

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2010-0076, Sequence 5]

Federal Acquisition Regulation; Federal Acquisition Circular 2005-43; 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 (Councils) in this Federal Acquisition Circular (FAC) 2005-43. 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 2005-43 and the specific FAR case numbers. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755.

LIST OF RULES IN FAC 2005-43

Item	Subject	FAR Case	Analyst
I	Government Property	2008-011	Parnell
II	Registry of Disaster Response Contractors	2008-035	Gary
III	Recovery Act Subcontract Reporting Procedures (Interim)	2010-008	Morgan
IV	Clarification of Criteria for Sole Source Awards to Service-disabled Veteran-owned Small Business Concerns.	2008-023	Cundiff
V	Trade Agreements Thresholds (Interim)	2009-040	Davis

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005-43 amends the FAR as specified below:

Item I—Government Property (FAR Case 2008-011)

This final rule amends the FAR to revise FAR part 45 and its associated clauses. Changes are being made to FAR parts 2, 4, 15, 32, 42, 45, and 52. These changes are to clarify and correct the previous FAR rule for part 45, Government Property, published under Federal Acquisition Circular 2005-17, FAR case 2004-025, May 15, 2007, (72 FR 27364). Minor changes are made to the proposed rule published August 6, 2009 (74 FR 39262).

The rule specifically impacts contracting officers, property administrators, and contractors responsible for the management of Government property. The rule does not affect the method of managing Government property. The rule merely clarifies and corrects the previous FAR rule.

Item II—Registry of Disaster Response Contractors (FAR Case 2008-035)

This final rule adopts, without change, the interim rule implementing Public Law 109-295, the Department of

Homeland Security Appropriations Act, 2007, section 697, which requires the establishment and maintenance of a registry of disaster response contractors. The Disaster Response Registry is located at <http://www.ccr.gov>. The Federal Emergency Management Agency (within the Department of Homeland Security) has a link to the registry for vendors on its Web site at <http://www.fema.gov/business/contractor.shtm>. The Registry covers domestic disaster and emergency relief activities.

Item III—Recovery Act Subcontract Reporting Procedures (FAR Case 2010-008) (Interim)

This interim rule amends the FAR to revise the clause at FAR 52.204-11, American Recovery and Reinvestment Act—Reporting Requirements. The revised clause will require first-tier subcontractors with Recovery Act funded awards of \$25,000 or more, to report jobs information to the prime contractor for reporting into *FederalReporting.gov*. It also will require the prime contractor to submit its first report on or before the 10th day after the end of the calendar quarter in which the prime contractor received the award, and quarterly thereafter.

The revised clause will be used for all new solicitations and awards issued on or after the effective date of this interim rule. This clause is not required for any existing contracts, or task and delivery orders issued under a contract, that

contain the original clause FAR 52.204-11 (March 2009). Therefore, this interim rule does not require renegotiation of existing Recovery Act contracts that include the clause dated March 2009.

Item IV—Clarification of Criteria for Sole Source Awards to Service-Disabled Veteran-Owned Small Business Concerns (FAR Case 2008-023)

This final rule amends FAR 19.1406(a) to clarify the criteria that need to be met in order to conduct a sole source service-disabled veteran-owned small business (SDVOSB) concern acquisition. The FAR language is amended to be consistent with the Veterans Benefit Act of 2003 (15 U.S.C. 657f) and the Small Business Administration's regulation (13 CFR 125.20) that implements the Act. This final rule also amends FAR 19.1306(a) to clarify the criteria that need to be met in order to conduct a sole source for Historically Underutilized Business Zone (HUBZone) small business concern acquisitions. These amendments to the FAR alleviate confusion for contracting officers on the appropriate use of the criteria needed to conduct sole source HUBZONE small business and SDVOSB concern acquisitions.

Item V—Trade Agreements Thresholds (FAR Case 2009-040) (Interim)

This interim rule adjusts the thresholds for application of the World

Trade Organization Government Procurement Agreement and the free trade agreements as determined by the United States Trade Representative, according to a pre-determined formula under the agreements.

Dated: June 25, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005–43 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 2005–43 is effective July 2, 2010, except for Items I, II, and IV which are effective August 2, 2010.

Dated: June 24, 2010.

Shay D. Assad,

Director, Defense Procurement and Acquisition Policy.

Dated: June 24, 2010.

Rodney P. Lantier,

Acting Senior Procurement Executive, Office of Acquisition Policy, U.S. General Services Administration.

Dated: June 23, 2010.

William P. McNally,

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, 4, 15, 31, 32, 42, 45, and 52

[FAC 2005–43; FAR Case 2008–011; Item I; Docket 2009–0029; Sequence 1]

RIN 9000–AL41

Federal Acquisition Regulation; FAR Case 2008–011, Government Property

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 revise FAR part 45, Government Property, and its associated clauses.

DATES: *Effective Date:* August 2, 2010.

FOR FURTHER INFORMATION CONTACT:

Ms. Jeritta Parnell, Procurement Analyst, at (202) 501–4082, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–43, FAR Case 2008–011.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 74 FR 39262, August 6, 2009. This rule clarifies and corrects the previous FAR rule for part 45, Government Property, published under FAC 2005–17, FAR Case 2004–025, May 15, 2007 (72 FR 27364).

Sixteen respondents submitted 106 comments. The comments received were grouped under 31 general topics. A discussion of the comments and the changes to the rule as a result of these comments are provided below:

1. Access

There is no revision to the proposed rule based on this category of comment. One respondent recommended revising FAR 52.245–1(g)(4) to provide Government access to contractor site locations at reasonable times. The Councils did not agree. Similar language is already contained in the proposed rule at FAR 52.245–1(g)(1). The proposed FAR language at 52.245–1(g)(1) provides for Government access to all contractor site locations, prime and subcontractor (with prime contractor consent). This language was merely consolidated. The language consolidated and relocated subsections 52.245–1(g)(1) and 52.245–1(g)(4) into one subsection.

2. Closeout

There is no revision to the proposed rule based on this comment category. One respondent suggested adding a new paragraph after FAR 52.245–1(f)(x) entitled Disposition of contractor inventory. The Councils noted the issue raised by the commenter. The recommendations are outside the scope of this particular case.

3. Commingling

There is no revision to the proposed rule based on this comment category. Two respondents suggested that commingling Government and

contractor material should not occur. One respondent questioned whether equipment can be commingled by being located with similar equipment. Another respondent recommended revising FAR 52.245–1(f)(1)(viii)(B) to address commingling while in storage or in stockrooms. The Councils do not agree. The practice of commingling only applies to material. Equipment, special tooling, and special test equipment can be co-located, but by their nature are not commingled. The Councils see no need to limit the applicability of commingling to a particular location(s).

4. Contractor Records

There is no revision to the proposed rule based on this comment category. Two respondents submitted three comments on contractor records. Two comments requested clarification on retention periods in FAR 4.705–3(h). In addition, one commenter requested clarification of the term “property records” in FAR 4.705–3(h). Another respondent recommended removal of language “consisting of equipment usage and status reports” from FAR 4.705–3(c). The Councils disagree. The beginning of the retention period is defined in FAR 4.704(a). The definition of property records is in the proposed rule at FAR 45.101. The recommendation for removal of language from FAR 4.705–3(c) is outside the scope of this particular case and will be considered in the formulation of a new case.

5. Corrective Action

There is a revision to the proposed rule at FAR 52.245–1(g)(3) based on this comment category.

Two respondents recommended revising the action required for corrective action. One respondent recommended additional language to distinguish between the lines of authority and responsibility as follows: “ * * * the contractor shall immediately take all necessary corrective actions and shall prepare a corrective action plan at the request of the Property Administrator.” The Councils partially agree. The language at FAR 52.245–1(g)(3) is revised to add “ * * * the contractor shall prepare a corrective action plan when requested by the Property Administrator and take all necessary corrective actions as specified by the schedule within the corrective action plan.” The second respondent suggested that there needs to be a better audit protocol and due process in property management practices. The Councils noted the issues raised by this respondent and the respondent’s recommended revisions to FAR 52.245–1(g)(3). These revisions are outside the