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Part III

Department of Defense

**General Services
Administration**

**National Aeronautics and
Space Administration**

**48 CFR Chapter 1 and Parts 1, 2, 3, et al.
Federal Acquisition Regulations; Final
Rules, Interim Rules, and Small Entity
Compliance Guide**

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2010-0076, Sequence 9]

Federal Acquisition Regulation; Federal Acquisition Circular 2005-47; 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) 2005-47. 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 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 2005-47 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 2005-47

Item	Subject	FAR case	Analyst
I	Notification of Employee Rights Under the National Labor Relations Act (Interim)	2010-006	McFadden.
II	HUBZone Program Revisions	2006-005	Morgan.
III	Preventing Abuse of Interagency Contracts (Interim)	2008-032	Sakalos.
IV	Small Disadvantaged Business Self-Certification (Interim)	2009-019	Morgan.
V	Uniform Suspension and Debarment Requirement (Interim)	2009-036	Gary.
VI	Limitation on Pass-Through Charges	2008-031	Chambers.
VII	Technical Amendments.		

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 2005-47 amends the FAR as specified below:

Item I—Notification of Employee Rights Under the National Labor Relations Act (FAR Case 2010-006) (Interim)

This interim rule amends the Federal Acquisition Regulation (FAR) to implement Executive Order 13496, Notification of Employee Rights Under Federal Labor Laws, as implemented by the Department of Labor (DoL). The Executive order requires contractors and subcontractors to post a notice that includes employee rights under the National Labor Relations Act, 29 U.S.C. 151 *et seq.* This Act encourages collective bargaining, and protects the exercise by employees of their freedom to associate, to self organize and to designate representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment. This FAR interim rule establishes a new subpart 22.16, Notification of Employee Rights under the National Labor Relations Act. The rule also creates a new FAR clause 52.222-40, Notification of Employee Rights under the National Labor Relations Act. In addition, this rule

revises the FAR clauses at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, and 52.244-6, Subcontracts for Commercial Items, to include the requirements of the new FAR clause 52.222-40. The required employee notice, “Notification of Employee Rights Under the National Labor Relations Act,” may be obtained from the DoL; downloaded from a DoL Web site; provided by the Federal contracting agency, if requested; or reproduced and used as exact duplicate copies of the DoL’s official poster (*see* FAR 52.222-40(c)). Contracting officers shall insert the clause at FAR 52.222-40, Notification of Employee Rights under the National Labor Relations Act, in all solicitations and contracts, including acquisitions for commercial items and commercially available off-the-shelf items, except acquisitions—

(1) Under the simplified acquisition threshold. For indefinite-quantity contracts, include the clause only if the value of orders in any calendar year of the contract is expected to exceed the simplified acquisition threshold;

(2) For work performed exclusively outside the United States; or

(3) Covered (in their entirety) by an exemption granted by the Secretary.

A contracting agency may modify the clause at FAR 52.222-40, if necessary, to reflect an exemption granted by the

Secretary of the Department of Labor (*see* 22.1603(b)).

Item II—HUBZone Program Revisions (FAR Case 2006-005)

This FAR final rule implements the Small Business Administration (SBA) final rule published in the **Federal Register** at 69 FR 29411 on May 24, 2004, and an interim rule published in the **Federal Register** at 70 FR 51243 on August 30, 2005, amending its HUBZone regulations at 13 CFR part 126 to implement the Small Business Reauthorization Act of 2000, the Consolidated Appropriations Act of 2005, and other various policy changes. The FAR is amended to—

(1) Require a HUBZone small business concern to be a HUBZone small business concern both at the time of its initial offer and at the time of contract award;

(2) Require that HUBZone concerns provide to the contracting officer a copy of the notice required by 13 CFR 126.501 if material changes occur before award that could affect its HUBZone eligibility;

(3) *Allow waiver of the 50 percent requirement.* In accordance with 13 CFR 126.700, for general construction or construction by special trade contractors, a HUBZone small business concern must spend at least 50 percent of the cost of contract performance incurred for personnel on its own employees or subcontract employees of

other HUBZone small business concerns. This final rule amends FAR clause 52.219-3, Notice of Total HUBZone Set-Aside, and FAR clause 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns, to include an Alternate I, to be used to waive the 50 percent requirement only after determining that at least two HUBZone small business concerns cannot meet the requirement. However, the HUBZone small business prime contractor must still meet the performance of work requirements set forth in 13 CFR 125.6(c).

Item III—Preventing Abuse of Interagency Contracts (FAR Case 2008-032) (Interim)

This interim rule implements section 865 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year 2009. FAR subpart 17.5 now addresses all interagency acquisitions, not just those made under the Economy Act authority. A new subsection 17.502-1 is added to require that all interagency acquisitions include a determination of best procurement approach. For an assisted acquisition between the servicing agency and the requesting agency, this subsection now requires a written agreement that establishes the general terms and conditions governing the relationship between the parties. Subsection 17.502-2 contains business-case analysis requirements when an agency wishes to establish a contract that would be used by other agencies. There is a statutory exception included in subpart 17.5 for orders of \$500,000 or less issued against Federal Supply Schedules.

Item IV—Small Disadvantaged Business Program Self-Certification of Subcontractors (FAR Case 2009-019) (Interim)

This interim rule amends the FAR by allowing small disadvantaged businesses (SDBs) to self-represent their SDB status to prime contractors in good faith when seeking Federal subcontracting opportunities. This change implements revisions made by the Small Business Administration (SBA) to its SDB regulations. This case only addresses the subcontracting status portion of the SBA final rule for Small Disadvantaged Business certification. The Small Disadvantaged Business certification for prime contracts will be addressed in a future rule. This change removes a cost of compliance burden on SDB subcontractors seeking SBA certification.

Item V—Uniform Suspension and Debarment Requirement (FAR Case 2009-036) (Interim)

This interim rule amends the FAR at parts 9 and 52 to implement section 815 of the National Defense Authorization Act for Fiscal Year 2010, Public Law 111-84. The law requires that suspension and debarment requirements flow down to all subcontracts except contracts for the acquisition of commercially available off-the-shelf items, and in the case of contracts for the acquisition of commercial items, first-tier subcontracts only.

This requirement will protect the Government against contracting with entities at any tier who are suspended, debarred or proposed for debarment. This rule does not have a significant impact on the Government, contractors or any automated systems.

Item VI—Limitations on Pass-Through Charges (FAR Case 2008-031)

This final rule adopts the interim rule published in the **Federal Register** at 74 FR 52853, October 14, 2009, as a final rule with minor changes.

The interim rule amended the FAR to implement section 866 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year 2009 (Pub. L. 110-417) and section 852 of the John Warner NDAA for Fiscal Year 2007 (Pub. L. 109-364). This legislation required the Councils to amend the FAR to minimize excessive pass-through charges by contractors from subcontractors, or from tiers of subcontractors, that add no or negligible value, and to ensure that neither a contractor nor a subcontractor receives indirect costs or profit/fee (*i.e.*, pass-through charges) on work performed by a lower-tier subcontractor to which the higher-tier contractor or subcontractor adds no, or negligible, value.

To enable agencies to ensure that pass-through charges are not excessive, the interim rule included a solicitation provision and a contract clause requiring offerors and contractors to identify the percentage of work that will be subcontracted, and when subcontract costs will exceed 70 percent of the total cost of work to be performed, to provide information on indirect costs and profit/fee and value added with regard to the subcontract work.

Item VII—Technical Amendments

Editorial changes are made at FAR 3.104-1, 5.601, 7.105, and 10.002.

Dated: November 24, 2010.

Millisa Gary,

Acting Director, Acquisition Policy Division.

Dated: November 23, 2010.

Shay D. Assad,

Director, Defense Procurement and Acquisition Policy.

Dated: November 24, 2010.

Joseph A. Neurauter,

Deputy Associate Administrator and Senior Procurement Executive, Office of Acquisition Policy, U.S. General Services Administration.

Dated: November 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 1, 2, 22, and 52

[FAC 2005-47; FAR Case 2010-006; Item I; Docket 2010-0106, Sequence 1]

RIN 9000-AL76

Federal Acquisition Regulation; Notification of Employee Rights Under the National Labor Relations Act

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

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing an interim rule to amend the Federal Acquisition Regulation (FAR) to implement Executive Order 13496, Notification of Employee Rights Under Federal Labor Laws, as implemented by the Department of Labor (DoL). This Executive Order requires contractors to display a notice to employees of their rights under Federal labor laws, and the DoL has determined that the notice shall include employee rights under the National Labor Relations Act.

DATES: *Effective Date:* December 13, 2010.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before February 11, 2011 to be considered in the formulation of a final rule.