

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR–2007–0002, Sequence 10]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–24; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2005–24. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at <http://www.regulations.gov>.

DATES: For effective dates and comment dates, see separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to each FAR case. Please cite FAC 2005–24 and the specific FAR case numbers. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

LIST OF RULES IN FAC 2005–24

Item	Subject	FAR case	Analyst
I	Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission.	2005–011	Woodson.
II	Numbered Notes for Synopses	2006–016	Woodson.
III	Trade Agreements—New Thresholds (Interim)	2007–016	Murphy.
IV	New Designated Countries—Dominican Republic, Bulgaria, and Romania	2006–028	Murphy.
V	FAR Part 30—CAS Administration	2005–027	Loeb.
VI	Common Security Configurations	2007–004	Davis.

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow.

For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–24 amends the FAR as specified below:

Item I—Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission (FAR Case 2005–011)

This final FAR rule addresses the issues of contractor personnel that are providing support to the mission of the United States Government in a designated operational area or supporting a diplomatic or consular mission outside the United States, but are not authorized to accompany the U.S. Armed Forces. This final FAR rule clarifies that contractor personnel are only authorized to use deadly force in self-defense or in the performance of security functions, when use of such force reasonably appears necessary to execute their security mission. The purpose and effect of the rule is to relieve the perceived burden on contractors operating without consistent guidance or a standardized clause in a contingency operation or otherwise risky environment.

Item II—Numbered Notes for Synopses (FAR Case 2006–016)

This final rule amends the Federal Acquisition Regulation (FAR) to update and clarify policy for synopses of proposed contract actions and to delete all references to Numbered Notes (Notes) in the FAR and Federal Business Opportunities (FedBizOpps) electronic publication. The prescriptions for Numbered Notes were deleted from the FAR in a former FAR case and transitioned from the Commerce Business Daily to FedBizOpps actions. This transition resulted in other synopses-related changes that were not captured in the associated FAR language revision. Additionally, the transition to the electronic FedBizOpps publication for solicitation and other announcements rendered these Notes obsolete or outdated.

Item III—Trade Agreements—New Thresholds (FAR Case 2007–016) (Interim)

This interim rule adjusts the thresholds for application of the World Trade Organization Government Procurement Agreement and the other Free Trade Agreements as determined by the United States Trade Representative, according to a formula set forth in the agreements.

Item IV—New Designated Countries—Dominican Republic, Bulgaria, and Romania (FAR Case 2006–028)

This final rule converts, without change, the interim rule published in the **Federal Register** at 72 FR 46357, August 17, 2007. No comments were received in response to the interim rule. The effective date of the rule was August 17, 2007. The interim rule allowed contracting officers to purchase the goods and services of the Dominican Republic without application of the Buy American Act if the acquisition is subject to the Free Trade Agreements. The threshold for applicability of the Dominican Republic-Central America-United States Free Trade Agreement is \$67,826 for supplies and services (the same as other Free Trade Agreements to date except Morocco, Bahrain, Israel, and Canada) and \$7,443,000 for construction (the same as all other Free Trade Agreements to date except NAFTA and Bahrain). The interim rule also added Bulgaria and Romania to the list of World Trade Organization Government Procurement Agreement countries wherever it appears.

Item V—FAR Part 30—CAS Administration (FAR Case 2005–027)

This final rule amending the Federal Acquisition Regulation (FAR) to implement revisions to the regulations related to the administration of the Cost Accounting Standards (CAS). Among other changes, the final rule streamlines

the process for submitting, negotiating, and resolving cost impacts resulting from a change in cost accounting practice or noncompliance with stated practices.

Item VI—Common Security Configurations (FAR Case 2007–004)

This final rule amends the Federal Acquisition Regulation to require agencies to include common security configurations in new information technology acquisitions, as appropriate. The revision reduces risks associated with security threats and vulnerabilities and will ensure public confidence in the confidentiality, integrity, and availability of Government information. This final rule requires agency contracting officers to consult with the requiring official to ensure the proper standards are incorporated in their requirements.

Dated: February 19, 2008.

Al Matera,

Director, Office of Acquisition Policy.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005–24 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005–24 is effective February 28, 2008, except for Items I, II, V, and VI which are effective March 31, 2008.

Dated: February 14, 2008.

Shay D. Assad,

Director, Defense Procurement and Acquisition Policy.

Dated: February 19, 2008.

David A. Drabkin,

Acting Chief Acquisition Officer & Senior Procurement Executive, Office of the Chief Acquisition Officer, U.S. General Services Administration.

Dated: February 13, 2008.

James A. Balinskas,

Acting Assistant Administrator for Procurement, National Aeronautics and Space Administration.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 7, 12, 25, and 52

[FAC 2005–24; FAR Case 2005–011; Item I; Docket 2008–0001; Sequence 1]

RIN 9000–AK42

Federal Acquisition Regulation; FAR Case 2005–011, Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) in order to address the issues of contractor personnel that are providing support to the mission of the United States Government in a designated operational area or supporting a diplomatic or consular mission outside the United States, but are not authorized to accompany the U.S. Armed Forces.

DATES: Effective Date: March 31, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAC 2005–24, FAR case 2005–011.

SUPPLEMENTARY INFORMATION:

A. Background

This rule creates a new FAR Subpart 25.3 to address issues relating to contracts performed outside the United States, including new section 25.301, Contractor personnel in a designated operational area or supporting a diplomatic or consular mission outside the United States. The rule also adds a new clause entitled “Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States.” This clause will not apply to contractor personnel authorized to accompany the U.S. Armed Forces because they are covered by the Defense Federal Acquisition Regulations

Supplement (DFARS) 225.7402 and the clause at 252.225–7040.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 71 FR 40681, July 18, 2006, under the case title “Contractor Personnel in a Theater of Operations or at a Diplomatic or Consular Mission.” The public comment period ended on September 18, 2006. Because the FAR proposed rule and the DFARS interim rule under DFARS Case 2005–D013 are similar in many respects, the Councils reviewed the comments on both rules together, except for those issues that applied only to the Department of Defense. The Councils received 6 comments on the FAR rule and 10 comments on the DFARS rule.

The most widespread concern of respondents centered on the paragraph in the clause that sets forth the law of war principles regarding use of deadly force by contractors. There was strong objection to the perception that the U.S. Government is now hiring contractors as mercenaries. These comments on the use of deadly force have been divided into two categories: The right to self-defense, and private security contractors.

1. Right to Self-Defense

a. Distinction Between Self-Defense and Combat Operations (Relates to FAR 52.225–19(B)(3)(I))

Comment: One respondent states that there is an inherently vague line between what constitutes “defense” and “attack” which is plainly crossed when the terms are applied in asymmetric warfare. It is clear, they say, that contractors employing self-defense measures would have to undertake a wide array of combat activities to assure their safety. They refer to these contracts as “Self Defense Contracts.”

Response: The FAR language recognizes that individuals have an inherent right to self-defense. The language does not require self-defense, just authorizes it when necessary. It does not authorize preemptive measures.

b. Whether the Right of Self-Defense Should Be Modified to “Personal” Self-Defense?

Comment: One respondent recommends insertion of the word “personal” before “self-defense” in the DFARS rule, stating that this will “clarify that civilians accompanying the force are authorized to use deadly force only in defense of themselves, rather than the broader concept of unit self-defense or preemptive self-defense.”

Response: The Councils concluded that this is not a problem in the FAR,