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48 CFR Chapter 1

Federal Acquisition Regulation; Final Rules

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

[Docket FAR 2011–0076, Sequence 5]

**Federal Acquisition Regulation; Federal Acquisition Circular 2005–53; 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) 2005–53. 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 2005–53 and the specific FAR case numbers. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755.

**SUPPLEMENTARY INFORMATION:**

**LIST OF RULES IN FAC 2005–53**

Item	Subject	FAR case	Analyst
I .....	Equal Opportunity for Veterans .....	2009–007	McFadden.
II .....	Unique Procurement Instrument Identifier .....	2009–023	Morgan.
III .....	Uniform Suspension and Debarment Requirement .....	2009–036	Jackson.
IV .....	Extension of Sunset Date for Protests of Task and Delivery Orders (Interim) .....	2011–015	Lague.
V .....	Encouraging Contractor Policies to Ban Text Messaging While Driving .....	2009–028	Clark.
VI .....	TINA Interest Calculations .....	2009–034	Chambers.

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 2005–53 amends the FAR as specified below:

**Item I—Equal Opportunity for Veterans (FAR Case 2009–007)**

The interim rule, published September 29, 2010, is adopted as final with minor changes. A definition from the clause at FAR 52.222–35 for “executive and senior management” is added to FAR subpart 22.13. The interim rule implemented Department of Labor regulations on equal opportunity provisions for various categories of military veterans.

**Item II—Unique Procurement Instrument Identifier (FAR Case 2009–023)**

This final rule amends the FAR to define the requirement for an agency unique procurement instrument identifier (PIID) and, to extend the requirement for using PIIDs to solicitations, contracts, and related procurement instruments.

This final rule adds two new definitions at 4.001, revises 4.605(a), and adds a new FAR subpart 4.16—Unique Procurement Instrument Identifiers, to prescribe policies and procedures for assigning PIIDs. The Government expects that these changes

will reduce data errors and interoperability problems across the Federal Government’s business processes which were created by inconsistent and non-unique PIID assignment and use. These changes will not impose new requirements on small businesses, as the rule only addresses internal Government policy and procedures.

**Item III—Uniform Suspension and Debarment Requirement (FAR Case 2009–036)**

This rule adopts as final, with minor changes, an interim rule which implemented 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 commercially available off-the-shelf items, and in the case of commercial items, first-tier subcontracts only.

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

**Item IV—Extension of Sunset Date for Protests of Task and Delivery Orders (FAR Case 2011–015) (Interim)**

This interim rule amends the FAR to implement section 825 of the Ike Skelton National Defense Authorization

Act for Fiscal Year 2011 (Pub. L. 111–383). Section 825 extends the sunset date for protests against awards of task or delivery orders by DoD, NASA, and the Coast Guard from May 27, 2011 to September 30, 2016. The sunset date for protests against the award of task or delivery orders by other Federal agencies remains May 27, 2011. With this change, contractors will no longer be able to protest task or delivery orders awarded by agencies other than DoD, NASA, and the Coast Guard. There is no effect on Government automated systems.

**Item V—Encouraging Contractor Policies To Ban Text Messaging While Driving (FAR Case 2009–028)**

This final rule adopts, with changes, the interim rule published in the **Federal Register** at 75 FR 60264 on September 29, 2010, to implement Executive Order 13513 (October 1, 2009), published in the **Federal Register** at 74 FR 51225 on October 6, 2009, entitled “Federal Leadership on Reducing Text Messaging while Driving.” This final rule revises FAR clause 52.223–18 to encourage the adoption and enforcement of policies that ban text messaging while driving company-owned or -rented vehicles or Government-owned vehicles; or privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government. The final rule also revises the language in the clause to

encourage contractors to conduct initiatives such as: (1) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving, and (2) education, awareness, and other outreach programs to inform employees about the safety risks associated with texting while driving. This requirement applies to all solicitations and contracts.

#### Item VI—TINA Interest Calculations (FAR Case 2009–034)

DoD, GSA, and NASA are publishing a final rule amending the FAR to revise the clauses at FAR 52.214–27, FAR 52.215–10, and FAR 52.215–11 to require compound interest calculations be applied to Government overpayments as a result of defective cost or pricing data.

Dated: June 28, 2011.

Laura Auletta,

*Acting Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy.*

Federal Acquisition Circular (FAC) 2005–53 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 2005–53 is effective July 5, 2011, except for Items I, II, III, V and VI which are effective August 4, 2011.

Dated: June 27, 2011.

**Richard Ginman,**

*Director, Defense Procurement and Acquisition Policy.*

Dated: June 28, 2011.

**Joseph A. Neurauter,**

*Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.*

Dated: June 22, 2011.

**William P. McNally,**

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

[FR Doc. 2011–16671 Filed 7–1–11; 8:45 am]

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 1, 22, and 52

[FAC 2005–53; FAR Case 2009–007; Item I; Docket 2010–0101, Sequence 1]

RIN 9000–AL67

#### Federal Acquisition Regulation; Equal Opportunity for Veterans

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

**ACTION:** Final rule.

**SUMMARY:** DoD, GSA, and NASA have adopted as final, with changes, an interim rule amending the Federal Acquisition Regulation (FAR) to implement Department of Labor (DOL) regulations on equal opportunity provisions for various categories of military veterans. The interim rule revised coverage and definitions of veterans covered under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 and included new reporting requirements established under that Act and the Jobs for Veterans Act.

**DATES:** *Effective Date:* August 4, 2011.

**FOR FURTHER INFORMATION CONTACT:** Ms. Clare McFadden, 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 2005–53, FAR Case 2009–007.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 75 FR 60249 on September 29, 2010, to implement DOL regulations on equal opportunity provisions for various categories of military veterans. The interim rule revised coverage and definitions of veterans covered under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 and included new reporting requirements established under that Act and the Jobs for Veterans Act. The comment period closed November 29, 2010. One respondent submitted comments in response to the interim rule.

##### II. Discussion and Analysis of Public Comments

The Civilian Agency Acquisition Council and the Defense Acquisition

Regulations Council (the Councils) reviewed the comments in development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

##### A. Definitions

*Comment:* The respondent recommended inclusion of the definition of “Executive and Senior Management,” as defined in the FAR clause 52.222–35, Equal Opportunity for Veterans, in the definitions section of FAR subpart 22.13.

*Response:* The Councils have added the definition to FAR 22.1301.

*Comment:* The respondent recommended a change to the definition of the term “other protected veteran.”

*Response:* The FAR rule is implementing the DOL rule and does not have the latitude to expand the meaning of the DOL definition. (See the August 8, 2007, final rule of the Office of Federal Contract Compliance Programs, Department of Labor, 60–300.2 (p), 72 FR 44393.)

##### B. Delete References to the VETS–100 Form

*Comment:* The respondent recommends deleting all references to the VETS–100 Form and the date of December 1, 2003, to allow contractors to submit all reports on the VETS–100A Form.

*Response:* While understanding the rationale for the recommendation, the Councils are again bound by the DOL rule.

##### C. Date of FAR Clause 52.244–6

*Comment:* The respondent recommended that the FAR clause 52.244–6 date should be updated to reflect the OCT 2010 change made to the clause subsequent to the interim rule.

*Response:* When an interim rule is finalized, the final rule automatically retains any intervening changes to the FAR baseline, such as clause dates. No further change is required.

### III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant