

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2011–0076, Sequence 2]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–50; Introduction

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

and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by DoD, GSA, and NASA in this Federal Acquisition Circular (FAC) 2005–50. 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 2005–50 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 2005–50

Item	Subject	FAR case	Analyst
I	Proper Use and Management of Cost-Reimbursement Contracts (Interim)	2008–030	Sakalos.
II	Requirements for Acquisitions Pursuant to Multiple-Award Contracts (Interim)	2007–012	Clark.
III	Justification and Approval of Sole-Source 8(a) Contracts (Interim)	2009–038	Robinson.
IV	Additional Requirements for Market Research	2008–007	Sakalos.
V	Socioeconomic Program Parity (Interim)	2011–004	Morgan.
VI	Use of Commercial Services Item Authority	2008–034	Chambers.
VII	Trade Agreements Thresholds	2009–040	Davis.
VIII	Disclosure and Consistency of Cost Accounting Practices for Contracts Awarded to Foreign Concerns.	2009–025	Chambers.
IX	Compensation for Personal Services	2009–026	Chambers.
X	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 numbers and subject set forth in the documents following these item summaries. FAC 2005–50 amends the FAR as specified below:

Item I—Proper Use and Management of Cost-Reimbursement Contracts (FAR Case 2008–030) (Interim)

This interim rule amends the FAR to implement section 864 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417). This law aligns with the goal of the Presidential Memorandum on Government Contracting, issued on March 4, 2009, which is to reduce waste, fraud, and abuse in Government contracting. This rule provides internal regulatory guidance on the proper use and management of all contracts, specifically cost-reimbursement contracts. The rule identifies (1) circumstances when cost-reimbursement contracts are appropriate; (2) acquisition plan findings required to support the contract type selection; and (3) the acquisition resources necessary to award and manage a cost-reimbursement contract.

Item II—Requirements for Acquisitions Pursuant to Multiple-Award Contracts (FAR Case 2007–012) (Interim)

This interim rule amends the FAR to implement section 863 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417). Section 863 mandates enhanced competition for orders placed under multiple-award contracts, including GSA’s Federal Supply Schedules. If an order over the simplified acquisition threshold does not follow the section 863 competitive procedures, section 863 requires that a notice and the determination of an exception be published in FedBizOpps within 14 days after award.

The interim rule relocates all procedures for establishing a Blanket Purchase Agreement (BPA) or placing an order under a BPA in one subsection, FAR 8.405–3. New BPAs must be established in accordance with the new competition standard. Orders over the simplified acquisition threshold against a new multiple-award BPA must meet the new competition standards; use is discretionary for existing multiple-award BPAs.

For orders under FAR part 16 task- and delivery-order contracts, orders over the simplified acquisition threshold must meet the new

competition procedures; each contract holder must receive notice of the intent to make a purchase.

Item III—Justification and Approval of Sole-Source 8(a) Contracts (2009–038) (Interim)

This interim rule amends the FAR to implement section 811 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84). Section 811 prohibits the award of a sole-source contract in an amount over \$20 million under the 8(a) program authority (15 U.S.C. 637(a)) without first obtaining a written Justification and Approval (J&A) approved by an appropriate official and making public the J&A and related information. This is a new internal Government requirement for the development and approval of a sole-source J&A for 8(a) sole-source awards over \$20 million. It neither prohibits such awards nor increases the qualifications required of 8(a) firms. No automated systems are impacted.

Item IV—Additional Requirements for Market Research (FAR Case 2008–007)

This final rule adopts, with changes, the interim rule that amended the FAR to implement section 826 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181). Section 826, entitled “Market Research,”

established new requirements for agencies subject to Title 10, United States Code. As a matter of policy, this provision of law was applied to contracts awarded by all executive agencies. The rule requires that market research must be conducted before an agency places a task or delivery order in excess of the simplified acquisition threshold under an indefinite-delivery indefinite-quantity contract. In addition, a prime contractor with a contract in excess of \$5 million for the procurement of items other than commercial items is required to conduct market research before making purchases that exceed the simplified acquisition threshold. Among other changes, the final rule also deletes the language added to FAR 52.244-6 (Alternate I) and relocates it to a new FAR clause 52.210-1, Market Research.

Item V—Socioeconomic Program Parity (FAR Case 2011-004) (Interim)

This interim rule amends the FAR to implement section 1347 of the “Small Business Jobs Act of 2010” (Pub. L. 111-240) and the Small Business Administration regulations governing specific contracting and business assistance programs. Section 1347 changed the word “shall” to “may” at section 31(b)(2)(B) of the Small Business Act (15 U.S.C. 657a(b)(2)(B)), thereby permitting a contracting officer to use discretion when determining whether an acquisition will be restricted to a small business participating in the 8(a) Business Development Program, the Historically Underutilized Business Zone Program, or the Service-Disabled Veteran-Owned Small Business Program.

Item VI—Use of Commercial Services Item Authority (FAR Case 2008-034)

This final rule adopts, without change, an interim rule that implemented section 868 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417). Section 868 provides that the FAR shall be amended with respect to the procurement of commercial services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold competitively in substantial quantities in the commercial marketplace. Such services may be considered commercial items only if the contracting officer has determined in writing that the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for these services.

The rule details the information the contracting officer may consider in

order to make this determination. The rule further details, when this determination cannot be made, the information which may be requested to determine price reasonableness.

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

This final rule adopts, without change, an interim rule that amended the FAR to adjust 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.

Item VIII—Disclosure and Consistency of Cost Accounting Practices for Contracts Awarded to Foreign Concerns (FAR Case 2009-025)

This final rule adopts, without change, the interim rule that amended the FAR to revise FAR 30.201-4(c), 30.201-4(d)(1), 52.230-4, and 52.230-6 to maintain consistency between FAR and Cost Accounting Standards (CAS) regarding the administration of the Cost Accounting Standard Board’s (CASB) rules, regulations and standards. This revision was necessitated by the CASB publishing a final rule in the **Federal Register** on March 26, 2008 (73 FR 15939) which implemented the revised clause, Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns, in CAS-covered contracts and subcontracts awarded to foreign concerns.

Item IX—Compensation for Personal Services (FAR Case 2009-026)

This final rule adopts, without change, the interim rule that amended the FAR to align the existing FAR 31.205-6(q)(2)(i) through (vi) with the changes made in Cost Accounting Standards (CAS) Board standards 412 “Cost Accounting Standard for composition and measurement of pension cost,” and 415 “Accounting for the cost of deferred compensation.” Formerly, the applicable CAS standard for measuring, assigning, and allocating the costs of Employee Stock Ownership Plans (ESOPs) depended on whether the ESOP met the definition of a pension plan at FAR 31.001. Costs for ESOPs meeting the definition of a pension plan at FAR 31.001 were covered by CAS 412, while the costs for ESOPs not meeting the definition of a pension plan at FAR 31.001 were covered by CAS 415. Now, regardless of whether an ESOP meets the definitions of a pension plan at FAR 31.001, all costs of ESOPs are covered by CAS 415.

Item X—Technical Amendments

Editorial changes are made at FAR 19.201, 52.212-3, and 52.212-5.

Dated: March 4, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy.

Federal Acquisition Circular (FAC) 2005-50 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 2005-50 is effective March 16, 2011, except for Item IV which is effective April 15, 2011, and Item II which is effective May 16, 2011.

Dated: March 4, 2011.

Amy G. Williams,

Acting Deputy Director, Defense Procurement and Acquisition Policy (Defense Acquisition Regulations System).

Dated: March 4, 2011.

Joseph A. Neurauter,

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

Dated: February 28, 2011.

Sheryl J. Goddard,

Acting Assistant Administrator for Procurement National Aeronautics and Space Administration.

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48 CFR Parts 1, 2, 7, 16, 32, 42, and 50

[FAC 2005-50; FAR Case 2008-030; Item I; Docket 2011-0082, Sequence 1]

RIN 9000-AL78

Federal Acquisition Regulation; Proper Use and Management of Cost-Reimbursement Contracts

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

ACTION: Interim rule with request for comments.

SUMMARY: DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement section 864 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009. This law aligns