essential based on the functions the employee performs and the availability of other means to mitigate the loss of redeploying the at-risk contractor personnel. The completed spreadsheet must be provided to the CJTF-OIR Operational Contract Support Integration Cell (OCSIC) at centcom.arifjan.cjtf-oir.list.cj4-ocsdirectorate@mail.mil by July 30, 2020.
- Inform contractors with personnel performing in Iraq and Syria that they must redeploy all contractor personnel identified as non-mission essential “at-risk” personnel. Contractors must commence redeploying their identified non-mission essential “at-risk” personnel in Iraq and Syria as soon as possible, and have such personnel ready to move no later than August 1, 2020.
- Direct contractors to adhere to the current theater entry requirements when deploying their personnel to the CJTF-OIR Combined Joint Operations Area (CJOA). Full compliance with all theater entry requirements outlined in the Foreign Clearance Guide (FCG) at <https://www.fcg.pentagon.mil/fcg.cfm> is required by DFARS 252.225-7995 Contractor Personnel Performing in the United States Central Command Area of Responsibility (DEVIATION 2017-O-0004) (see “Contractor Personnel Performing in U.S. Central Command Area of Responsibility” under the October 2017 *Federal Contracts Perspective* article “DOD Issues Four Additional Class Deviations”). “Due to the COVID-19 pandemic, theater entry requirements have been recently updated, and contractors should check the FCG frequently as additional updates are possible.”

■ **General Services Administration (GSA) Extension of Purchase Exceptions From the AbilityOne Program:** The General Services Administration (GSA) has extended, from July 31, 2020, to September 30, 2020, the temporary purchase exceptions that the AbilityOne Program has granted to GSA because nonprofit agencies (NPAs) cannot meet GSA’s requirements within needed timeframes during the COVID-19 pandemic. The list of items covered by this temporary purchase exception include towelettes, hand sanitizer, lotion hand soap, disposable gloves, and utility pails.

For more on the original memorandum, see “GSA Memorandum on Purchase Exceptions From the AbilityOne Program in Response to COVID-19” in the June 2020 *Federal Contracts Perspective* article “Running Out of Actions to Take Against COVID-19.”

EDITOR’S NOTE: The AbilityOne Program is one of the largest sources of employment in the United States for people who are blind or have significant disabilities. Approximately 500

nonprofit organizations employ these individuals and provide quality products and services to the federal government at a fair market price.

■ **GSA Extension of Exception for Non-Availability for Trade Agreements and Buy American Statute Clauses:** GSA has extended, from August 1, 2020, to September 30, 2020, the determination that certain supplies are temporarily unavailable in sufficient quantity or satisfactory quality as the United States responds to COVID-19, and that these supplies are exempt from the trade agreements (see paragraph (c) of FAR 25.403, World Trade Organization Government Procurement Agreement and Free Trade Agreements) and the Buy American Act (see paragraph (b) of FAR 25.103, Exceptions [to the Buy American Act]).

The items covered by this non-availability exception are: N95 masks (Federal Supply Classification [FSC] code 4240, Safety and Rescue Equipment); sodium hypochlorite (bleach) (FSC 6810, Chemicals); disinfectants including cleaners, sprays and wipes (FSC 6840, Pest Control Agents and Disinfectants); cleaners, including sanitizing surface and floor cleaners (FSC 7930, Cleaning and Polishing Compounds and Preparations); and hand sanitizers, soaps, and dispensers (FSC 8520, Personal Toiletry Articles).

For more on original determination, see “General Services Administration (GSA) Regulation (GSAR) Non-Availability Exception for Trade Agreements and Buy American Statute Clauses” in the May 2020 *Federal Contracts Perspective* article “Acquisition Community Fighting COVID-19 on a Multitude of Fronts.”

■ **Department of Energy (DOE) FAR Class Deviation Eliminating Hard Copy Original Documents, Signatures, Notarization, and Seals:** The DOE joins the Department of Health and Human Services (HHS), the Department of Homeland Security (DHS), the Department of the Interior (DOI), the Department of Education, and the Department of Commerce (DOC) in issuing a deviation from the FAR to eliminate hard copy original documents, signatures, notarization, seals on bonds, and other seals for certain contract requirements, because it is difficult or impossible to obtain the services of notaries public during the COVID-19 pandemic. DOE used the Civilian Agency Acquisition Council (CAAC) memorandum on the subject as the basis for their required consultations with the CAAC (see “Civilian Agency Acquisition Council (CAAC) Memorandum on FAR Deviation Eliminating Hard Copy Original Documents, Signatures, Notarization, and Seals” under the June 2020 *Federal Contracts Perspective* article “Running Out of Actions to Take Against COVID-19”). (**EDITOR’S NOTE:** DOD is not a member of the CAAC, so it has issued its own deviation that parallels the CAAC memorandum.)

GSA LAUNCHES IT ACQUISITION UNIVERSITY

The General Services Administration (GSA) has announced the launch of its new online training solution for acquisition professionals, the IT [Information Technology] Acquisition University (ITAU) (<https://hallways.cap.gsa.gov/app/#/gateway/it-acquisition-university>). ITAU offers training on such topics as cybersecurity, cloud migration, and federal IT modernization. While much of the portal is publicly accessible, some content is restricted to government personnel only. ITAU will eventually offer live webinars from GSA’s experts in IT and acquisition.

PROMPT PAYMENT INTEREST RATE SET AT 1 1/8%

The Treasury Department has established 1 1/8% (1.125%) as the interest rate for the computation of payments made between July 1, 2020, through December 31, 2020, under the Prompt Payment Act and the Contracts Disputes Act. This rate is also used in facilities capital cost of money calculations.

The interest rate for the prior six-month period (January 1, 2020, through June 30, 2020) was 2 1/8% (2.125%). The interest rate for July 1, 2019, through December 31, 2019, was 2 5/8% (2.625%).

All prompt payment interest rates since 1980 (in six-month increments) are available at <https://www.fiscal.treasury.gov/prompt-payment/rates.html>.

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

NONMANUFACTURING RULE FOR DIABETIC TEST STRIPS WAIVED

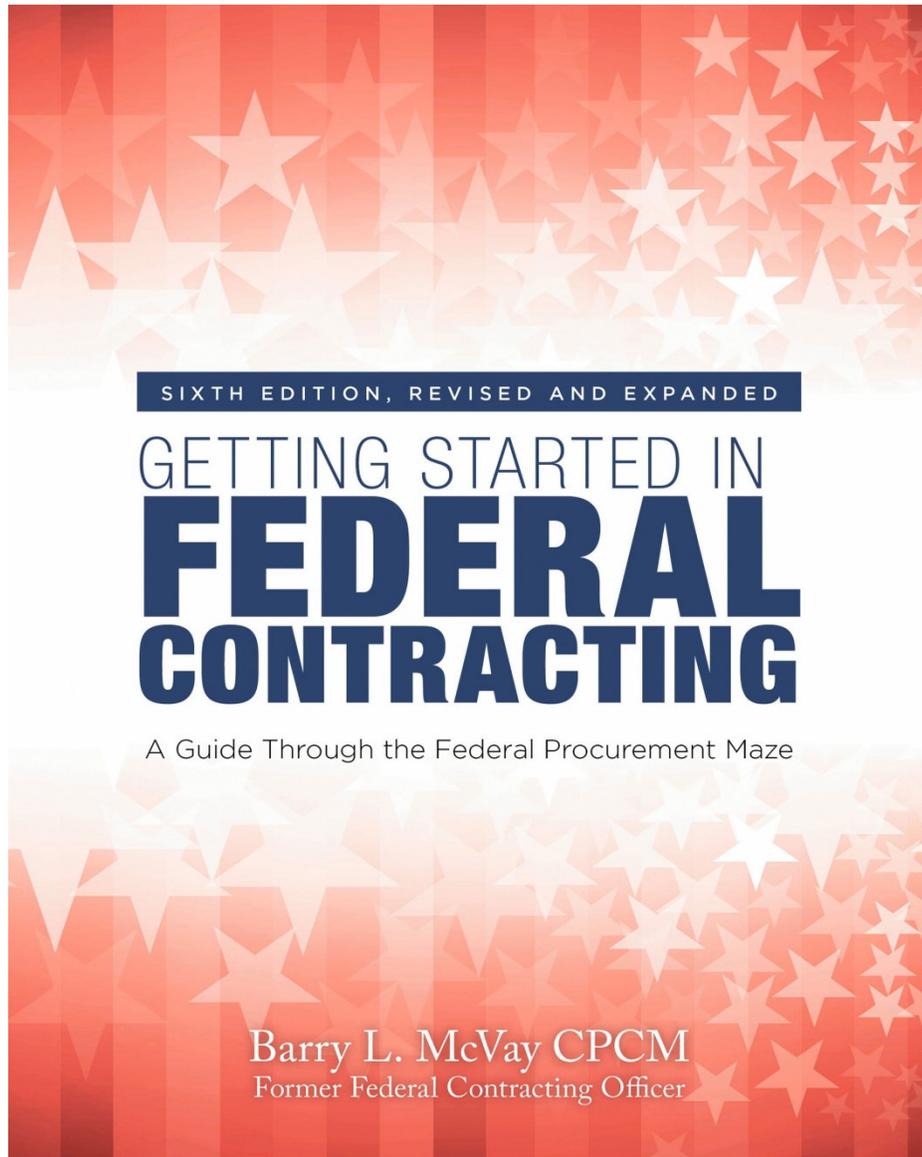
The Small Business Administration (SBA) is waiving the nonmanufacturer rule for diabetic test strips under North American Industry Classification System (NAICS) code 325413, In-Vitro Diagnostic Substance Manufacturing, and Product Service Code (PSC) 6515, Medical and Surgical Instruments, Equipment, and Supplies.

SBA invited the public to comment on the proposed waiver or to provide information on potential small business sources for these products. No comments were received in response to the proposed waiver, so SBA has determined that there are no small business manufacturers of this class of products, and it is granting the nonmanufacturing rule waiver. This waiver will allow qualified regular dealers to supply the product of any manufacturer on a federal contract set aside for small businesses, service-disabled veteran-owned small businesses (SDVOSB), women-owned small businesses (WOSB), economically disadvantaged women-owned small businesses (EDWOSB), businesses in historically underutilized business zones (HUBZones), or participants in the SBA's 8(a) Business Development program.

For more on the proposed nonmanufacturing rule waiver, see the May 2020 *Federal Contracts Perspective* article "Nonmanufacturer Rule Waiver for Diabetic Test Strips."

EDITOR'S NOTE: The SBA regulation on the nonmanufacturer rule is in Title 13 of the Code of Federal Regulations (CFR), Business and Credit Administration; part 121, Small Business Size Standards; under paragraph (b) of 121.406, How Does a Small Business Concern Qualify to Provide Manufactured Products or Other Supply Items Under a Small Business Set-Aside, Service-Disabled Veteran-Owned Small Business Set-Aside, WOSB [women-owned small business] or EDWOSB [economically disadvantaged women-owned small business] Set-Aside, or 8(a) Contract? (13 CFR 121.406(b)) The SBA regulation on the waiver of the nonmanufacturer rule is 13 CFR 121.1202, When Will a Waiver of the Nonmanufacturer Rule Be Granted for a Class of Products?

More information on the nonmanufacturer rule and class waivers can be found at <https://www.sba.gov/partners/contracting-officials/small-business-procurement/non-manufacturer-rule>. A complete list of products for which the nonmanufacturer rule has been waived is available at <https://www.sba.gov/document/support-non-manufacturer-rule-class-waiver-list>.



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