

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2008–0003, Sequence 2]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–27; 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) 2005–27. 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 2005–27 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 2005–27

Item	Subject	FAR case	Analyst
I	Correcting Statutory References Related to the Higher Education Act of 1965	2007–020	Cundiff.
II	Changing the Name of the Office of Small and Disadvantaged Business Utilization for DoD	2008–001	Cundiff.
III	Administrative Changes to the FPI Blanket Waiver and the JWOD Program Name	2007–015	Clark.
IV	Local Community Recovery Act of 2006	2006–014	Clark.
V	Additional Requirements for Competition Advocate Annual Reports	2007–007	Woodson.
VI	Contract Debts	2005–018	Murphy.
VII	Subcontractor Requests for Bonds	2007–022	Jackson.
VIII	Extension of Authority for Use of Simplified Acquisition Procedures for Certain Commercial Items.	2008–002	Jackson.
IX	Enhanced Competition for Task and Delivery Order Contracts—Section 843 of the Fiscal Year 2008 National Defense Authorization Act (Interim).	2008–006	Clark.
X	Online Representations and Certifications Application Review	2006–025	Woodson.
XI	Cost Accounting Standards (CAS) Administration and Associated Federal Acquisition Regulation Clauses (Interim).	2007–002	Chambers.
XII	CAS Administration	2006–004	Chambers.
XIII	Accepting and Dispensing of \$1 Coin	2006–027	Jackson.
XIV	Technical Amendments		

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 2005–27 amends the FAR as specified below:

Item I—Correcting Statutory References Related to the Higher Education Act of 1965 (FAR Case 2007–020)

This final rule amends the Federal Acquisition Regulation to reflect the correct public law citations for the definitions of minority institution and Hispanic-serving institution. The citations changed when the Higher Education Act of 1965 was amended by the Higher Education Amendments of 1998.

Item II—Changing the Name of the Office of Small and Disadvantaged Business Utilization for DoD (FAR Case 2008–001)

This final rule amends the Federal Acquisition Regulation to change the

name of the “Office of Small and Disadvantaged Business Utilization” to the “Office of Small Business Programs” for the Department of Defense. Section 904 of the National Defense Authorization Act for Fiscal Year 2006, Pub. L. 109–163, re-designated the “Office of Small and Disadvantaged Business Utilization”.

Item III—Administrative Changes to the FPI Blanket Waiver and the JWOD Program Name (FAR Case 2007–015)

This final rule amends the language in the Federal Acquisition Regulation to increase the blanket waiver threshold for small dollar-value purchases from Federal Prison Industries by Federal agencies and also changes the name of the JWOD Program to the AbilityOne Program. These changes are administrative in nature and any impact will be minimal.

Item IV—Local Community Recovery Act of 2006 (FAR Case 2006–014)

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have adopted as

final, with a minor change to the second interim rule, two interim rules amending the Federal Acquisition Regulation (FAR) to implement amendments to the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The first interim rule was published in the **Federal Register** at 71 FR 44546, August 4, 2006. The second interim rule was published in the **Federal Register** at 72 FR 63084, November 7, 2007.

Item V—Additional Requirements for Competition Advocate Annual Reports (FAR Case 2007–007)

This final rule amends the Federal Acquisition Regulation 6.502 to require that annual reviews by executive agency competition advocates be provided in writing to both the agency senior procurement executive and the agency chief acquisition officer, and ensure task and delivery orders over \$1,000,000 issued under multiple award contracts are properly planned, issued, and comply with 8.405 and 16.505. The rule provides for one of several initiatives by the Administrator, Office of Federal

Procurement Policy, to reinforce the use of competition and related practices for achieving a competitive environment. The rule reinvigorates the role of agencies' competition advocates, strengthens agencies' competition practices, and ensures best value for the taxpayer.

Item VI—Contract Debts (FAR Case 2005–018)

This final rule amends and reorganizes FAR Subpart 32.6, Contract Debts, and amends associated other FAR coverage, based on the recommendations of the Department of Defense Contract Debt Integrated Process Team, to improve contract debt controls and procedures and to ensure consistency within and between existing regulations. FAR Subpart 32.6 prescribes policies and procedures for identifying, collecting, and deferring collection of contract debts (including interest, if applicable). Throughout, the term "responsible official" has been replaced with the specific individual/organization responsible for fulfilling the FAR requirement. FAR 32.601 is revised to specify what constitutes a contract debt, rather than how a contract debt may arise. All discussions of contract debt determinations are consolidated in FAR 32.603, including the responsibility of the contracting officer in making debt determinations. All discussions of the demand for payment are consolidated in FAR 32.604, including the requirements for demand letters. All discussions of final decisions are consolidated in FAR 32.605. FAR 32.606 includes all coverage on debt collections, including when responsibility should be transferred to the Department of Treasury. All discussions of interest are consolidated at FAR 32.608, including how to compute interest. The Government's right to make a demand for payment and start the interest clock running under the contract is ensured, as is the Government's right to make a demand for payment without first issuing a final decision of the contracting officer. A final decision is required only if the contractor disagrees with the demand for payment.

Item VII—Subcontractor Requests for Bonds (FAR Case 2007–022)

This final rule amends the list of laws inapplicable to commercial items, to clarify that the existing regulations at FAR 28.106–4, Contract clause, and 52.228–12, Prospective Subcontractor Requests for Bonds, do not apply to commercial items. Section 806(a)(3) of Pub. L. 102–190, as amended by Sections 2091 and 8105 of Pub. L. 103–

355 will be included in the list at FAR 12.503(a) and 12.504(a).

Item VIII—Extension of Authority for Use of Simplified Acquisition Procedures for Certain Commercial Items (FAR Case 2008–002)

This final rule amends the Federal Acquisition Regulation to implement Section 822 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181). Section 822 amends Section 4202(e) of the Clinger-Cohen Act of 1996 (division D of Pub. L. 104–106; 110 Stat. 652; 10 U.S.C. 2304 note) by extending until January 1, 2010, the timeframe in which an agency may use simplified procedures to purchase commercial items in amounts greater than the simplified acquisition threshold, but not exceeding \$5,500,000 (\$11 million for acquisitions as described in 13.500(e)).

Item IX—Enhanced Competition for Task and Delivery Order Contracts—Section 843 of the Fiscal Year 2008 National Defense Authorization Act (FAR Case 2008–006) (Interim)

This interim rule amends Federal Acquisition Regulation Subpart 16.5 to implement Section 843 of the Fiscal Year 2008 National Defense Authorization Act (Pub. L. 110–181). The provisions of Section 843 include: (1) Limitation on single award task or delivery order (Indefinite-Delivery Requirements, and Indefinite-Quantity) type contracts greater than \$100 million; (2) Enhanced competition for task and delivery orders in excess of \$5 million; and (3) Protest on orders on the grounds that the order increases the scope, period, maximum value of the contract under which the order is issued; or valued in excess of \$10 million. FAR sections 16.503 and 16.504, as amended by this rule, are applicable to single award task or delivery order contracts awarded on or after May 27, 2008. FAR section 16.505, as amended by this rule, is applicable to orders awarded on or after May 27, 2008 on existing contracts as well as new contracts.

Item X—Online Representations and Certifications Application Review (FAR Case 2006–025)

This final rule adopts as final, without change, the interim rule published in the **Federal Register** at 72 FR 46359, August 17, 2007. The rule amends FAR 23.406 and 23.906 to revise the prescriptions for the use of 52.223–9 and 52.223–14 to provide for their use under the same circumstances as the prescription for use of their associated provisions. These revisions ensure

compliance with the requirements of 40 CFR part 247 and 42 U.S.C. 11023.

Item XI—Cost Accounting Standards (CAS) Administration and Associated Federal Acquisition Regulation Clauses (FAR Case 2007–002) (Interim)

The subject case is revising the Federal Acquisition Regulation (FAR) clauses concerning the administration of Cost Accounting Standards (CAS) to maintain consistency between the CAS rules and the FAR.

Item XII—CAS Administration (FAR Case 2006–004)

This final rule adopts, with minor changes, the proposed rule published in the **Federal Register** at 71 FR 58338, October 3, 2006, amending the Federal Acquisition Regulation to implement revisions to the regulations related to the administration of the Cost Accounting Standards as they pertain to contracts with foreign concerns, including United Kingdom concerns.

Item XIII—Accepting and Dispensing of \$1 Coin (FAR Case 2006–027)

This final rule adopts, with change, the interim rule published in the **Federal Register** at 72 FR 46361, August 17, 2007. This final rule implements the Presidential \$1 Coin Act of 2005 (Pub. L. 109–145). The Presidential \$1 Coin Act of 2005 requires the Secretary of the Treasury to mint and issue annually four new \$1 coins bearing the likenesses of the Presidents of the United States in the order of their service and to continue to mint and issue "Sacagawea-design" coins for circulation. In order to promote circulation of the coins, Section 104 of the Public Law also requires that Federal agencies take action so that, by January 1, 2008, entities that operate any business, including vending machines, on any premises owned by the United States or under the control of any agency or instrumentality of the United States, are capable of accepting and dispensing \$1 coins and that the entities display notices of this capability on the business premises. Pub. L. 110–147 was enacted to amend Section 5112(p)(1)(A) of Title 31, United States Code, to allow an exception from the \$1 coin dispensing capability requirement for those vending machines that do not receive currency denominations greater than \$1. Contracting officers have been instructed in the Applicability Date of the preamble to modify contracts upon request of the contractor, to change the older version of the clause to the newer version without requiring consideration from the contractor.

Item XIV—Technical Amendments

Editorial changes are made at FAR 15.404-1 and 52.212-5.

Dated: September 9, 2008

Al Matera,

Director, Office of Acquisition Policy.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005-27 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 2005-27 is effective October 17, 2008, except for Items VII, VIII, IX, X, XIII, and XIV which are effective September 17, 2008.

Dated: September 5, 2008.

Shay D. Assad,

Director, Defense Procurement and Acquisition Policy.

Dated: September 8, 2008.

David A. Drabkin,

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

Dated: August 26, 2008.

William P. McNally,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. E8-21383 Filed 9-16-08; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2 and 52

[FAC 2005-27; FAR Case 2007-020; Item I; Docket 2008-0001; Sequence 15]

RIN 9000-AL06

Federal Acquisition Regulation; FAR Case 2007-020, Correcting Statutory References Related to the Higher Education Act of 1965

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) to correct references to sections of the Higher Education Act of 1965 at FAR 2.101 and 52.2. These sections of the Act contain the definitions of minority institution and Hispanic-serving institution. The citations for these sections changed when the Higher Education Act of 1965 was amended by the Higher Education Amendments of 1998. This final rule updates the FAR accordingly.

DATES: *Effective Date:* October 17, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501-0044, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-27, FAR case 2007-020.

SUPPLEMENTARY INFORMATION:

A. Background

The definition of “minority institution” had been found in section 1046 of the Higher Education Act of 1965 (HEA) and at 20 U.S.C. 1135d-5(3). The Higher Education Amendments of 1998 redesignated section 1046 of the HEA as section 365.

The Hispanic-serving Institution Program was authorized in section 316 of Title III of the HEA, as amended by 1992 amendments. In the Higher Education Amendments of 1998, Pub. L. 105-244, the Hispanic-serving institution Program was moved into Title V of the HEA and reenacted, in that title, with all the relevant provisions that governed that program while it was part of Title III of the HEA. This final rule reflects these changes.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98-577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Parts 2 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2005-27, FAR case 2007-020, in correspondence.)

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2 and 52

Government procurement.

Dated: September 9, 2008.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 in paragraph (b)(2) by revising the definition “Minority Institution” to read as follows:

2.101 Definitions.

* * * * *
(b) * * *
(2) * * *

Minority Institution means an institution of higher education meeting the requirements of Section 365(3) of the Higher Education Act of 1965 (20 U.S.C. 1067k), including a Hispanic-serving institution of higher education, as defined in Section 502(a) of the Act (20 U.S.C. 1101a).

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PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.212-5 by revising the date of the clause and paragraph (b)(11)(i) to read as follows:

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

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CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIALS ITEMS (OCT 2008)

* * * * *
(b) * * *

____ (11)(i) 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (OCT 2008) (10 U.S.C. 2323)(if the offeror elects to waive the adjustment, it shall so indicate in its offer.)

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